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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/18

SPONSOR Rehm/Maestas **LAST UPDATED** _____ **HB** 29

SHORT TITLE Sentencing for Firearms in Noncapital Felony **SB** _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate Increase see Fiscal Implications	Indeterminate Increase see Fiscal Implications	Indeterminate Increase see Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB19; HB25; HB28; HB112; HB118; and HB120

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 New Mexico Attorney General’s Office (NMAG)
 New Mexico Sentencing Commission (NMSC)
 Administrative Office of the District Attorneys (AODA)
 Department of Public Safety (DPS)

No Responses Received From

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 29 proposes to amend Section 31-18-16 NMSA 1978 to increase the basic sentence for a noncapital felony in which a firearm was used from one year to three years and increases the imprisonment sentence for a second noncapital felony with a firearm from three years to five years, including for a serious youthful offender or a youthful offender.

FISCAL IMPLICATIONS

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the New Mexico Corrections Department (NMCD), the cost per day to house an inmate in state prison in FY17 was an average of \$123 per day, or about \$44,779 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. The LFC reported in its FY19 budget recommendations that NMCD ended FY17 with a \$1 million budget surplus. NMCD's general fund budget, not including supplemental appropriations, has grown by an average of two percent, and is 11 percent higher than FY14, closely mirroring the inmate population growth of 10 percent.

The cost to monitor offenders on a standard caseload is \$7.89 per offender per day. However, without an estimated average number of offenders being monitored whose offense is similar to the one in this bill, the cost to the NMCD Probation and Parole Division cannot be quantified.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

The Public Defender Department (PDD) anticipates a need for additional appropriations should this bill become law. Although it does not annualize the cost, PDD does provide the cost of a mid-level trial attorney between \$92.5 thousand and \$99.7 thousand depending on the area of the state where additional attorneys would be needed. The cost outside of Santa Fe and Albuquerque are at the higher level because it has to provide a salary differential to maintain qualified employees. In addition to the mid-level attorney, PDD would also need to hire support staff, a secretary, investigator and social worker, which would cost on average \$77.1 thousand per attorney. Other annual operating costs per attorney are estimated at \$2.3 thousand. Nonrecurring costs to add a new attorney and support staff is estimated at \$3.1 thousand. The average impact to the general fund annual operating budget to add one attorney is \$175.1 thousand per year.

SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) provides the following:

- 1) The imposition of longer, enhanced sentences, in additional cases, may spur more defendants to retain counsel and request jury trials. Indigent offenders are entitled to public defender services.
- 2) In recent years, sentencing and corrections trends nationwide have led to the enactment of laws and other measures that tend to create or expand opportunities to divert people away from the criminal justice system, reduce prison populations, and to support people's successful reentry into the community. Additionally, the trend has been to reserve sentence enhancement application for the most serious crimes, the most serious offenders. HB29, in increasing the enhancement of the basic sentence of imprisonment when a firearm is used in the commission of

a noncapital felony, appears to follow this trend.

According to the New Mexico Attorney General’s Office (NMAG), this bill could potentially lessen the deterrent for criminals who commit felonies while using firearms. The effect of mandatory incarceration is not just the promise of punishment but also the promise that using a gun when committing crimes will foreclose various acts of judicial clemency such as a conditional discharge or deferred sentence and could serve as the basis for other crimes if that criminal elects to possess a firearm. This is important because there are other laws which would then be triggered if the criminal decides to possess firearms or commit crimes again. Possessing a firearm within 10 years of having been convicted and sentenced to incarceration results in the crime of Possession of a Firearm by a Felon, a fourth Degree Felony. 30-7-16, NMSA.

The Administrative Office of the District Attorneys (AODA) believes that this bill would permit someone found to have used a firearm for the first time when they committed a non-capital felony to have that enhancement also suspended or deferred, then even someone convicted of violent crimes that involved use of a firearm could have their entire sentence suspended or deferred, including crimes where someone was killed or seriously injured or in fear of being killed or seriously injured. Federal statutes, on the other hand, impose a much more severe penalty for use of a firearm in a crime of violence or drug trafficking.

PERFORMANCE IMPLICATIONS

This bill may have an impact on the following performance measures:

- **NMCD:**
 - Percent of prisoners reincarcerated back into the corrections department within thirty-six months due to technical parole violations;
 - Percent of prisoners reincarcerated back into the corrections department system within thirty-six months due to new charges or pending charges;
 - Percent of inmates testing positive for drug use or refusing to be tested in a random monthly drug test;
 - Percent of sex offenders reincarcerated back into the corrections department within thirty-six months; and
- **District Courts:**
 - Cases disposed of as a percent of cases filed;
 - Percent change in case filings by case type;
- **District Attorneys:**
 - Average caseload per attorney;
 - Number of cases prosecuted;
 - Number of cases prosecuted per attorney;
- **Public Defenders:**
 - Percent of cases taken by contract attorneys;
 - Percent of cases that go to trial with clients defended by contract attorneys.

ADMINISTRATIVE IMPLICATIONS

The AOC states that longer sentence may lead to more trials and appeals, which may lead to higher workloads and require more resources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to:

HB19, Increase Penalty for Felon with Firearm;
HB25, Increased Penalty for Felon with Firearm;
HB28, Violent Felonies for Sentencing;
HB112, Increased 2nd Degree Murder Penalties;
HB118, Change Firearm Violations Classification; and
HB120, Sentencing Enhancement for Certain Crimes

OTHER SUBSTANTIVE ISSUES

NMAG opines that a potential criminal has possibly more to lose by using a gun to commit a felony under the current law than under the proposed bill because they would be subject to mandatory time, additional crimes if possessing a gun within the next 10 years, and be subject to the firearm enhancement for second and subsequent offenses. Under the proposed amendment the same gun wielding criminal could actually be subject to potentially *lesser* punishment notwithstanding the increase in basic sentence, especially if they elect to commit additional crimes in the future using firearms.

ABS/sb