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FISCAL IMPACT REPORT

SPONSOR Lane/Reeb/Lara LAST UPDATED _____
ORIGINAL DATE 2/15/2023
BILL
SHORT TITLE Purchase of Firearms for Another NUMBER House Bill 306
ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	No fiscal impact	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 61

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
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 306

House Bill 306 creates the new crime of unlawful purchase of a firearm for another, a fourth-degree felony carrying a sentence of 18 months of incarceration. Unlawful purchase of a firearm for another consists of a person knowingly purchasing or conspiring to purchase any firearm for, on behalf of, or at the request of or demand of another person, if they know the other person

- Is a felon;
- Is otherwise prohibited from possessing a firearm by federal laws or the laws of any other state or political subdivision of another state;
- Intends to use, carry, possess, sell, or otherwise transfer possession of the firearm in

- furtherance of any felony or misdemeanor; or,
- Intends to sell or otherwise transfer possession of the firearm to any other person prohibited by law.

HB306 specifies that prosecution for this crime shall not prevent prosecution pursuant to any other section of the Criminal Code.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

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. HB306 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

The proposed new crime of unlawful purchase of a firearm for another 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 serve 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 HB306 are not included in this analysis, but could be moderate.

SIGNIFICANT ISSUES

Gun Violence and “Straw Purchases” of Firearms. In 2020, New Mexico had the seventh-highest firearm-related death rate in the country.¹ The Department of Health (DOH) reports a total of 479 firearm-related deaths in New Mexico in 2020, including 303 suicides, 149 homicides, and 14 legal interventions.²

NMSC explains that although federal law prohibits “straw purchases” of firearms, there are circumstances under which state law does not prohibit such purchases. Under Section 30-7-7.1 NMSA 1978, selling a firearm without a background check is a misdemeanor offense, but the law does not apply to firearm transfers without consideration and creates an exception for sales between family members. Under Section 30-7-16 NMSA 1978, it is a third-degree felony for certain people (including felons) to receive, transport, or possess firearms, but the penalty applies only to the unlawful recipient of the firearm, not the provider. As a result, state law currently permits an individual to knowingly purchase a firearm for someone who is prohibited from possessing firearms if there is no consideration or if they are family members. HB306 proposes to close this “loophole.”

DOH reports research on secondhand gun transactions shows 30 percent to 40 percent of these transactions occur in an unregulated secondhand firearm market that includes classified ads, online sales, and gun sales, and this is also a common source of guns used in crimes.³ A survey of incarcerated gun offenders at jails in Los Angeles County found over 66 percent of those firearms were purchased illegally, with 51 percent of those purchases from friends, acquaintances, or friends of friends.⁴ A 2021 examination of handgun purchasers aged 21 to 49 in California in 2021 found 10.7 percent had a criminal conviction at the time of purchase, 32 percent had a criminal charge for a violent offense, and individuals who purchased handguns from a pawn shop were 71 percent more likely to have a criminal history that included a charge for a firearm-related violent crime.⁵ Additionally, 43 percent of handguns used in crimes recovered by the Boston Police Department between 2007 and 2013 that were first sold at Massachusetts licensed dealers and then matched to the state-mandated secondhand gun transfer data had more than one recorded ownership transfer after first retail sale.⁶

Other Concerns. The Public Defender Department (PDD) notes that because this conduct is already illegal under federal law, under the dual sovereignty doctrine, both New Mexico and the United States could prosecute a person. PDD further notes the bill would explicitly allow for any other crime to be charged along with unlawful purchase of a firearm for another, which could result in a person facing a significant, aggregate sentence. PDD states “This bill...is redundant and would create further State litigation when the federal government already prosecutes these crimes.”

The office of the New Mexico Attorney General (NMAG) notes that, because “purchase” generally requires buying, it would not be a crime to give a gun to a felon if the person giving the

¹ https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm

² <https://wonder.cdc.gov/Deaths-by-Underlying-Cause.html>

³ <https://www.sciencedirect.com/science/article/pii/S0091743515001772>

⁴ <https://injuryprevention.bmj.com/content/23/4/226>

⁵ <https://link.springer.com/article/10.1186/s40621-021-00301-5>

⁶ <https://www.sciencedirect.com/science/article/pii/S0091743515001772>

gun did not buy the gun themselves.

