

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original Amendment _____
Correction _____ Substitute _____

Date 16 January 2024
Bill No: HB 47-280

Sponsor: William "Bill" R. Rehm, Randall T. Pettigrew, Harlan Vincent
Short Title: Unlawful Firearms While Trafficking

Agency Name and Code Number: Law Offices of the Public Defender (LOPD) -280
Person Writing: Kate Baldrige
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

This bill, HB 47, identical to one unsuccessfully proposed in the 2020, 2021, 2022, and 2023 Legislative Sessions as HB 114, 81, 26, and HB 59, respectively, seeks to create a new third degree felony crime of carrying a firearm while trafficking drugs in Article 7 of the Criminal Code (Weapons and Explosives).

The legislation’s effective date would be July 1, 2024.

FISCAL IMPLICATIONS

Because a likely significant number of drug traffickers may possess a weapon, this bill would likely lead to a frequent “add-on” charge any time a person accused of trafficking is arrested in possession of their firearm, even if otherwise legally possessed. The additional third-degree felony carries a three-year sentence; consequently, defendants may be less likely to take a plea and prefer to take the matter to trial. If more higher-penalty trials result, LOPD may need to hire more trial attorneys with greater experience. Accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed higher-penalty scheme.

For estimation purposes, these felonies would be handled by mid-level felony capable attorneys (Associate Trial Attorneys). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. Associate Trial Attorney’s mid-point salary including benefits is \$98,073.36 in Albuquerque/Santa Fe and \$104,167.76 in the outlying areas (due to necessary salary differential to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,780.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126,722.33.

Presumably the courts, and DAs would be affected in similar measure to LOPD.

The proposed legislation would also have a fiscal impact on DOC, given additional sentences in drug trafficking prosecution. The analysis of this bill in 2020, 2021, 2022, and 2023 noted the 2009 conclusion of a previous analysis which provided: “if the bill passes and it

substantially increases the inmate population or probation/parole caseloads, it would increase the workloads of current prison and probation/parole staff. Individuals convicted of this crime would be more likely to need intensive supervision by probation/parole staff, and that higher level of supervision is more time consuming and more expensive to provide.”

SIGNIFICANT ISSUES

None noted.

PERFORMANCE IMPLICATIONS

See *Fiscal Implications*, above.

ADMINISTRATIVE IMPLICATIONS

See *Fiscal Implications*, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill was introduced as HB 23 in 2009, where it died and further action was postponed indefinitely until the 2020, 2021, 2022, and 2023 Legislative Sessions when it was reintroduced as HB 114, 81, 26, and 59, respectively.

Use of a firearm during the commission of a felony is already addressed in NMSA 1978, § 31-18-16 (2022), the enhancements for which were just increased in 2022 under HB 68. Similarly, the separate crime of felon in possession of a firearm is already addressed in NMSA 1978, §§ 30-7-16 (2022). Both of these statutes underwent a comprehensive overhaul as part of the Governor’s crime package during both the 2020 and 2022 Legislative Sessions. In the 2023 Legislative Session, HB 61 sought to further enhance the penalty for third-degree felon in possession of a firearm from three years to five years in prison, and third-degree felon in possession of a firearm by a serious violent felon from three years to six years in prison.

Moreover, HB 46 introduced during the current legislative session seeks again to further enhance the penalty for third-degree felon in possession of a firearm or destructive device from three years to five years in prison for a first offense, and nine years for a subsequent offense, and seeks to enhance seeks to enhance the penalty for felon in possession of a firearm or destructive by a serious violent felon from three years to nine years in prison.

TECHNICAL ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

Status quo.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None known.