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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/18
LAST UPDATED _____

SPONSOR Maestas **HB** 118

SHORT TITLE Change Firearm Violation Classification **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)

Conflicts with HB19
 Relates to HB29, HB120
 Duplicates HB25

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General’s Office (NMAG)
 New Mexico Sentencing Commission (NMSC)
 Administrative Office of the Courts (AOC)
 New Mexico Corrections Department (NMCD)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 118 proposes to amend Section 30-7-16 NMSA 1978 to change the penalty for a felon receiving, transporting or possessing any firearm or destructive device from a fourth degree felony to a third degree felony.

FISCAL IMPLICATIONS

Based on an analysis by the New Mexico Sentencing Commission (NMSC) the change for the penalty in this bill would add nine months to the sentence which would cost the state an

additional \$33.6 thousand. As of June 30, 2017, the New Mexico Corrections Department (NMCD) had 55 inmates serving a sentence with this charge. The additional cost for those inmates would be \$1.8 million.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state-run 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 do contribute to overall population growth as longer sentences 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. It further reports that 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.

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) in its response to HB25 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 operating budget to add one attorney is \$175.1 thousand per year.

The Administrative Office of the Courts (AOC) anticipates minimal impact should this bill become law, although higher caseloads do have the potential to increase costs.

SIGNIFICANT ISSUES

According to the Administrative Office of the District Attorneys (AODA), under long established case law, it is a violation of double jeopardy to use a prior felony conviction to prove that someone is a felon in possession of a firearm (or destructive device) and then use the same prior felony to enhance their sentence as a habitual offender. See, State v. Haddenham, 110 N.M. 149 (Ct. App. 1990), cert. den. (1990). (If someone is convicted of multiple crimes involving a firearm, they can be split with one being used to prove they were a felon in possession and another one used to prove they are a habitual offender. See, State v. Handa, 120 N.M. 38 (Ct. App. 1995).

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.
- 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

According to AOC, this bill has the potential to increase the number of jury trials and appeals because it increases penalties. In general, prosecutions brought pursuant to laws with increased penalties can take up a considerable amount of judicial time and resources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB19, Increase to Penalty for Felon with a Firearm

Relates to: HB29 Sentencing for Firearms in Noncapital Felony; HB120 Sentencing Enhancement for Certain Crimes

Duplicates HB25 Increase Penalty for Felon with a Firearm;

ABS/al/jle