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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	<u>Sen. Padilla/Rep. Dixon</u>	<b>LAST UPDATED</b>	<u>2/7/2025</u>
	Sale of Firearms Without Background	<b>ORIGINAL DATE</b>	<u>2/7/2025</u>
<b>SHORT TITLE</b>	<u>Check</u>	<b>BILL</b>	
		<b>NUMBER</b>	<u>Senate Bill 255</u>
		<b>ANALYST</b>	<u>Dinces</u>

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$23.4	At least \$49.9	At least \$72.4	Recurring	General Fund
LOPD	No fiscal impact	At least \$275	At least \$275	At least \$550	Recurring	General Fund
AODA	No fiscal impact	At least \$275	At least \$275	At least \$550	Recurring	General Fund
<b>Total</b>	No fiscal impact	At least \$573.4	At least \$599.0	At least \$1,172.4	Recurring	General Fund

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

Relates to Senate Bill 70 and Senate Bill 244

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorneys (AODA)  
New Mexico Sentencing Commission (NMSC)  
New Mexico Corrections Department (NMCD)  
Department of Public Safety (DPS)

#### Agency Analysis was Solicited but Not Received From

Law Office of the Public Defender (LOPD)  
New Mexico Attorney General (NMAG)  
Department of Health (DOH)

## SUMMARY

### Synopsis of Senate Bill 255

Senate Bill 255 (SB255) amends Section 30-7-7.1 NMSA 1978 by creating a new violation of this statute for facilitating firearm sales without a background check on publicly available platforms. SB255 also increases the penalty for a violation under Section 30-7-7.1 from a misdemeanor offense to a third-degree felony.

SB255 also amends Section 30-42-3 NMSA 1978 by including the unlawful sale of a firearm without a background check and facilitation of the unlawful sale of a firearm without a background check, pursuant to Section 30-7-7.1 NMSA 1978, as new crimes under the Racketeering Act.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the number of individuals in prison and the length of time served in prison that might result from this bill as well as the number of people who may be charged with facilitation of the unlawful sale of a firearm. 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 long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in for one day in FY24 was \$155.63; 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). This bill will likely increase the number of individuals incarcerated and increase the time they spend being incarcerated.

According to the Administrative Office of the Courts (AOC):

As penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury costs.

There will be a minimal administrative cost for the statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The Administrative Office of the District Attorneys (AODA) also highlights that this bill would require additional resources for the Law Office of the Public Defender (LOPD), AODA, and the judiciary. LFC staff assumed LOPD and AODA would each require at least one additional FTE and that each agency would require additional support staff time, leading to an estimated annual cost of \$275 thousand per agency.

The New Mexico Sentencing Commission (NMSC) highlights there may also be additional costs for NMCD:

SB255 creates a new third-degree felony, "facilitation of the unlawful sale of a firearm without a background check", which carries a basic sentence of three years imprisonment. The bill also increases the penalty for the existing offense of "unlawful sale of a firearm without a background check" from a misdemeanor, which carries a maximum sentence of less than one year, to a third-degree felony. For individuals convicted of a third-degree felony who were released from NM prisons in FY24, the

median length of stay was 19.2 months. It is difficult to determine what the effect of passing SB255 would be on the state's prison population, but its addition of a new third-degree felony, along with the increased penalty for unlawful sale of a firearm without a background check, would likely 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.

## SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of sentence. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful. In New Mexico, however, sentencing has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC's evaluation team found in the 2<sup>nd</sup> Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime. 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 thus provide a stronger deterrent to serious crime. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning that time in jail or prison may make people more likely to commit crimes in the future.

Section 30-7-7.1 was enacted in 2019 and requires background checks for all private firearm sales, with limited exceptions. A violation under this statute is currently a misdemeanor offense with each firearm sold contrary to the provisions of this section constituting a separate offense (Section 30-7-7.1[E]). SB255 increases the penalty to a third-degree felony, punishable by up to three years in prison for each offense.

Current law mandates federal instant background checks for firearm transfers, with exemptions for immediate family members, law enforcement officers, and licensed dealers. The bill creates a new crime of facilitation of the unlawful sale of a firearm without a background check and makes it a third-degree felony.

According to AOC:

SB255 focuses on addressing firearm sales without a background check on publicly available platforms. A publicly available platform is a computer application or service that provides digital content and services to the public. This legislation appears to focus on firearm sales on social media sites or on online classified ads since it references "reasonable, industry standard steps could be taken to block or limit the unlawful sale of a firearm." Since a violation of Section 30-7-7.1 is a criminal offense, it is not clear how a company or organization, rather than an individual, can be held criminal liable.

NMCD adds:

SB255 aims to close loopholes that allow firearm sales without background checks, addressing concerns over gun access by prohibited individuals. The bill aligns with federal law under 18 U.S.C. § 922(t), which requires background checks for firearm purchases. Adding the new crime of facilitation of the unlawful sale of a firearm without a background check to the definition of "racketeering" would provide stronger penalties

when done within the scope of an enterprise or within racketeering practices. When done within the definition of “racketeering,” the offense would be a second-degree felony, and the crime of racketeering would constitute a separate and distinct offense apart from the enumerated predicate crimes. *State v. Johnson*, 1986-NMCA-084, 728 P.2d 473.

The New Mexico Department of Public Safety (DPS) notes that:

This amendment strengthens firearm sale regulations and aligns penalties with other serious criminal activities. This bill prevents firearms from reaching individuals who are prohibited from owning them, such as felons, domestic abusers, and those with mental health concerns. It reduces the risk of gun-related crimes by ensuring proper background checks. By adding unlawful firearm sales to the definition of “racketeering,” the law strengthens penalties, discourages illegal gun trafficking, and enhances law enforcement's ability to prosecute organized crime involving firearms. By tightening firearm sale regulations, this law helps create a safer environment, reduces gun-related crimes, and ensures that firearms are sold responsibly in New Mexico; therefore, NM DPS supports this legislation.

## PERFORMANCE IMPLICATIONS

AOC states that changes in the number of cases filed or going to trial may impact their performance measures.

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percentage of cases filed
- Percent change in case filings by case type

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to Senate Bill 70 and Senate Bill 244. SB70 adds racketeering crimes and SB244 addresses unlawful transfer of a firearm to a minor.

## TECHNICAL ISSUES

According to AODA:

SB255's new language includes the term “industry standards.” “Industry standards” is a vague term and would be difficult to prove without an expert. The deletion of “industry standards” and just reasonable standards would be more practical to enforce and prosecute.

NMSC also points out that the term “industry standards” is vague, and includes additional terms that may need to be defined:

The definition of “facilitation of the unlawful sale of a firearm without a background check” provided by SB255 is vague; it is unclear exactly what conduct the bill aims to penalize. No further definitions are provided for included terms like “publicly available platform” and “industry standard steps” that could reasonably be interpreted to include or exclude a variety of conduct.