

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>Hamblen</u>	LAST UPDATED _____
SHORT TITLE <u>21 Years Old to Purchase or Possess Firearms</u>	ORIGINAL DATE <u>1/29/2023</u>
	BILL NUMBER <u>Senate Bill 116</u>
	ANALYST <u>Rabin</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to Counties	Indeterminate but minimal	At least \$9.6 to \$19.2	At least \$9.6 to \$19.2	At least \$19.2 to \$38.4	Recurring	County General Funds

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

Relates to House Bill 9, House Bill 50, and House Bill 72
 Conflicts with House Bill 101

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 Senate Bill 116

Senate Bill 116 makes it a misdemeanor offense (carrying a sentence of up to one year in jail) for a person under 21 years old to purchase or possess an automatic or semiautomatic firearm or to purchase or possess a firearm that is capable of accepting a large-capacity feeding device. The bill provides that a person under 21 years old may possess an automatic or semiautomatic firearm in certain situations: while attending a firearm safety course, while target shooting at an established range, while engaging in organized competition using the firearm, while engaging in performance with a firearm, while engaged in legal hunting or trapping, and while traveling to any of these activities with the firearm unloaded. The bill further provides a person under 21

years old may possess an automatic or semiautomatic firearm when on private property under the control of a person's parent, grandparent, or legal guardian and while being supervised by a parent, grandparent, or legal guardian. The bill provides exemptions from these provisions for peace officers and members of the armed services.

The bill further makes it a misdemeanor offense to knowingly sell or transfer ownership of an automatic firearm, semiautomatic firearm, or firearm capable of accepting a large-capacity feeding device to a person under 21 years old who is not covered by one of those exceptions.

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. 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. SB116 is anticipated to increase the number of incarcerated individuals.

The proposed new crime created under this bill is a misdemeanor, punishable by up to a year in jail; for purposes of this analysis, it is estimated an individual could spend between six months and one year incarcerated for this offense. 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 of \$9,614 to \$19.2 thousand to counties.

It is difficult to estimate how many individuals will be charged, convicted, or be sent to jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to jail each year for this crime, a cost of \$9,614 to \$19.2 thousand. To account for time to adjudication, these costs are not anticipated to be incurred until one year after the bill takes effect, in FY25; however, a minimal cost may apply in FY24 for individuals who are detained for some period of time prior to adjudication.

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 SB116, are not included in this analysis, but could be moderate.

SIGNIFICANT ISSUES

Gun Violence and Minimum Age Requirement Laws. The Department of Health (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 2010.¹ DOH further notes New Mexico had the country's highest rate of firearm-related deaths across all ages in

¹ <https://www.nmhealth.org/news/awareness/2021/12/?view=1760>

2019,² but emphasizes firearm-related violence is disproportionately concentrated among young people.³ In its analysis of another bill aimed at reducing access to guns by young people (House Bill 9), DOH reported New Mexico’s rate of firearm-related deaths in children under 18 years old between 2018 and 2022 was 4.7 deaths per 100 thousand residents, 81 percent higher than the national average of 2.6 deaths per 100 thousand residents and the seventh highest in the nation.⁴

DOH explains New Mexico currently has a minimum age law restricting possession of a handgun to those 19 and over, but no minimum age requirements regarding the possession of an automatic firearm, semiautomatic firearm, or firearm capable of accepting a large-capacity feeding device. The Administrative Office of the Courts explains current federal law restricts purchasing a shotgun or rifle to those 18 years old and older and restricts purchasing a handgun and ammunition for the handgun to those 21 years old and older.

According to a 2023 meta-analysis of research evidence on the effects of gun policies in the United States from the RAND Corporation, there is mixed evidence for the impact of minimum age requirement laws on public safety. The meta-analysis found moderate evidence that minimum age requirement laws setting 21 as the minimum age of *purchase* for a firearm may reduce suicides among young people, limited evidence that minimum age requirement laws setting 21 as the minimum age of *possession* for a firearm may reduce suicides among young people, and inconclusive evidence that minimum age requirement laws for *possessing* a firearm may reduce unintentional firearm deaths. Studies further provided inconclusive evidence regarding both the existence and direction (increase or decrease) of the impact of minimum age requirement laws and total suicides, firearm homicides, total homicides, other violent crime, or mass shootings. The study notes “...the effectiveness of minimum age laws is likely to be tempered by the ease with which many youth can obtain firearms from sources other than legal retailers.”⁵

Constitutional Concerns. The Sentencing Commission (NMSC), the office of the New Mexico Attorney General (NMAG), the Public Defender Department (PDD) and AODA note the provisions of SB116 are likely to be challenged under the Second Amendment of the U.S. Constitution, with uncertain outcomes. NMSC explains federal courts are split on whether age-based restrictions are a violation of the Second Amendment, and the matter has not yet been heard by the U.S. Supreme Court.

NMAG further notes the proposed bill could be challenged under the New Mexico Constitution, as Article 2, Section 6 states “No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.” Although similar statutes in other states have been upheld under their state constitutions, those states had different constitutional language regarding this issue.

² <https://www.cdc.gov/violenceprevention/publichealthissue/strategicvision.html>

³ <https://ojjdp.ojp.gov/publications/trends-in-youth-arrests.pdf>;
<https://www.washingtonpost.com/health/2022/06/03/why-so-many-mass-shooters-young-angry-men/>;
<https://wisqars.cdc.gov/fatal-reports>

⁴ <https://wonder.cdc.gov/ucd-icd10.html>

⁵ https://www.rand.org/pubs/research_reports/RRA243-4.html

Other Concerns. The Administrative Office of the District Attorneys (AODA) notes people under 21 years old who are members of the armed services would be allowed to purchase and possess automatic firearms, semiautomatic firearms, or a firearm capable of accepting large-capacity feeding devices, without restriction and regardless of whether such purchase or possession is done within the scope of their duties. AODA suggests adding language specifying the exception for members of the armed services be limited to the course and scope of their duties.

RELATIONSHIP, CONFLICT

SB116 relates to House Bill 9, which also aims to reduce youth access to firearms.

SB116 further relates to House Bill 50 and House Bill 72, which seek to place restrictions on some of the weapons covered by SB116, but not based on age.

PDD notes the proposed offense under SB116 may conflict with HB101, explaining:

...HB 101 would prohibit the possession, manufacture, purchase, sale, or transfer of large-capacity magazines and assault weapons, and punish such conduct as fourth-degree felonies. If SB116 is also enacted, there would be a conflict in punishment. It is possible that an exception could be created whereby anyone under 21 is only a misdemeanor, reserving felony penalties under HB101 for adults over age 21. This would be reasonable, as starting a young adult out in life as a felon for simply possessing a gun he or she may have already been possessing legally, has significant implications in the life of an otherwise law-abiding person.

TECHNICAL ISSUES

AODA suggests replacing “a parent” with “the person’s parent” on page 3, line 1, unless the intention is that anyone who is a parent, grandparent, or legal guardian provide supervision.

ER/al/ne