DOH adds “Enforcement of HB306 will...be difficult unless any person who transfers the firearm to another person (not just the original firearm purchaser) is required to file documentation with law enforcement. HB306 should also require gun owners to notify the police of stolen firearms.”

DOH notes there is no time limit for the use of the firearm for any felony or the sale or transfer of the firearm to any person prohibited by law, and suggests such a time limit could be useful to add.

RELATIONSHIP

HB306 relates to House Bill 61, which proposes to increase the penalty for a felon in possession of a firearm or destructive device (a third-degree felony) from the three-year sentence for most third-degree felonies to a five-year sentence.

TECHNICAL ISSUES

NMAG notes HB306 criminalizes the purchase of a firearm in certain circumstances, but “purchase” is not defined in the bill or elsewhere in the Criminal Code. It may be desirable to add such a definition.

HB306 requires the original firearm purchaser to know if the other person intends to sell or transfer the firearm to any other person prohibited by law. However, as noted above, the current understanding of the term “purchase” requires the act of buying, meaning if the original purchaser provides the firearm to a second person who further transfers (without the act of buying) the firearm to a person who is prohibited by law from having a firearm, it appears the original purchaser could be charged with the crime created by this bill, but the second person (who actually provided the firearm to a prohibited individual) would not. DOH notes it may be useful to require documentation of a background check for any transfer of the possession of a firearm to make the person most proximal to the transfer of the firearm accountable under HB306. Alternatively, a definition of “purchase” could be added that encompasses this conduct, or another word that encompasses this conduct could be used in place of “purchase.”

The Administrative Office of the District Attorneys (AODA) notes people other than felons may be prohibited from possessing a firearm under New Mexico law, but HB306 only prohibits unlawful purchase of a firearm for a person who is a felon or “prohibited from possessing a firearm by any law of the United States, any other state or a political subdivision thereof,” (emphasis added) which would exclude non-felons who are otherwise prohibited from possessing a firearm under New Mexico law. AODA suggests removing the word “other” on page 1, line 23, to resolve this issue.

NMAG notes the bill makes it a fourth-degree felony to conspire to commit unlawful purchase of a firearm for another, but it is unnecessary to treat the act and conspiracy to commit the act because conspiracy to commit a fourth-degree felony is already a fourth-degree felony, which would encompass conspiracy to commit unlawful purchase of a firearm for another. However, NMAG notes current law treats an *attempt* to commit a fourth-degree felony is only a

misdemeanor, so, if the intention of the bill is to punish an attempt to commit unlawful purchase of a firearm for another as a fourth-degree felony, “conspires” could be replaced with “attempts.”

The Administrative Office of the Courts (AOC) notes HB306 mirrors some of the language in the Bipartisan Safer Communities Act that relates to straw purchases, but that language requires the purchaser to “know” or “have reasonable cause to believe” the person they are purchasing a firearm from is prohibited from possessing it. AOC suggest it may be helpful for HB306 to include similar language to expand the strict “knowingly” standard currently included in the bill.

OTHER SUBSTANTIVE ISSUES

NMAG notes:

As drafted, the bill specifically states that prosecution under this new language does not prohibit prosecution under other provisions, showing that the Legislature intends punishment for this felony in addition to any other felonies that may be prosecutable. This provides clarity of legislative intent. *See State v. Gutierrez*, 2011-NMSC-024, ¶ 55 n. 2, 150 N.M. 232 (“We note, however, that our Legislature knows how to accomplish such a task and has expressly provided for multiple punishments in the case of other crimes that might, depending on the circumstances of the particular case, be precluded for double jeopardy purposes when charged together with robbery, armed or otherwise.” (citation omitted)).

ALTERNATIVES

NMAG suggests “[a] possible alternative is to enact a limitation on procuring firearms for others as part of a regulatory bill rather than, or in addition to, a criminal statute.”

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