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FISCAL IMPACT REPORT

SPONSOR <u>Roybal Caballero/Lopez/Chavez</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/2/2023</u>
SHORT TITLE <u>Possession of Semiautomatic Firearm Converter</u>	BILL NUMBER <u>House Bill 72/ec</u>
	ANALYST <u>Rabin</u>

APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
\$0.0	\$1,500.0	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$0.0	At least \$26.6	At least \$37.6	At least \$64.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 50, House Bill 101

Sources of Information

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
Public Defender Department (PDD)
New Mexico Attorney General (NMAG)
Sentencing Commission (NMSC)
Department of Health (DOH)
Corrections Department (NMCD)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 72

House Bill 72 creates the new crime of knowingly possessing or transferring a semiautomatic firearm converter (a fourth-degree felony, carrying a basic sentence of 18 months in prison). The

crime does not apply if a person is performing duties on behalf of the state, a political subdivision of the state, the armed forces of the United States, or the New Mexico National Guard, if that possession or transfer is directly related to the person's duties.

HB72 appropriates \$1.5 million from the general fund to the Department of Public Safety (DPS) to carry out the provisions of the act, including providing funding to additional local and statewide law enforcement, court processes, and incarceration.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

Appropriation. The appropriation of \$1.5 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund.

The Department of Public Safety (DPS) notes it will incur costs related to the distribution of the funds appropriated in this bill, and suggests appropriations to DPS be made solely for use by the New Mexico State Police and funding for other law enforcement agencies be routed through the Department of Finance and Administration's Local Government Division. As currently written, DPS estimates it would require \$80 thousand of the appropriation for administration costs and \$100 thousand for enforcement costs.

Because the majority of the costs associated with this bill are recurring, and many will not be realized until FY25 or later, this appropriation is not expected to fully cover the costs of the bill. Additional costs are noted under additional operating budget impact.

Additional Operating Budget Impact. Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. HB72 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

The proposed new crime of knowingly possessing or transferring a semiautomatic firearm converter is a fourth-degree felony, which carries an 18-month prison sentence; the Sentencing Commission (NMSC) estimates the average length of time served by offenders released from prison in FY21 whose highest charge was for a fourth-degree felony was 516 days. Based on the marginal cost of each additional inmate in New Mexico's prison system, each offender sentenced to prison for this crime could result in estimated increased costs of \$37.6 thousand to NMCD.

It is difficult to estimate how many individuals will be charged, convicted, or get time in prison or jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to prison each year for this crime, a cost of \$37.6

thousand. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred in the first year of incarceration, while the cost of the remaining 151 days (\$11 thousand) would be incurred in the second year of incarceration. To account for time to adjudication, no costs are anticipated to be incurred until one year after the bill takes effect, in FY25. Because the estimated time served is greater than one year, costs are anticipated to increase in FY26, as an offender admitted in FY25 serves the remainder of their term and another offender is admitted, but will level out that same year (as offenders begin to be released from prison) and remain level in future fiscal years.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under HB72, are not included in this analysis, but could be moderate. Notably, the appropriation contained in this bill should help cover those costs for FY24, but the costs will be recurring.

SIGNIFICANT ISSUES

Gun Violence. The Department of Health (DOH) reports four incidents of firearm violence where four or more people (not including the perpetrator) were killed in the U.S. in the first half of 2022,¹ including two that occurred in states bordering New Mexico. DOH reports such incidents resulted in 33 percent more fatalities and 500 percent more injuries between 2017 and 2021 than between 2012-2016.²

DOH reports a rate of firearm-related injuries in New Mexico of 23.1 per 100 thousand residents in 2020, a rate 3.4 percent higher than the prior year and 55 percent higher than 2010.³ DOH further notes New Mexico had the country's highest rate of firearm-related deaths across all ages in 2019⁴.

Constitutional Concerns. NMSC note the outcomes of Second Amendment challenges to the provisions of HB72 are uncertain. NMSC explains a 2022 U.S. Supreme Court decision “upended prior precedent on the constitutionality of restrictions on guns.” The U.S. Supreme Court has sent some challenges to such bans back to lower courts for reconsideration in light of its 2022 decision.

However, the office of the New Mexico Attorney General (NMAG) notes that because HB72 seeks to limit possession of firearm *accessories*, not possession of a firearm itself, there are no immediately apparent constitutional concerns arising from the bill.

RELATIONSHIP

HB72 relates to House Bill 50, which bans the possession or transfer of large-capacity magazines, and House Bill 101, which would restrict the possession, manufacture, purchase, sale, or transfer of a large capacity ammunition feeding device.

TECHNICAL ISSUES

¹ <https://www.themarshallproject.org/2022/07/06/what-you-need-to-know-about-the-rise-in-u-s-mass-shootings>

² <https://www.theviolenceproject.org/mass-shooter-database/>

³ <https://www.nmhealth.org/news/awareness/2021/12/?view=1760>

⁴ <https://www.cdc.gov/violenceprevention/publichealthissue/strategicvision.html>

NMAG notes HB72’s definition of “automatic firearm” differs greatly from the definition of “machinegun” set forth in federal law (26 USCA § 5845(b)). The agency recommends amending the definition in the bill to incorporate or reference the federal definition to avoid conflicts with federal law:

“Automatic firearm” means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person;

OTHER SUBSTANTIVE ISSUES

NMAG notes federal law enforcement officers are not included as an exception to the provisions of the bill.

The Public Defender Department writes:

Because enactment of this law would declare to be criminal certain ordinary activities that have previously been legal since the founding days of New Mexico, any such enactment include public awareness campaigns to prevent innocents from inadvertently becoming criminals by continuing behavior they have legally done all their lives. *See State v. Montoya*, 1977-NMCA-134, ¶ 14, 91 N.M. 262 (stating the “general rule is that ignorance of the law is not a defense.”). At a minimum, some sort of grace period to turn currently legal gun accessories in to authorities should be included.

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