

<b>LFC Requester:</b>	
-----------------------	--

**AGENCY BILL ANALYSIS  
2026 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** Feb. 12, 2026  
**Bill No:** HB 49-280

**Sponsor:** Joy Garratt  
**Short Title:** Increase Felon Firearm Penalty

**Agency Name and Code**    280-LOPD  
**Number:** \_\_\_\_\_  
**Person Writing**    Kim Chavez Cook  
**Phone:** 505-395-2822    **Email** [Kim.ChavezCook@lpadnm.us](mailto:Kim.ChavezCook@lpadnm.us)

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY25</b>	<b>FY26</b>	<b>FY27</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: **HB 25** (also amending Section 30-7-16).  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

**Changes to the synopsis and analysis responsive to the HJC Amendment are indicated by strikethrough and underlining.**

Synopsis:

HB 49 would increase the penalty for a felon possessing a firearm in NMSA 1978, Section 30-7-16.

Under current law, a non-violent felon possessing a firearm is guilty of a third-degree felony (0-3 years) and a “serious violent” felon possessing a firearm is guilty of a special third-degree felony (0-6 years).

The HCPAC Substitute would maintain the distinction between felons whose felon status is based on a non-violent or violent felonies, and would maintain the current penalty for non-violent felons who later possess a firearm. It would only increase the penalty for violent felons who later possess a firearm, [~~and would do so with a self-enhancing penalty for repeat possession offenders.~~] Specifically, it would increase the first possession offense from the current 6-year penalty to a 9-year second degree felony; ~~thereafter any subsequent possession conviction would be a first degree felony, which has a basic sentence of 18 mandatory years (not 0-18).~~ The HJC amendment removes the self-enhancing penalty for repeat offenses, thus removing the first-degree felony penalty.

**FISCAL IMPLICATIONS**

~~The increase for a first offense bill would increase the penalty for violent felons possessing a firearm by three additional years per case. [; however, the second offense penalty to a first degree felony is not only tripling the term of years, but transforms the sentence into a mandatory 18 years, by which judges have no discretion to suspend or defer in favor of probation. The impact on plea negotiations, likelihood of trial, and ultimately, sentencing litigation and costs of incarceration will be substantial.]~~

Higher-penalties cases are somewhat more likely to go to trial. These felonies would be handled by, at a minimum, mid-level felony capable attorneys (Associate Trial Attorneys), but more likely higher-level attorneys (Trial Attorneys). The LOPD cost for experienced defense attorneys, including salary, benefits, operational costs, and support staff is \$292,080.16 annually

in the Albuquerque/Santa Fe areas, and \$300,569.45 in outlying geographic areas.

A 2022 workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, “A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.”

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls-sclaid-moss-adams-nm-proj.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf). Barring some other way to reduce indigent defense workload, any increase in the number of serious, complex felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep the LOPD’s workload crisis from spreading.

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.

Any increase in trials would also increase litigation costs for the courts and District Attorneys’ offices. Moreover, precluding earned meritorious deductions is certain to impact the housing budget for the Department of Corrections.

## **SIGNIFICANT ISSUES**

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 49 would thus constitute a *fourth* penalty increase to this crime in the span of six 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. Reviewer is not aware of any research finding that increased criminal penalties have an increased deterrent effect on the commission of the crimes. The bill would, at most, lead to an increase in incarceration.

In addition, it is important to note that, unlike sentencing enhancements for using a firearm during the commission of another [violent] 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.

As the HCPAC-Substitute for HB 49 focuses on possession by violent felons, Analyst notes that the distinction between violent and non-violent felons was in effect for *one year* in

2020, and then again since 2022. According to Sentencing Commission data, since 2022, only about 10% of cases where Felon in possession is the “lead charge” involve a felon whose felon status was for a *violent* felony. Analyst suspects that violent felons incur a “possession” charge more often in conjunction with a new crime constituting the “lead charge,” and are therefore not reflected in these numbers. However, this illustrates the discussion below that when “felon in possession” is a “bottom of the ticket” charge alongside more serious felony charges, all of which receive enhancements and can be imposed consecutively, the increased penalty for *this particular charge* is unnecessary for ensuring lengthy sentences. Increasing this penalty would be excessive within an already comprehensive sentencing scheme.

As it stands, we are *currently* punishing the non-violent possession crime as harshly or more harshly than many violent crimes like aggravated battery and aggravated assault. If HB 49 is adopted, New Mexico would punish *gun possession* for a non-violent offender the same as *actually committing* armed robbery, aggravated burglary, attempted murder, shooting at or from a motor vehicle resulting in great bodily harm, kidnapping, and many sexual assaults. The increase for felons based on a violent crime is less dramatic, but focusing on subsequent *possession* conduct misses the mark. Possession offenses are not the source of New Mexico’s violent crimes.

It is also worth noting that, because people charged with this crime must have a prior felony conviction, the vast majority will also already be subject to Habitual Offender Enhancements to the existing basic sentence, which involve a one, four, or eight-year enhancement depending on the number of prior felony cases. Thus, for the most egregious repeat offenders, the *existing* basic sentence could easily become either 11 years (for non-violent felons) or 14 years (for violent felons) even if this bill were not enacted.

## **PERFORMANCE IMPLICATIONS**

In addition to an increased desire to defend against higher penalty charges at a jury trial, the need to heavily litigate pretrial motions and to prepare a defense presentation at sentencing is also more pressing. Furthermore, if charged alongside other charges, felon-in-possession charges are almost always “severed” from the other counts to avoid having to unnecessarily inform the jury of a defendant’s “felon” status in considering the other allegations. Thus, cases including this charge among others tend to require *two trials* and not just one. With the increased penalties and good time ineligibility, the need for more experienced attorneys and reliance on peripheral LOPD services such as investigators and social workers would make defending these charges more resource-intensive than they are currently.

## **ADMINISTRATIVE IMPLICATIONS**

*See* performance implications.

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

HB 25 would also amend Section 30-7-16.

## **TECHNICAL ISSUES**

## OTHER SUBSTANTIVE ISSUES

Unlike sentencing enhancements for **using** a firearm during the commission of a crime, this crime punishes felons simply for **possessing** a gun, **even if they never use it**. It is already a crime for felons to possess a firearm. However, doing so hardly presents the same level of risk or danger associated with *committing violent felonies*, like armed robbery or aggravated burglary. Felon in possession includes storing a gun in the closet and does not require carrying it or using it in any way, nor the commission of any other crime.

- Before 2020, this was a 1.5-year 4<sup>th</sup>-degree felony penalty for all felons.
- In 2020, this body passed a bill that separated out non-violent felons and violent felons, increasing the penalty to a *third* degree felony only for “serious violent offense” (SVO) felons, leaving the fourth-degree penalty for **non**-violent felons.
- The next year, the Legislature removed the distinction by increasing the penalty for *all* felons to the third-degree felony carrying three years.
- Then in 2022, HB 68 again increased the sentence for violent felons to *six* years, leaving the non-SVO felon penalty at three years.

The current penalty, **which reflects three increases in the last six years**, is already a serious crime, separately punishable by federal law. If a felon *uses* a gun to commit a new crime, they’ll be punished for possession, the new crime, *and* subject to sentence enhancements based on the firearm and the prior felonies, as shown in the chart on the final page of this analysis. Dramatically increasing the penalty for this inherently non-violent crime will not improve public safety and will result in draconian penalties far beyond the danger or culpability created by the underlying conduct.

## ALTERNATIVES

Non-punitive, regulatory approaches for reducing access to firearms.

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

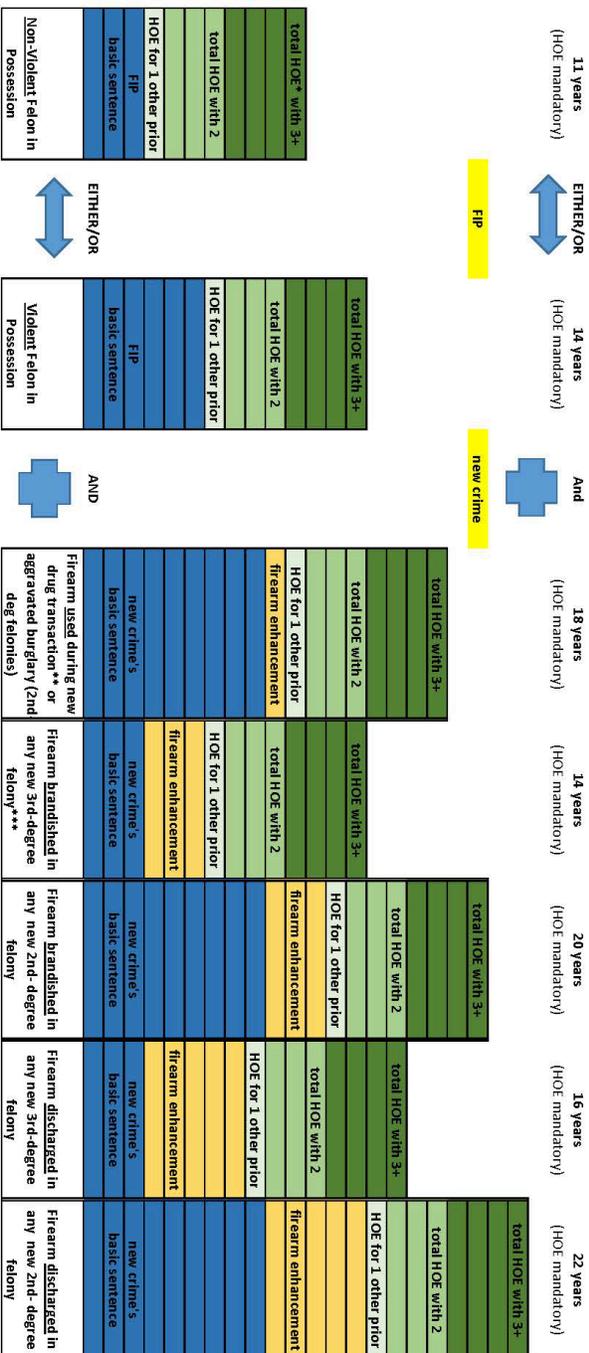
Status quo: felon in possession would be punished as a third-degree felony carrying three years in prison for most felons, and carrying six years in prison for those whose “felon” status is premised on a SVO. Furthermore, *in addition to* the possession crime, *use* of a firearm to commit a new crime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

## AMENDMENTS

*See Chart* →

Felon in Possession ("FIP") does not require use.

Under current law, if a convicted felon commits a new crime involving a gun, they are facing the following penalties:



\* HOE: habitual offender enhancement

\*\* if trafficking is a second offense, the basic sentence is 18 years, not 9

\*\*\* 2nd and 3rd degree felons are the most common firearm crimes, but if the new crime is a 4th- or 1st-degree felony, the basic sentence would be 1, 5 or 18 years, respectively