

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**  **Amendment** \_\_\_\_\_  
**Correction** \_\_\_\_\_ **Substitute** \_\_\_\_\_

**Date** Jan. 17, 2024  
**Bill No:** HB 46-280

**Sponsor:** Bill Rehm and Harlan Vincent  
**Short Title:** Increase of Felon in Possession of a Firearm Penalties  
**Agency Name and Code** LOPD-280  
**Number:** \_\_\_\_\_  
**Person Writing** Thomas J. Lewis  
**Phone:** 505-395-2826 **Email** Thomas.Lewis@lopdm.us

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

Section 1(B) of the bill would add “destructive device” to the offense of “felon in possession of a firearm.” Section 1(B) would also increase the basic sentence for a felon in possession of a firearm or destructive device from three to five years imprisonment. The bill would make the crime a special penalty third degree felony by creating (in Section 2 of the bill) a new 5-year basic sentence provision in NMSA Section 31-18-15(A) for a “third degree felony for possession of a firearm or destructive device by a felon pursuant to Subsection B of Section 30-7-16 NMSA 1978.”

Section 1(B) of the bill would also make “felon in possession of a firearm or dangerous device” a second degree felony for a second or subsequent offense, with a penalty of nine years imprisonment.

Section 1(C) would add “destructive device” to the offense of “serious violent felon in possession of a firearm.” Section 1 (C) of the bill would also reclassify a “*serious violent* felon in possession of a firearm or destructive device” as a second-degree felony with a penalty of nine years imprisonment.

Section 1(E)(3) of the bill would delete the existing provision limiting applicability of its provisions to persons for whom less than ten years have passed since the completion of serving their sentence or period of probation, whichever is later.

**FISCAL IMPLICATIONS**

The conduct targeted is already illegal under the existing statutory scheme, although the bill seeks to increase the basic sentence for non-SVO felons from three to five years, and for second or greater offenses, nine years. The bill would also increase the penalty for SVO felons from six years to nine years. Higher-penalties cases are somewhat more likely to go to trial. If a greater number of individuals qualify for this crime and more trials result, LOPD may need to hire more trial attorneys. These felonies would be handled by, at a minimum, mid-level felony capable attorneys (Associate Trial Attorneys), or higher. Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. Assessment of the impact on the LOPD upon enactment of this bill would be necessary after the implementation of the proposed higher-

penalty scheme.

## **SIGNIFICANT ISSUES**

This bill would add “possession of a destructive device” to the basic offense of “felon in possession of a firearm.” The bill also would increase the basic penalty for “felon in possession of a firearm or destructive device” from three to five years, and for second or greater offenses, nine years. For SVO felons, the bill would increase the penalty from six years to nine years. Notably, the Legislature has consistently increased penalties for this crime three times in as many years. In 2020, the penalty for this crime was increased from a fourth degree felony to a third degree felony only for SVO felons, leaving the fourth-degree felony for non SVO felons. The next year, the Legislature removed the distinction, increasing the penalty for *all* felons to the third-degree felony carrying three years. In 2022, HB 68 increased the basic sentence for SVO felons to *six* years, leaving the non-SVO felon penalty at three years. HB 46 would thus constitute a *fourth* penalty increase to this crime in the span of as many years. Reviewer is unaware of any evidence showing that these previous penalty increases have had any deterrent effect or resulted in any reduction in gun crime.

HB 46 would also abolish the existing statutory limitation period of ten years from the date of completion of a felon’s sentence or period of probation. The bill would thus subject former felons to permanent exposure to the penalties of the bill without regard to any subsequent rehabilitation. The bill would thus undermine the goal of the limitation period to promote the reform and subsequent good behavior of felons. Oddly, HB 46 does not include an abolition of the ten-year limitation period from its definition of SVO. Presumably, after the conclusion of the ten-year limitation period, an SVO would be subject only to the penalties for ordinary felons.

In addition, it is important to note that, unlike sentencing enhancements for using a firearm during the commission of a crime, Section 30-7-16 punishes a felon for simply possessing a gun or destructive device, even if they never *use* it. The statute represents a policy determination that felons should never possess a firearm. However, doing so hardly presents the same level of risk or danger associated with violent felonies, like armed robbery or aggravated burglary. Felon in possession is a crime of *mere possession*. It includes storing a gun in one’s closet and does not require having it on their person or using it in any way, nor the commission of any contemporaneous crime. It is at its foundation, a *regulatory* offense, and the current penalty, which reflects three increases in the last three years, is sufficient.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo: felon in possession would be punished as a third degree felony carrying three years in prison for most felons, and carrying six years in prison for those whose “felon” status is premised on a SVO. Furthermore, *in addition to* the possession crime, *use* of a firearm to commit a new crime would be punishable by whatever penalty attaches to that offense, plus, for most crimes, a firearm enhancement. Furthermore, that penalty for using a firearm would be increased based on the person’s felon status under the Habitual Offender Act.

## **AMENDMENTS**