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FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/19

SPONSOR Rehm LAST UPDATED _____ HB 105

SHORT TITLE Enhanced Penalty for Firearm Used in Crime SB _____

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate		Recurring	See Fiscal Implications

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 104 and HB 130.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Law Offices of the Public Defender (LOPD)
 Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 105 proposes to amend Section 31-18-16 NMSA 1978 to increase from one year to three years the current one-year basic sentence enhancement for a noncapital felony in which a firearm was used and to increase from three years to five years the basic sentence enhancement for a subsequent noncapital felony with a firearm.

FISCAL IMPLICATIONS

According to AOC, firearm enhancement cases take up a considerable amount of judicial time because the district courts have to conduct not only a trial, but a sentencing phase as well. There may be an increase in the amount of work that needs to be done by the courts, thus requiring additional resources needed to handle the increase. AOC also notes that increasing the mandatory enhancement by several years is so severe that many accused persons will invoke their right to

trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. According to AOC, these additional costs are not capable of quantification.

LOPD anticipates that the increase in incarceration time resulting from the bill would result in more defendants facing a firearm enhancement, and who would choose to take their cases to trial and not resolve cases short of trial, especially for a subsequent offense. While it is not possible to say how many more cases would result in trials, such cases would be handled by LOPD experienced felony attorneys (who tend to be among the more highly paid LOPD attorneys) because most of these cases would be for violent felony charges and many would carry substantial mandatory minimums.

LOPD states that any increase in the number of prosecutions would bring a concomitant need for an increase in indigent defense funding. If HB 105 is enacted, resulting in more higher-penalty trials, LOPD and the DAs will need to hire more trial attorneys with greater experience, and more investigators, experts and court resources. An LOPD Assistant Trial Attorney's mid-point salary including benefits is \$102,187.62 in Albuquerque/Santa Fe and \$109,362.24 in the outlying areas (due to salary differential required to maintain qualified employees). Recurring statewide operational costs per attorney would be \$2,300.00 with start-up costs of \$3,128.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$77,113.01.

NMCD notes that it is difficult to estimate the fiscal impact of this or any bill which enhances a criminal penalty or enhancement. This bill will not result in more convictions; however, it may extend the prison sentences of those offenders who have their sentences enhanced because of the use of a firearm. NMCD anticipates that if passed, HB 105 could result in a minimal to moderate increase in its prison population as these firearms enhanced offenders are sent to prison and start serving their enhancement time in prison.

NMCD also states that the classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The average cost to incarcerate a male inmate is \$43,436 per year in a state-owned and operated prison, and the average annual cost in a privately-operated prison is \$32,113 (where primarily only level III or medium custody inmates are housed). NMCD further states that the cost per client in Intensive Supervision programs is \$1,293 per year. The cost per client in Community Corrections is \$10,124 per year. The cost per client per year for female residential Community Corrections programs is \$23,972 and for males is \$23,497. Offenders placed on probation for the crimes covered by the bill seem likely to be immediately or eventually placed on standard supervision.

SIGNIFICANT ISSUES

AOC notes that that the imposition of longer, enhanced sentences may spur more defendants to retain attorneys and demand jury trials. Indigent defendants are entitled to public defender services.

Currently under Section 31-18-16, the enhancements imposed may not be suspended or deferred. HB 105 allows the enhancement imposed on a first offense to be suspended or deferred. AODA notes that HB105 therefore increases the firearm enhancements, but permits leniency in imposing the enhancement on a first offense.

AODA also states that the bill's increase in the potential sentence, with the possibility of having the enhancement suspended or deferred for a first offense, may lead to more plea bargains.

Under HB 105, according to LOPD, a fourth-degree felony, such as aggravated assault, would carry a basic sentence of four and one-half years or six and one-half years when a firearm is used. This would be highly disproportionate to the use of any other weapon, even though such weapons would also be deadly weapons, which would only carry a sentence of eighteen months. In short, the increased enhancement would create disparities between criminal sentences, even where the weapons used in the underlying offenses would cause just as substantial an injury to the victim.

PERFORMANCE IMPLICATIONS

According to AOC, HB 105 may impact the courts' performance-based budgeting measures, which may result in a need for additional resources. For example, the district court's performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases.

RELATIONSHIP

Relates to HB 104, No Statute of Limitation on 2nd Degree Murder, and HB 130, Additional Firearm Crimes & Penalties.

BG/sb