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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Reps. Szczepanski and Hochman- Vigil/Sen. Hamblen</u>	<b>LAST UPDATED</b> <u>2/5/24</u> <b>ORIGINAL DATE</b> <u>1/24/2024</u> <b>BILL NUMBER</b> <u>House Bill 127/aHJC</u>
<b>SHORT TITLE</b> <u>Age 21 For Firearm Purchases</u>	<b>ANALYST</b> <u>Sanchez</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Courts and Judicial Agencies	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

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

Relates to House Bill 129, House Bill 46, House Bill 47 and House Bill 58

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
 Office of the Attorney General (NMAG)  
 New Mexico Sentencing Commission (NMSC)  
 Department of Public Safety (DPS)

## SUMMARY

### Synopsis of HJC Amendment to House Bill 127

The House Judiciary Committee Amendment to House Bill 127 adds an exception for firearm possession for individuals under age 21 who are hunting guides or outfitters as outlined in Section 17-2A-3 NMSA 1978.

### Synopsis of Original House Bill 127

House Bill 127 (HB127) amends Section 30-7-2 NMSA 1978, to prohibit those under 21 from buying or possessing automatic or semiautomatic firearms and large-capacity magazines, with specific exceptions. These exceptions include usage in firearm safety courses, target shooting at ranges, organized competitions, performances, legal hunting or trapping, and transit to these activities with unloaded firearms. Additionally, under supervision, those under 21 can possess such firearms on private property controlled by a parent, grandparent, or legal guardian. The bill exempts peace officers and armed service members and makes selling or transferring these firearms to individuals under 21 years of age, outside these exceptions, a misdemeanor.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

## 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 additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. HB127 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 increase costs by approximately \$9,614 to \$19.2 thousand to counties.

It is difficult to estimate how many individuals will be charged, convicted, or 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, costing \$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 FY26; however, a minimal cost may apply in FY25 for individuals detained for some period before 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 HB127, are not included in this analysis but could be moderate.

An analysis provided by the Administrative Office of the Courts (AOC) stated the administrative costs for updating and distributing statutory changes statewide would be minimal. However, any additional impact on the judiciary will depend on the enforcement of new laws and related prosecutions. New laws and amendments can increase court caseloads, necessitating more resources.

## SIGNIFICANT ISSUES

The Office of the Attorney General (NMAG) and the New Mexico Sentencing Commission's analysis of HB127 raises concerns about the constitutionality of the age restrictions proposed in the bill. The constitutionality of age-based restrictions on purchasing semi-automatic firearms is a contentious issue in the U.S., particularly following the U.S. Supreme Court's decision in *New York State Rifle & Pistol Assn v. Bruen*.<sup>1</sup> While some states have raised the age for purchasing these firearms to 21, court decisions have been varied. The Supreme Court's ruling in *Bruen* mandates firearm regulations must align with the nation's historical tradition of regulating

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<sup>1</sup> [https://www.supremecourt.gov/opinions/21pdf/20-843\\_7j80.pdf](https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf)

firearms, yet it refrains from specifically addressing age limits. Lower courts have issued conflicting rulings: some upholding age restrictions, others striking them down. The matter remains unsettled at the Supreme Court level, leaving room for further legal challenges and interpretations.

Analysis from AOC also pointed out potential issues with providing access to juvenile records as they relate to the provisions of HB127. AOC is the sole entity with access to juvenile and mental health records. Since January 2023, AOC has conducted enhanced background checks for gun purchasers aged 18-20. Between January 3, 2023, and January 16, 2024, AOC processed 3,420 juvenile checks, allowing 3,201 purchases, denying 15 due to current criminal history, and 10 solely based on enhanced outreach. AOC also notes federal law permits 18-year-olds to buy long guns, including assault weapons but restricts handgun purchases to those over 21. The Bipartisan Safer Communities Act of 2022 mandates the FBI consult state juvenile justice and mental health records, as well as local law enforcement, when a person under 21 attempts to buy a gun.

Under New Mexico's Children's Code, sealed juvenile records cannot be disclosed, and juvenile dispositions are not considered convictions, allowing gun purchases to proceed unless the juvenile received an adult sentence in a criminal case.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB127 relates to House Bill 129, which establishes a 14-day waiting period for firearm purchases.

HB127 relates to House Bill 46, which amends the Criminal Code to allow for a third-degree felony conviction if a felon is convicted of being in possession of a firearm or “destructive device.

HB127 relates to House Bill 47, which creates a new third-degree felony crime of unlawful carrying of a firearm while trafficking a controlled substance.

HB127 relates to House Bill 58, which seeks to repeal the criminal code section mandating instant background checks for firearm sales.

## **OTHER SUBSTANTIVE ISSUES**

The analysis provided by NMAG expressed concerns regarding the proposed misdemeanors for those under 21 regarding the purchase and possession of certain firearms and for the sale of these firearms to minors under specific circumstances, requiring proof of specific intent or exceptional circumstances, which may be challenging to establish beyond a reasonable doubt.

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