

<b>LFC Requester:</b>	<b>Scott Sanchez</b>
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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**     X

**Date** February 12, 2024  
**Bill No:** HB 316s

**Sponsor:** Rehm  
**Short Title:** Public Peace, Health, Safety & Welfare

**Agency Name and Code Number:** NM Sentencing Commission – 354  
**Person Writing:** Keri Thiel  
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**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)

Relates to: HB 46; Conflict with: HB 198  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

The HJC substitute for HB 316 makes a number of changes to Section 30-7-16 NMSA 1976, regarding possession of a firearm or destructive device. The bill would make possession of a destructive device by a felon a third degree felony for a first offense, and a second degree felony for a second or subsequent offense. The bill would also make a second or subsequent offense of a felon in possession of a firearm a second degree felony.

HB 316s would amend the offense of possession of a destructive device by a serious violent felon to be a second degree offense, rather than a third degree offense as it is under current law. The bill would remove the current special penalty of six years imprisonment for that offense.

The bill would also amend Section 31-18-15 NMSA 1978, the basic sentencing structure, to add a special penalty of five years imprisonment for a third degree felony for possession of a firearm or destructive device by a felon.

HB 316s 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 316s 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. However, HB 316s 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 316s would 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 316s 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 316s 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**

Relationship - HB 316s overlaps with the changes proposed by HB 46. Both bills would create a special five-year third degree felony for felons in possession of a firearm or destructive device, and both bills would make a second or subsequent offense of the same a second degree felony. Both bills would also change the penalty for a serious violent felon in possession to a second degree felony, removing the current special penalty third degree felony for that offense.

Conflict – HB 316s and HB 198 make different and conflicting changes to the proscribed penalties for felons and serious violent felons in possession of a firearm.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

## **AMENDMENTS**