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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

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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 2/05/2025

Bill No: SB 244-280

Sponsor: Michael Padilla
Short Title: Unlawful Transfer of Firearm to a Minor

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
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure 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:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 244 proposes to add a Section 30-7-2.5 to Article 7, Weapons and Explosives, of Criminal Offenses under New Mexico Statutes Annotated (NMSA).

The proposed legislation would create a new crime for the (1) knowing (2) transfer of a firearm (3) to a minor. The offense would allow several exceptions for lawful transfer, including:

- When in a hunter or handgun safety course, or legal shooting activity;
- When at target practice at an authorized range;
- When participating or preparing for performance under exempt 501(c)(3) organization;
- When engaged in legal hunting or trapping;
- When on real property that is controlled by a parent, guardian, or grandparent and being supervised by a parent, guardian, or grandparent;
- When a transfer is from a parent, guardian or grandparent.

§ 30-7-2.5(A)(1)-(7) NMSA 1978 (2025 proposed).

The proposed offense would make a separate crime for each firearm transferred, allowing two or more offenses be charged in one complaint, and explicitly stating that each offense shall be punished separately. § 30-7-2.5(B) & (C) NMSA 1978 (2025 proposed).

The proposed offense would not except “mistake of fact” as to the minor’s age as a defense. § 30-7-2.5(D) NMSA 1978 (2025 proposed).

The proposed offense would be punished as a second-degree felony. § 30-7-2.5(E) NMSA 1978 (2025 proposed).

The legislation would define (1) firearm; (2) knowingly, as “knew or should have known;” (3) minor, as under age nineteen, and; (4) transfer.

The proposed legislation would also add the new offense to the Racketeering Act, Definitions. § 30-42-3(A)(27) (“unlawful transfer of a firearm to a minor, as provided in Section 30-7-2.5 NMSA 1978”). The Racketeering Act prohibits the proceeds from any

racketeering activity to be used to gain an interest in a business enterprise, punishable as a second-degree felony. § 30-42-4(A)-(D), NMSA 1978. The Act also provides that any such ill-gotten proceeds are subject to forfeiture. § 30-42-4(E), NMSA 1978.

FISCAL IMPLICATIONS

It is difficult to predict the impact on the Law Offices of the Public Defender [hereinafter *LOPD*] due to the creation of a new crime insofar as no statistics exist to suggest how much the previously legal behavior presently occurs (after all, it's completely legal now) and would continue and would be prosecuted. It is important to remember that indigent criminal defense is a constitutionally mandated right, and that LOPD does not control the decision to charge or the number of resultant cases assigned to the agency. All that can be said at this time is that if more charges, case assignments and trials result, LOPD may need to hire more attorneys and staff. Accurate prediction of the fiscal impact is impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed legislation.

Assuming the proposed second-degree felony would be prosecuted for multiple violations in a single incident, and alongside any attendant charges, exposure to higher criminal penalties is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea when facing significant incarceration time. If more higher-penalty trials result from enactment, LOPD may need to hire more trial attorneys with greater experience to ensure compliance with constitutional mandates of effective assistance of counsel. In addition to the impact on LOPD, courts, DAs, AGs, and NMCD could anticipate increased costs.

Defense of such cases and hearings would be handled by mid-level felony capable LOPD criminal defense 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. An 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 (due to necessary salary differential to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51. Again, assessment of the impact would be necessary after the implementation of the proposed legislation, but such is likely to result in a requirement for additional funds to LOPD in order to provide constitutionally required effective assistance of counsel.

Because enactment of this law would declare to be criminal certain ordinary activities that have previously been legal since the founding days of New Mexico, any such enactment should come with profound fanfare, advertising and education to prevent innocents from inadvertently becoming criminals by simply continuing behavior they may have legally done previously.

SIGNIFICANT ISSUES

Potential unintended consequences

The proposed offense addresses potential double jeopardy issues by explicitly stating a legislative intent that *each violation* be punished separately. However, this mandate may result in unintended consequences from such multiple punishments.

For example, the proposed offense is designated as a second-degree felony. Such felonies

are punishable by a term of nine years. § 31-18-15 NMSA 1978 (Sentencing). Suppose a person is charged with transferring ten firearms to a minor: that person faces 90 years of incarceration. It is unclear that the legislature intends to punish the transfer of firearms to minors more harshly than an intentional murder, for example. Additionally, there is every reason to believe the proposed offense would largely co-occur along with other, greater, offenses such as conspiracy to commit a more serious felony, robbery, racketeering etc. It is recommended the legislature consider making the proposed “transfer” offense a lower level felony, or permit case-by-case assessment of double jeopardy where several violations may arise from the same transaction, or both.

A second potential unintended consequence is the risk of prosecution for crime committed between children, as the proposed legislation does not explicitly limit liability to adults. This analyst assumes the aim of the legislation is to punish adults who give or sell guns to children. However, a juvenile could be adjudicated a delinquent child based on the proposed offense.

A delinquent act is “an act committed by a child that would be designated as a crime under the law if committed by an adult” under NMSA 1978 § 32A-2-3. There are also a variety of policy reasons the legislature would not want such laws applied to children. First, as the law has repeatedly recognized elsewhere, children as group are “generally are less mature and responsible than adults,” *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982), and “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them” *Bellotti v. Baird*, 443 U.S. 622, 635 (1979). Applying statutes intended to punish the adult exploitation of children to children, and especially child-participants, does not necessarily further the Legislature’s aims and, in fact, can lead to absurd and unconstitutional results.

The defined Mens Rea is potentially insufficient for criminal liability

The proposed legislation would define “knowingly” as “knew or should have known.” This language mirrors a civil liability standard, and potentially creates a conflict with New Mexico case law related to mens rea for criminal liability.

The “knew or should have known” standard is “essentially a civil negligence standard,” the New Mexico Supreme Court held that it was a lesser standard, inconsistent with the actual knowledge requirements of the statute and established precedent. *State v. Suazo*, 2017-NMSC-011, ¶ 23. “[I]t is a ‘concept firmly rooted in our jurisprudence [that w]hen a crime is punishable as a felony, civil negligence ordinarily is an inappropriate predicate by which to define such criminal conduct’ in the absence of some contrary indication from the Legislature.” *Suazo*, 2017-NMSC-011, ¶ 23 (quoting *Santillanes v. State*, 1993-NMSC-012, ¶¶ 30-31, 115 N.M. 215).

The legislature should consider whether the proposed mens rea requirement would fail constitutional scrutiny, engender unanticipated legal challenges, and result in reversals on appeal.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

There has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS