

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(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}

Date Prepared: February 21, 2025 Check all that apply:
Bill Number: HB 496 Original X Correction ___
 Amendment ___ Substitute ___

**Agency Name
and Code**

Sponsor: <u>Garratt</u>	Number: <u>NM Sentencing Commission – 354</u>
Short Title: <u>Felon in Possession of Firearm Penalty</u>	Person Writing: <u>Keri Thiel</u>
	Phone: <u>505-259-8763</u> Email: <u>kthiel@unm.edu</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/**Conflicts with**/Companion to/Relates to: HB 166 and SB 253
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 496 amends Section 30-7-16 NMSA 1978, regarding transportation or possession of a firearm or destructive device by certain persons, to increase the sentence for a felon in possession of a firearm, apply the same penalty to a felon in possession of a destructive device and felons who receive or transport firearms or destructive devices, remove the differentiation between a felon and a serious violent felon, and add an increased penalty applicable to second and subsequent offenses.

As proposed by HB 496, felons who receive, transport or possess firearms or destructive devices shall be guilty of a second degree felony for a first offense, and a first degree felony for a second or subsequent offense.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

In 2021, the New Mexico Sentencing Commission engaged the services of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to analyze the state's Criminal Code for its strengths and weaknesses. One item of concern for the Robina Institute was that the Criminal Code has a number of special statutes that fall out of the normal penalty structure in the state. HB 496 would remove one of these special penalties from the Criminal Code, as it would remove the existing six-year third degree felony for serious violent felons in possession of a firearm or destructive device.

HB 496 would increase the basic term of years of imprisonment for felons in possession of a firearm, and would also apply the same penalty for felons in possession of a destructive device. HB 496 would also add an increased penalty for second or subsequent offenses of felons in possession of a firearm or destructive device. The bill would apply the same penalties to felons who receive or transport a firearm or destructive device.

While it is difficult to determine what the effect of passing HB 496 would be on the state's prison population, it is likely that these changes would lead to more people being incarcerated by the Corrections Department. The average per day cost to incarcerate someone in the state's prison system is \$155.63/day; this average includes private and public facilities.

Section 30-7-16 NMSA 1978 has been amended several times in recent years to increase the penalty for felons in possession of firearms. The Sentencing Commission has compiled multi-

year data regarding charges and convictions pursuant to Section 30-7-16 to examine whether there is any correlation between the increased penalties and the rate of offense. This data is below.

Cases Filed with Section 30-7-16 as the Lead Offense (including those not disposed)

Date Case Filed	# Cases Filed
FY2019	370
FY2020	304
FY2021	490
FY2022	464
FY2023	441
FY2024	513
Total	2,582

Outcome of Charges Under Section 30-7-16 by Year*

Date Case Filed	# Disposed Cases	Incompetency	Dismissal	Acquittal	Conviction
FY2019	779	1%	67%	<1%	32%
FY2020	682	1%	69%	<1%	29%
FY2021	969	1%	71%	<1%	28%
FY2022	851	1%	65%	1%	34%
FY2023	733	1%	63%	<1%	36%
FY2024	476	<1%	79%	<1%	20%
Total	4,490	1%	68%	<1%	31%

*Please note that only disposed cases are included (hence lower numbers in more recent years).

NMCD Admissions with Section 30-7-16 as the Lead Charge

Year Entered NMCD	# Persons Incarcerated	Avg. Sentence not counting EMD
FY2019	71	1,262
FY2020	73	1,447
FY2021	57	1,465
FY2022	70	1,309
FY2023	84	1,620
FY2024	85	1,562

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 166 and SB 253, both of which amend the prescribed penalty for felons in possession of a firearm.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS