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FISCAL IMPACT REPORT

SPONSOR Wirth LAST UPDATED _____
ORIGINAL DATE 1/31/2023
BILL _____
SHORT TITLE Prohibit Firearms at Polling Places NUMBER Senate Bill 44
ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to Counties	Up to \$9.6	Up to \$9.6	Up to \$9.6	Up to \$28.8	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

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)
Secretary of State (SOS)
Corrections Department (NMCD)
Department of Public Safety (DPS)

SUMMARY

Synopsis of Senate Bill 44

Senate Bill 44 creates the new crime of unlawful carrying of a firearm at a polling place, a petty misdemeanor, punishable by up to six months in jail. Unlawful carrying of a firearm at a polling place is defined as carrying a loaded or unloaded firearm within 100 feet of a polling place on Election Day or while early voting is in progress. The prohibition does not apply to peace officers in the course of their duties or peace officers and security personnel with authorization from local government officials to be stationed in the area.

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 significant 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. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB44 could increase the number of incarcerated individuals and increase the time they spend incarcerated.

For purposes of this analysis, it is estimated an individual could spend up to six months incarcerated in jail for a petty misdemeanor under SB44. Based on the marginal cost of each additional inmate in New Mexico's jail system, each offender sentenced to jail for this crime could result in estimated increased costs up to \$9,614 to counties. 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, resulting in increased costs to counties of \$9,614 per year. To account for time to adjudication, these costs are not anticipated to be incurred until one year after the bill takes effect, in FY25.

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 SB44, are not included in this analysis, but may exist.

SIGNIFICANT ISSUES

The office of the Secretary of State notes "Passing this legislation would increase the amount of protection available to our election administrators, poll workers, and voters, and it would work towards eliminating threats of fear and intimidation. Although intimidation of voters is currently a crime in New Mexico, prosecutors would need to show that the person carrying a firearm sought to intimidate by carrying the weapon." SOS also adds "Increasing the 100 ft boundary to 500 ft may bolster or help solidify protections achieved by the firearm prohibition. Recently in Maricopa County, Arizona, armed individuals were filmed "monitoring" ballot boxes. A 100 ft. boundary would still be within view of most polling locations and therefore could still result in voter intimidation."

The Administrative Office of the Courts (AOC) further explains:

Two in five voters in the November 2022 midterm elections say they are worried about threats of violence or voter intimidation, according to a new Reuters/Ipsos poll. <https://www.reuters.com/world/us/exclusive-two-five-us-voters-worry-about-intimidation-polls-reutersipsos-2022-10-26/>. The presence of armed individuals at the polls could potentially escalate a disagreement or confrontation regarding differing political views. In November of 2022, the Department of Justice posted an article with contact information to report disruption at a polling place and the work of the Civil Rights Division enforcing the federal voting rights

laws that protect the rights of all citizens to access the ballot. See: <https://www.justice.gov/opa/pr/justice-department-monitor-polls-24-states-compliance-federal-voting-rights-laws>. A Los Angeles Times Post article stated that most states do not have laws restricting firearms in polling places: <https://www.latimes.com/politics/story/2020-10-20/guns-in-polling-places>.

The Administrative Office of the District Attorneys writes:

SB44 would likely survive a Second Amendment challenge. In *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago, Ill.*, 561 U.S. 742 (2010) the U.S. Supreme Court repeated its assurances that certain prohibitions and regulatory measures do not offend the Second Amendment, including prohibitions on carrying firearms in sensitive places such as schools and government buildings. A polling place would be such a sensitive location, susceptible to the violence that has increased around elections and politics. In addition, the state has a compelling interest in ensuring that elections are fairly and safely conducted and that its citizens are not intimidated when exercising their fundamental right to vote.

The Public Defender Department raises some concerns with the bill, stating:

SB44 does not include an intent element. Analyst recommends a requirement that the person “intentionally carry a firearm at a polling place” as an element of the proposed crime. Presuming that the purpose of this new law is to prevent and punish purposeful voter intimidation, the bill should not criminalize the inadvertent act of carrying a firearm to or near a polling station by someone who might have a conceal and carry permit and simply forgotten that the firearm was still on his or her person. An “intentional” or “purposeful” requirement would better target culpable conduct of carrying a firearm to a polling place as an act of intimidation.

In addition, 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.”).

TECHNICAL ISSUES

The office of the New Mexico Attorney General notes “There are already various definitions for “firearm” in existing law. For example, these laws do not include mufflers or silencers in the definition: § 40-17-2, § 40-13-2. These laws (as well as New Mexico’s uniform jury instruction defining “firearm” for criminal trials, UJI 14-704) do include mufflers or silencers: § 30-20A-2, § 30-7-7.1, § 32A-2-33.”

NMAG further raises a the concern that “page 2, lines 4–5 (Section 1, subpart B(2)) could be open to interpretation as to whether the peace officer must be on duty at the time in order to fall within the contemplated exception.”

OTHER SUBSTANTIVE ISSUES

The Sentencing Commission Reports:

According to the Giffords Law Center, 16 states and the District of Columbia have some kind of restrictions on firearms at polling places. Ten of these jurisdictions explicitly prohibit both concealed weapons and open carry weapons at polling locations – Arizona, California, District of Columbia, Florida, Georgia, Louisiana, New Jersey, New York, Texas, and Virginia. See details at “States that Prohibit Firearms in Polling Places”, available at: <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/location-restrictions/>.

AOC notes “There are other state laws that prohibit handguns within a number of areas where polls are located; i.e. schools (NMSA 1978 Sections 30-8-2.1 and 29-19-8), universities (NMSA 1978 Section 20-7-2.4), court facilities (NMSA 1978, Section 29-19-10), and hospitals. Also, concealed carry licenses do not allow guns where they are otherwise prohibited by state law. In addition, NMSA 1-20-14 prohibits voters from being intimidated at polling locations.”

According to NMAG:

The Office of the Attorney General holds a statutory duty to provide “legal advice, assistance, services and representation,” in actions to enforce the Election Code and to “assign investigators or lawyers to aid the secretary of state and county clerks to ensure the proper conduct of an election.” See NMSA 1978, Section 1-2-1.1. The Office of the Attorney General is regularly requested by the Secretary of State to provide civil resources for election monitoring as well as litigation assistance in enforcing the Election Code. SB44 could increase the expectations of the role of the Office of the Attorney General, both in election monitoring and potential criminal prosecutions, without providing additional resources.

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