

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

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

Subsection B is amended to change the language to fit with the title of the crime and change the crime from “found in possession of” to “receives, transports or possesses” a firearm or destructive device” and provide that the person is guilty of a third degree felony “for possession of a firearm or destructive device by a felon” which is a new sentencing category, established in Section 2 of the bill.

Subsection C is new material which provides that a felon found guilty under this section for a second or subsequent offense is guilty of a second-degree felony.

Subsection D is amended to make the same stylistic changes as in Subsection B. It also increases the penalty for when the crime is committed by a “serious violent felon” to a second-degree felony from a third-degree felony. It also deletes the basic imprisonment term of six years and instead provides that sentencing shall be governed by Section 31-18-15 (which provides a basic sentence of nine years for a second-degree felony) but that a court shall not suspend or defer one-third of the sentence, meaning that at least a three year term is mandatory.

Subsection E (now subsection F due to the addition of the new Subsection B) is amended to include in the definition for “felon” for purposes of the statute, that one is not a felon if one has completed the total term of deferment in Section 31-20-9. Subsection 5 of Subsection F also amends the reference to Section 33-2-34(N), instead of 33-2-34(L).

Section 2 amends Section 31-18-15 entitled “Sentencing Authority – Noncapital Felonies – Basic Sentences and Fines – Parole Authority – Meritorious Deductions” to include a new category of “third degree felony for possession of a firearm or destructive device by a felon” with a basic imprisonment of five years, which is two years greater than the basic sentence for a regular third-degree felony.

Section 3 provides the effective date as July 1, 2026.

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

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 – Juvenile Firearm Use and Background Checks amends Section 30-7-16 to include a new category of persons subject to the act; namely, “an adult subject to a juvenile disposition for a delinquent act involving use of a firearm under the Delinquency Act” if that act would have been a felony if committed by an adult and regardless of whether or not the judgment resulted in an adult sentence.

HB 52 - Criminal Competency Statute Cross References contains the same change to the subsection of Section 33-2-34 as this bill.

HB 49 - Increase Felony Firearm Penalty amends Section 30-7-16(B) to increase the penalty for felons to a second-degree felony for a first offense and a first-degree felony for a second or subsequent offense. It also deletes the category of a “serious violent felon.”

TECHNICAL ISSUES

The wording in Subsection F(3)(c) of the proposed Section 30-7-16 is somewhat unclear. The current subsection defines “felon” for the purposes of the statute but only if the person “has not received a deferred sentence.” The additional language is “or completed the total term of deferment as provided in Section 31-20-9 NMSA 1978.” If the intent is that a person is not a felon for the purposes of the subsection if the person *has* completed the term of deferment, then it would be better to add the word “has” before “completed.” If the intent is the opposite, then the phrase should read “has not completed” to harmonize with the structure of the first part of the phrase.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

n/a