

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

The House Consumer and Public Affairs Committee substitute for HB 49 also amends Section 30-7-16 NMSA 1978 but differs from the original bill in several ways:

- The substitute bill leaves in place the penalty for a felon in possession of a firearm that is in the current law, which was removed in the original bill.
- The substitute bill proposes increased penalties specifically for serious violent felons: a second degree felony punishable by no less than nine years imprisonment for first offenses, and a first degree felony for second and subsequent offenses. These penalties were applicable to all felons in the original bill, and the original bill did not include the mandatory minimum sentence for first offenses.
- The substitute bill leaves in place the definition of “serious violent felon” that is in the current law, which was removed in the original bill.

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

In 2021, the New Mexico Sentencing Commission engaged the services of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to analyze the state’s 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. The HCPAC substitute for HB 49, like the original bill, would remove one of these special penalties from the Criminal Code, as it would remove the existing six-year third degree felony for serious violent felons in possession of a firearm.

The HCPAC substitute for HB 49 would increase the penalty for serious violent felons in possession of a firearm, make that penalty applicable to first offenses only, and add a higher penalty for second or subsequent offenses. The substitute bill also sets a mandatory minimum sentence of nine years imprisonment for first offenses, essentially making it so the basic sentence provided in Section 31-18-15 NMSA 1978 for second degree felonies cannot be reduced.

While it is difficult to determine what the effect of passing the HCPAC substitute for HB 49 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 \$153.08/day; this average includes private and public facilities.

Section 30-7-16 NMSA 1978 has been amended several times in recent years to increase the

penalty for felons in possession of firearms. In FY 2024, the most recent year for which NMSC has access to court data, there were 950 cases of felon in possession charges, and felon in possession was the lead offense in 682 of those cases. Of those cases that have been disposed, there was a finding of guilt for the felon in possession charges 35% of the time. There were 932 cases where felon in possession was the most serious weapons offense in the case (not necessarily the lead offense), and for these cases, there was a finding of guilt for felon in possession 36% of the time. As of June 30, 2024, there were 92 people incarcerated in NM prisons for a felon in possession conviction. The mean expected length of stay for those individuals was 2.2 years, and median expected length of stay was 2.0 years.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

In the original bill, the penalties provided were applicable to any felon “who violates this section”, which made the penalties applicable to possession of a destructive device as well as a firearm. The HCPAC substitute for HB 49 includes the “who violates this section” language in its penalties for serious violent felons, but also retains the “that is found to be in possession of a firearm” language from the current law. See page two of the substitute bill, lines 12-16. It is unclear whether the substitute bill intended those penalties to also apply to serious violent felons in possession of a destructive device.

If the HCPAC substitute for HB 49 does intend for the penalties to apply to serious violent felons in possession of a destructive device, then it is worth noting that the penalty for felons in possession of a firearm that is in the current law and was retained by the substitute bill does not apply to felons in possession of a destructive device. Without a designated penalty for that offense, it defaults to a petty misdemeanor under Section 31-18-13(D) NMSA 1978, which is a much lower penalty than that imposed in the original bill.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS