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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 49

SHORT TITLE: Increase Felon Firearm Penalty

SPONSOR: Rep. Garratt and Sen. Berghmans

LAST ORIGINAL
UPDATE: _____ **DATE:** 1/26/2026 **ANALYST:** Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 25, 67, and 146, and Senate Bill 17

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Department of Public Safety

Administrative Office of the Courts

Administrative Office of the District Attorneys

New Mexico Sentencing Commission

Corrections Department

Law Offices of the Public Defender

SUMMARY

Synopsis of House Bill 49

House Bill 49 (HB49) seeks to amend Section 30-7-16 of the Criminal Code to reclassify the crime of felon in possession of a firearm or destructive device from a third-degree felony to a second-degree felony. Section 30-7-16 of the Criminal Code prohibits certain categories of individuals from receiving, transporting, or possessing firearms or destructive devices in New Mexico, including individuals convicted of a felony, those subject to protective orders under the Family Violence Protection Act (Section 40-13-5 NMSA 1978), and those subject to domestic abuse orders under the Domestic Abuse and Dating Violence Protection Act (Section 40-13A-5 NMSA 1978).

Under current law, a violation of this section by a felon constitutes a third-degree felony, which carries a basic sentence of three years imprisonment pursuant to Section 31-18-15 NMSA 1978 (the Criminal Sentencing Act). HB49 proposes to elevate this offense to a second-degree felony for felons, which would carry a basic sentence of nine years imprisonment under the same

sentencing statute. The bill does not alter the classification or penalties for other individuals prohibited under the statute, such as those subject to protective orders. Nor does it redefine the terms “firearm” or “destructive device,” both of which are defined in existing law and remain unchanged by this bill.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and the length of time served that might result from this bill could have moderate fiscal impacts. House Bill 49 proposes to increase the penalty for felon in possession of a firearm from a third-degree felony to a second-degree felony for a first offense and to a first-degree felony for a second or subsequent offense. The creation of higher felony classifications for this offense will likely increase the population of New Mexico’s prisons and extend the average duration of incarceration for affected individuals, resulting in increased long-term costs to the state general fund.

The New Mexico Sentencing Commission reports that as of June 2024, 92 individuals were incarcerated under Section 30-7-16 NMSA 1978, with an average expected length of stay of 2.2 years. Increasing the felony level could result in fewer releases per admission, thereby increasing the total number of incarcerated individuals over time. Although the Corrections Department (NMCD) did not identify an immediate fiscal impact, the agency acknowledged that longer incarceration periods may elevate correctional costs in future fiscal years. NMCD estimates the average cost to incarcerate a single inmate in FY25 was \$61.5 thousand annually; however, the Legislative Finance Committee estimates a marginal cost of \$27.2 thousand per year per additional inmate, reflecting the incremental cost above fixed facility expenses.

The Administrative Office of the Courts noted that heightened penalties may lead to more cases proceeding to trial, particularly jury trials, which could increase court workload and expenditures, including juror compensation and related operational demands. These potential impacts are not included in this estimate but could present additional cost pressures on the judiciary, especially in high-volume jurisdictions. In FY24, the Sentencing Commission documented 950 cases involving this offense, with 682 cases listing it as the lead charge, suggesting even modest changes in sentencing or conviction patterns could produce measurable impacts on prison populations and associated costs.

While this analysis is limited to incarceration-related costs, additional system costs, such as increased demands on court resources, are not included here but could be moderate. Overall, HB49 is anticipated to increase the number of incarcerated individuals and the time they spend incarcerated, thereby increasing long-term costs to the state.

SIGNIFICANT ISSUES

HB49 increases the severity of penalties under Section 30-7-16, NMSA 1978, by reclassifying a first offense for felon in possession of a firearm or destructive device from a third-degree to a second-degree felony and a second or subsequent offense to a first-degree felony. This change

may affect how cases are charged and prosecuted within the state system. Currently, some felon-in-possession cases are referred to federal authorities because federal law provides more substantial penalties. By increasing the penalty at the state level, HB49 may lead to more cases being retained and prosecuted by state district attorneys, potentially altering the distribution of case volume between state and federal jurisdictions.

The proposed penalty enhancements may also influence prosecutorial discretion and case resolution strategies. Higher penalties can increase defendants' legal exposure, which in turn may affect plea-bargaining decisions and lead to more cases proceeding to trial. If such patterns emerge, they may affect court operations and timelines, particularly in judicial districts with already high felony caseloads.

The bill's provisions could also interact with New Mexico's habitual offender statute, Section 31-18-17 NMSA 1978 (the Criminal Sentencing Act), which authorizes additional sentencing enhancements for individuals with prior felony convictions. Reclassifying a second or subsequent felon-in-possession conviction as a first-degree felony could affect how future offenses are treated for enhancement purposes, possibly leading to longer cumulative sentences in some cases. Additionally, more severe felony classifications can carry collateral consequences beyond incarceration, such as longer periods of post-release supervision or restrictions on access to housing, employment, or public benefits. While these effects are not explicitly addressed in the bill, they may be relevant to its implementation and long-term application within the state's criminal justice system.

Finally, while changes to penalty structures are often designed to address concerns about public safety or recidivism, current research indicates that outcomes may depend on enforcement consistency, case resolution, and other factors. These broader systemic dynamics may influence the bill's overall impact beyond the statutory changes it proposes.

ADMINISTRATIVE IMPLICATIONS

HB49 may result in modest administrative changes for criminal justice agencies involved in case charging, tracking, and sentencing. For district attorneys and law enforcement agencies, the reclassification of felon-in-possession offenses may require updates to internal charging protocols and training to ensure that staff apply the revised felony levels consistently. Prosecutors may also need to re-evaluate how these cases are prioritized or resolved, considering the increased penalties, which could shift how plea agreements are structured or how charges are bundled with other offenses.

At NMCD, although no direct administrative impact was reported, classification staff may need to adjust intake procedures to account for the increased severity of the offense, including recalibrating custody levels or security designations. These internal adjustments typically do not result in measurable cost increases but may require updated guidance or coordination across facilities.

Additionally, as sentencing outcomes change, agencies that track conviction data or performance metrics related to offense types may need to revise reporting tools to reflect the new statutory structure. These updates are not expected to impose substantial burdens but may require coordination across case management and data systems.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB146 addresses the same statutory offense as HB49 by proposing changes to penalties for felons found in possession of firearms. Depending on the final language, the bills may duplicate or conflict if they amend the same section of law with different penalty structures.

HB25 primarily addresses juvenile access to firearms and background checks but may interact with HB49 if it includes provisions that affect firearm eligibility determinations or firearm transfers involving individuals with criminal histories.

HB67 proposes restrictions on firearm possession for individuals under restraining orders, a category that overlaps with individuals who may also have felony convictions. While not duplicative, HB67 and HB49 both expand firearm prohibitions and may affect enforcement coordination.

SB17 targets gun trafficking and illegal transfers, with likely implications for felon-in-possession cases. It may interact with HB49 by addressing upstream sources of firearm acquisition by prohibited individuals, including felons.

OTHER SUBSTANTIVE ISSUES

HB49 removes the designation of felon-in-possession as a “serious violent offense” under the Earned Meritorious Deductions Act, Section 33-2-34 NMSA 1978. While the bill increases the base felony classification for this offense, eliminating the serious violent designation could make individuals eligible for more generous earned time deductions—up to 15 days per 30 days served instead of four. This change may partially offset the longer statutory sentence lengths resulting from reclassification and could influence both actual time served and inmate programming eligibility. Although agencies did not identify this interaction as a fiscal or administrative issue, it may be relevant to understanding the combined effect of the bill’s sentencing and time-served provisions.

The bill also introduces a tiered sentencing structure but does not specify whether prior convictions used to enhance a sentence must occur under the amended statute or whether convictions under the previous version would qualify. This ambiguity could lead to differing interpretations in early implementation. Over time, changes to sentencing frameworks may also influence broader justice system trends, such as probation caseloads, parole decisions, and recidivism patterns—though such effects are typically observed over multiple fiscal years. These longer-term implications may be useful for evaluating the operational and policy context in which the bill would be applied.

SS/ct/hg