

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

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(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: January 20, 2026 **Check all that apply:**
Bill Number: HB 49 **Original** **Correction**
Amendment **Substitute**

Sponsor: <u>Joy Garratt</u>	Agency Name and Code Number: <u>Administrative Office of the District Attorneys - #264</u>
Short Title: <u>Increase Felony Firearm Penalty</u>	Person Writing <u>M. Anne Kelly</u> Phone: <u>5052503302</u> Email: <u>akelly@da.state.nm.us</u>

SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	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:

Section 1 amends Section 30-7-16 – entitled “Firearm or Destructive Devices – Receipt, Transportation or Possession by Certain Persons – Penalty”.

Subsections B and C – which currently provide that a felon found in possession of a firearm shall be guilty of a third-degree felony and that a serious violent felon found in possession of a firearm shall be sentenced to a basic sentence of six years – are deleted. The amended Subsection B provides that a felon is guilty of a second-degree felony for a first offense and a first-degree felony for a second or subsequent offense. The penalty for a person subject to an order of protection or a person convicted of crimes specified in Subsection (A)(3) is unchanged and is still a misdemeanor.

The definition of a “serious violent felon” in Subsection (E)(5) is deleted.

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.

None for this agency.

SIGNIFICANT ISSUES

The bill increases the penalty for a felon in possession of a firearm and eliminates the distinction between a felon and a serious violent felon. As currently defined in Section 30-7-16, a felon is a person convicted of a felony offense in the United States or any other state when less than ten years have passed since the person completed serving the sentence.

In 2025, the Court of Appeals considered a Second Amendment challenge to Section 30-7-16 and rejected a reading of Section 30-7-16 which permits restrictions based on categorizations of groups of people, such as felons. Instead, the Court held that possession of a firearm can be restricted if the court finds that the person poses a threat to others. *Romero*, ___-NMCA-___, ¶ 15, ___ P.3d ___ (A-1-CA-41601, Apr. 16, 2025) (rejecting a reading of Section 30-7-16(A) that permits restrictions based on historical categorizations of groups of people – like felons – and adopting a principle that permits restricting the possession of firearms if the court finds that the person poses a threat to others). Thus, if the constitutional claim is preserved, the State would need to show that the defendant is not only a convicted felon but also a threat to others.

In 2024, the Court of Appeals found the “unit of prosecution” for felon in possession of a firearm was “ambiguous” and therefore the rule of lenity must apply and the State must definitively prove two separate acts of possession to establish two offenses. *State v. Gonzales*, 2024-NMCA-062. In *Gonzales*, two firearms were found in the defendant’s bedroom pursuant to a search warrant. However, as the Court held, unless the State can somehow prove on remand that the defendant separately possessed those weapons, there can only be one conviction under the felon

in possession of a firearm statute. An increased penalty could help address this issue.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 25 amends Section 30-7-16 to include adults subject to a juvenile disposition for a delinquent act involving a firearm as a class of persons who can be convicted under the section.

HB 52 amends Section 30-7-16 – among other statutes – to correct a cross-reference to Section 33-2-34 (eligibility to earned meritorious deductions).

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

n/a