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## FISCAL IMPACT REPORT

SPONSOR HCPAC ORIGINAL DATE 02/18/21  
LAST UPDATED \_\_\_\_\_ HB 166/HCPACS  
SHORT TITLE Create New Firearms Crimes SB \_\_\_\_\_  
ANALYST Glenn

### **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications					

(Parenthesis ( ) Indicate Expenditure Decreases)

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

Law Offices of the Public Defender (LOPD)  
Administrative Office of the District Attorneys (AODA)  
Administrative Office of the Courts (AOC)  
Office of the Attorney General (NMAG)  
New Mexico Sentencing Commission (NMSC)  
New Mexico Department of Health (DOH)  
Department of Public Safety (DPS)

### **SUMMARY**

#### Synopsis of Bill

The House Consumer & Public Affairs Committee Substitute for House Bill 166 adds a new section to the Criminal Code that creates misdemeanor crimes related to firearms. A person is guilty of a misdemeanor if the person does the following:

1. Manufactures or causes to be manufactured a firearm unless the person is a federally licensed gun manufacturer.
2. Uses a three-dimensional printer to manufacture a firearm, firearm frame or a major component of a firearm unless the person is a federally licensed gun manufacturer.
3. Distributes digital instructions or instructions stored or displayed in electronic format as a

digital model that may be used to program a three-dimensional printer to manufacture a firearm, firearm frame or receiver or other major firearm component to a person in New Mexico who is not a federally licensed gun manufacturer.

4. Manufactures, produces, possesses, sells, transfers, purchases or receives a covert or undetectable firearm.

5. Possesses, manufactures or causes to be manufactured a firearm that lacks a unique serial number engraved, cast or stamped on the frame or receiver by a federally licensed gun manufacturer or importer.

6. Possesses, purchases or otherwise obtains separately or as part of a kit a firearm frame or receiver that is not imprinted with a serial number or any combination of parts from which a firearm without a serial number may be readily manufactured.

7. Sells or transfers separately or as part of a kit a firearm frame or receiver that is not imprinted with a serial number or any combination of parts from which a firearm without a serial number may be readily manufactured.

The new crimes created by the bill do not apply to the manufacture, sale or assembly of an inoperable firearm or parts necessary to make an inoperable firearm created solely for use as a prop in a film production by a digital media company, firearms that have been rendered permanently inoperable or are manufactured prior to 1968, or antique firearms, as defined in federal law.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

LOPD notes that the bill creates a new statutory scheme of misdemeanors. Some of the requirements of the bill may require consultation and testimony by a defense expert in ballistics. According to LOPD, misdemeanor cases tend to require less commitment of resources, but they still carry up to a full year in jail per count and the misdemeanors created by the bill have Second Amendment ramifications. Consequently, they could end up being complex misdemeanors to defend, requiring increased resources.

AOC states there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of the new crimes created by the bill, commenced prosecutions, and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

NMSC notes that HB166/HCPACS creates new misdemeanor offenses. Although a misdemeanor can result in jail time, it is anticipated that the bill would have little effect on the population of state correctional facilities, and NMSC reports that the bill has no fiscal impact. It is possible that the bill would increase the number of individuals sentenced to county jail terms.

## SIGNIFICANT ISSUES

LOPD explains that, under current state and federal law, it is generally lawful to make and own a firearm for personal use only. The federal Bureau of Alcohol, Tobacco, Firearms and Explosives only requires a license for sale or distribution of firearms. Current federal law prohibits home assembly of certain semiautomatic rifles or shotguns from ten or more imported parts and firearms that cannot be detected by metal detectors or x-ray machines. According to LOPD, a number of currently lawful build-at-home kits and other personal firearm building activities would become illegal under this bill.

LOPD notes that none of the new offenses created by HB166/HCPACS require that a person *knowingly* commit the offense, i.e., have specific intent. The bill could lead to convictions of unwitting individuals who are unaware that a gun, made by three-dimensional printer or not, was manufactured by a person who was not a federally licensed gun dealer or manufacturer. In particular, LOPD is concerned that the new possession crimes are strict liability; conviction would only require that the gun itself meets the specified criteria, rather than the possessor's actual knowledge of the gun's illegal status. Additionally, employees who are manufacturing or selling guns may face criminal liability under the bill, even if they are unaware that their employer is not a federally licensed gun dealer or manufacturer.

According to DOH, five states (California, Connecticut, New Jersey, New York, and Washington) have enacted laws to address the problem of undetectable and untraceable guns. AOC notes that New Jersey's prohibition on distributing digital plans for 3-D printed firearms has been challenged in federal court on the grounds that the digital plans were a form of speech protected by the First Amendment to the U.S. Constitution. NMAG also notes the bill's restrictions on distributing digital instructions for a 3-D printer to make a gun may be subject to a First Amendment challenge as infringing protected speech, at least if the writer of the program can be said to communicate with a human user. *See CDK Glob. LLC v. Brnovich*, 461 F. Supp. 3d 906, 925 (D. Ariz. 2020) and cases cited therein. NMAG states that the bill may be subject to a court challenge under the Second Amendment's protections for the right to keep and bear arms.

DOH states that the firearm age-adjusted death rate in New Mexico was 86 percent higher than the U.S. in 2019 (22.5 deaths per 100,000 vs 12.1 deaths per 100,000, respectively) according to CDC's Wide-ranging Online Data for Epidemiologic Research (WONDER, <https://wonder.cdc.gov/>). The New Mexico age-adjusted rate for firearm injury deaths was 22.5 deaths per 100,000 in 2019, the highest rate in at least 20 years (consistent data only available since 1999). This is a 19 percent increase over 2018 (<https://ibis.health.state.nm.us>).

## OTHER SUBSTANTIVE ISSUES

DOH states that, in recent years, there have been increasing efforts to circumvent gun laws regarding firearms that may be sold by federal gun dealers or manufacturers domestically or imported from abroad. Self-assembled firearms, which can be built from kits or 3-D printed, are referred to as "ghost guns" because they do not come with a serial number and are untraceable ([giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/ghost-guns](http://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/ghost-guns)).

According to DOH, 3-D technology has made it possible to produce a three-dimensional object such as a firearm much in the way that traditional printers can produce a printed document. These 3-D printers can produce firearm components that are not as durable as traditional metal

“frames” (or “receivers”) but can be just as deadly. An assault rifle assembled using a 3-D-printer has the ability to fire over six hundred rounds. A pistol made by a 3-D printer using almost entirely plastic had the capability of firing a 0.380 caliber bullet. Anyone with a 3-D printer could produce a fully functional and un-serialized firearm without a background check. These “ghost guns” have been used in multiple recent shootings by individuals who fail background checks and could not legally purchase a gun. In 2019, a sixteen-year-old boy used a self-assembled untraceable firearm in a school shooting, killing two students and injuring three others (<https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/ghost-guns>).

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