

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

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 X

Date Feb. 13, 2024

Bill No: HB 316-280

Sponsor: Reps. Rehm, Hochman-Vigil, et al
"PUBLIC PEACE, etc." (Felon
in Possession of a Firearm
Penalty)
Short Title: _____

Agency Name and Code LOPD-280
Number: _____
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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: HB 46, HB 198 (tabled)

Companion to:

Relates to: HB 168, HB 78, HB 47, HB 183, SB 5

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 316 would increase the penalty for a felon possessing a firearm in NMSA 1978, Section 30-7-16.

Under current law, a non-violent felon possessing a firearm is guilty of a third degree felony (3 years) and a “serious violent” felon possessing a firearm is guilty of a special third degree felony (6 years). HB 316 would now increase *both* penalties maintaining the non-violent/SVO distinction, increasing the non-SVO felony penalty for a first possessory offense from 3 to 5 years, and **tripling** the non-SVO penalty to 9 years for a second or subsequent offense. It also would increase the SVO penalty from 6 to 9 years.

The five-year penalty for a first offense by a non-violent felon is accomplished by creating a new type of felony called a “third degree felony for possession of a firearm or destructive device by a felon” and amending NMSA 1978, Section 31-18-15 to designate a basic sentence of five years for that felony.

FISCAL IMPLICATIONS

Higher-penalties cases are somewhat more likely to go to trial. These felonies would be handled by, at a minimum, mid-level felony capable attorneys (Associate Trial Attorneys), but more likely higher-level attorneys (Trial Attorneys). A mid-level felony capable Associate Trial Attorney’s mid-point salary *including benefits* is \$136, 321.97 in Albuquerque/Santa Fe and \$144, 811.26 in the outlying areas. A senior-level Trial attorney’s mid-point salary *including benefits* is \$149, 063.13 in Albuquerque/Santa Fe and \$157, 552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12, 780.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126, 722.33.

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. Assessment

of the impact on the LOPD upon enactment of this bill would be necessary after the implementation of the proposed higher-penalty scheme.

Any increase in trials would also increase litigation costs for the courts and District Attorneys' offices. Moreover, precluding earned meritorious deductions is certain to impact the housing budget for the Department of Corrections.

SIGNIFICANT ISSUES

Notably, the Legislature has consistently increased penalties for this crime three times in as many years. In 2020, the penalty for this crime was increased from a fourth degree felony to a third degree felony only for SVO felons, leaving the fourth-degree felony for non SVO felons. The next year, the Legislature removed the distinction, increasing the penalty for *all* felons to the third-degree felony carrying three years. In 2022, HB 68 increased the basic sentence for SVO felons to *six* years, leaving the non-SVO felon penalty at three years. HB 198 would thus constitute a *fourth* penalty increase to this crime in the span of as many years. Reviewer is unaware of any evidence showing that these previous penalty increases have had any deterrent effect or resulted in any reduction in gun crime. Reviewer is not aware of any research finding that increased criminal penalties have an increased deterrent effect on the commission of the crimes. The bill would, at most, lead to an increase in incarceration.

In addition, it is important to note that, unlike sentencing enhancements for using a firearm during the commission of another [violent] crime, Section 30-7-16 punishes a felon for simply possessing a gun or destructive device, even if they never *use* it. The statute represents a policy determination that felons should never possess a firearm. However, doing so hardly presents the same level of risk or danger associated with violent felonies, like armed robbery or aggravated burglary. Felon in possession is a crime of *mere possession*. It includes storing a gun in one's closet and does not require having it on their person or using it in any way, nor the commission of any contemporaneous crime. It is at its foundation, a *regulatory* offense, and the current penalty, which reflects three increases in the last three years, is sufficient.

Analyst notes that HB 316 would increase the non-violent felons' penalty for possession from a three to five years for a first offense, but would **triple** that penalty for a second offense, while increasing violent felons' possession penalty to 9 years across the board. As it stands, we are *currently* punishing this non-violent possession crime as harshly or more harshly than many violent crimes like aggravated battery and aggravated assault. If HB 316 is adopted, New Mexico would punish *gun possession* the same as *actually committing* armed robbery, aggravated burglary, attempted murder, shooting at or from a motor vehicle resulting in great bodily harm, kidnapping, and many sexual assaults.

It is also worth noting that, because people charged with this crime must have a prior felony conviction, the vast majority will also already be subject to Habitual Offender Enhancements to the existing basic sentence, which involve a one, four, or eight-year enhancement depending on the number of prior felony cases. Thus, for the most egregious repeat offenders, the *existing* basic sentence could easily become either 11 years (for non-violent felons) or 14 years (for violent felons) even if this bill were not enacted.

PERFORMANCE IMPLICATIONS

In addition to an increased desire to defend against higher penalty charges at a jury trial,

the need to heavily litigate pretrial motions and to prepare a defense presentation at sentencing is also more pressing. Furthermore, if charged alongside other charges, felon-in-possession charges are almost always “severed” from the other counts to avoid having to unnecessarily inform the jury of a defendant’s “felon” status in considering the other allegations. Thus, cases including this charge among others tend to require *two trials* and not just one. With the increased penalties and good time ineligibility, the need for more experienced attorneys and reliance on peripheral LOPD services such as investigators and social workers would make defending these charges more resource-intensive than they are currently.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

This bill would create a unique five-year basic sentence applicable to only *one* version of *one* crime, contributing to penalty confusion and statutory excess in the exhaustive list of basic sentences in Section 31-18-15(A), an issue that the Sentencing Commission is actively trying to address.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo: felon in possession would be punished as a third degree felony carrying three years in prison for most felons, and carrying six years in prison for those whose “felon” status is premised on a SVO. Furthermore, *in addition to* the possession crime, *use* of a firearm to commit a new crime is punishable by whatever penalty attaches to that offense, plus, for most crimes, a firearm enhancement. Furthermore, that penalty for using a firearm can already be increased based on the person’s felon status under the Habitual Offender Act.

AMENDMENTS