

LFC Requester:	Marty Daly
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**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 January 26, 2024

Bill No: HB 46

Sponsor: Rehm
Short Title: Felon in Possession of Firearm Penalty

Agency Name and Code Number: NM Sentencing Commission – 354
Person Writing: Keri Thiel
Phone: 505-259-8763 **Email:** kthiel@unm.edu

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)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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:

HB 46 amends Section 30-7-16(B) NMSA 1978, regarding the possession of firearms by felons, to also prohibit the possession of a destructive device by a felon. It specifies that a felon in possession of a firearm or destructive device shall be sentenced in accordance with the Criminal Sentencing Act, Section 31-18-15 NMSA 1978, which it amends to include a special five-year penalty for felons in possession of a firearm or destructive device. HB 46 further amends Section 30-7-16(B) to add that a second or subsequent offense shall be a second degree felony.

HB 46 similarly amends Section 30-7-16(C) NMSA 1978, regarding the possession of firearms by serious violent felons, to also prohibit the possession of a destructive device by a felon. The bill changes the penalty for a serious violent felon in possession from a third degree felony to a second degree felony, and removes the existing special penalty of a basic term of six years imprisonment.

HB 46 also amends Section 30-7-16(E)(3), which defines “felon”, to remove the condition that less than ten years have passed since the person completed serving their sentence or completed their probation period.

HB 46 sets an effective date of July 1, 2024.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The New Mexico Sentencing Commission is presently undertaking a review and update to the state’s Criminal Code. As part of this process, the Commission engaged the services of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to analyze the Criminal Code for its strengths and weaknesses. One item of concern for the Robina Institute was that the Criminal Code has a number of special statutes that fall out of the normal penalty

structure in the state. HB 46 would add an additional special penalty into the Criminal Code through its addition of a five-year third degree felony for felons in possession of a firearm or destructive device. At the same time, HB 46 would also remove a special penalty from the Criminal Code, as it would remove the existing six-year third degree felony for serious violent felons in possession of a firearm or destructive device.

HB 46 would remove the ten-year limitation on the definition of “felon” for the purposes of Section 30-7-16 NMSA 1978. This would broaden the reach of the statute and mean that more individuals would be prohibited from possessing a firearm or destructive device. The bill would also increase the basic term of years of imprisonment for felons and serious violent felons in possession of a firearm, and would also apply the same penalties for felons and serious violent felons in possession of a destructive device. HB 46 would also add an increased penalty for second or subsequent offenses of felons in possession of a firearm or destructive device. While it is difficult to determine what the effect of passing HB 46 would be on the state’s prison population, it is likely that these changes would lead to more people being incarcerated by the Corrections Department. The average per day cost to incarcerate someone in the state’s prison system is \$156.45/day; this average includes private and public facilities.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS