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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED	<u>02/13/24</u>
	ORIGINAL DATE	<u>02/13/24</u>
	BILL	<u>CS/House Bill</u>
SHORT TITLE <u>Felon in Possession of Firearm Penalty</u>	NUMBER	<u>316/HJCS</u>
	ANALYST	<u>Sanchez</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY27	FY28	FY29	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	At least \$573.4	At least \$893.3	At least \$893.3	At least \$2,359.9	Recurring	General Fund

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

Conflicts with HB198

Relates to HB47, HB78, HB79, HB88, HB101, HB114, HB127, HB129, HB168; SB5, SB69, SB90 and SJR12

Sources of Information

LFC Files

Agency Analysis Received From
 New Mexico Attorney General (NMAG)
 Sentencing Commission (NMSC)

Agency Analysis was Solicited but Not Received From
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Corrections Department (NMCD)
 Department of Public Safety (DPS)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of House Judiciary Committee Substitute for House Bill 316

The House Judiciary Committee substitute for House Bill 316 (HB316) amends Section 30-7-16 NMSA 1978 (Firearms or destructive devices; receipt, transportation or possession by certain

persons; penalty) to increase the penalty for the crime of possession of a firearm or destructive device by a felon from a fourth-degree felony to a third-degree felony for a first offense, and from a third-degree felony to a second-degree felony for a second or subsequent offense.

HB316 also amends Section 31-18-15 NMSA 1978 (Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions) to increase the penalty for a third-degree felony for possession of a firearm or destructive device by a felon to increase the basic sentence to five years of incarceration.

The effective date of this bill is July 1, 2024.

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. In addition to the potential for new crimes to send more individuals to prison and jail, longer sentences could result in fewer releases relative to admissions, driving up overall populations. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. HB316 is anticipated to increase the time individuals spend incarcerated.

Felon in Possession. In FY22, 1,196 people were admitted to prison for offenses that were not serious violent offenses, 82 percent of overall admissions. Assuming a similar share of the 39 individuals admitted to prison with their highest charge being felon in possession of a firearm in FY21 were admitted for offenses other than serious violent offenses, this change would increase the sentences of about 32 individuals each year. Based on estimates of actual time served for a two-year sentence enhancement provided by the Sentencing Commission (NMSC), these 32 individuals will spend an additional 383 days in prison each due to the increased sentence, a cost of \$27.9 thousand per offender. Overall, this analysis estimates HB316 will result in increased incarceration costs of \$893.3 thousand per year. These additional costs will begin to be realized in FY27, increasing over the following year (as more individuals serve longer sentences) and leveling out at \$893.3 thousand in FY28 (as offenders begin to be released from prison) and future fiscal years.

Serious Violent Felon in Possession. Using those same FY22 figures, approximately six people will face increased sentences under the serious violent felons provisions of HB316. Based on NMSC estimates of actual time served, these six individuals will spend an additional 4.2 years in prison, at a cost of \$111.9 thousand per year per offender. Overall, this analysis estimates increased costs of \$675.2 thousand per year. Because these additional costs will not be realized until FY30, they are not reflected in the table.

In addition, these costs are likely an underestimate, as a felon in possession of a firearm is often not the highest charge for which someone is admitted to prison. Last year, NMCD estimated that 10 percent of the New Mexico prison population, or close to 540 individuals, were serving time for this crime.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials (if more defendants invoke their right to a trial when facing more serious penalties), are not included in this analysis but could be significant.

SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than the severity of punishment, and prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC’s evaluation team has found in the 2nd Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than severe penalties. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

The analysis provided by the New Mexico Sentencing Commission points out that the agency is in the process of revising the state's Criminal Code with assistance from the Robina Institute of Criminal Law and Criminal Justice, which has pointed out the code's inconsistency due to special statutes. HB316 aims to modify this by implementing a five-year third-degree felony penalty for felons found in possession of firearms or destructive devices, altering the existing structure that currently includes a six-year penalty for serious violent felons under similar circumstances. Additionally, HB316 proposes to standardize penalties for possessing destructive devices and introduces harsher consequences for repeat offenses. Although the exact impact on prison populations is uncertain, it is anticipated that these changes could lead to an increase in incarcerations, with significant implications for the state’s correctional expenses.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB316 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.

HB316 relates to House Bill 47, which creates a new third-degree felony crime of unlawful carrying of a firearm while trafficking a controlled substance.

HB316 relates to House Bill 58, which seeks to repeal the criminal code section mandating instant background checks for firearm sales.

HB316 relates to House Bill 127, which raises the minimum age for firearm purchases to 21.

HB316 relates to House Bill 129, which establishes a 7-day waiting period for firearm purchases. HB316 conflicts with House Bill 198, which increases the degree of felony and the penalty for a felon in possession of a firearm from a third-degree to a second-degree felony and from a three-year sentence to a nine-year sentence

HB316 relates to Senate Bill 69, which also establishes a 14-day waiting period for firearm purchases.