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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/08/17

SPONSOR HF1 LAST UPDATED \_\_\_\_\_ HB 17/HFIS

SHORT TITLE Felon Possessing A Firearm Penalties SB \_\_\_\_\_

ANALYST Sánchez

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

|              | FY17 | FY18          | FY19          | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected                  |
|--------------|------|---------------|---------------|-------------------|---------------------------|--------------------------------|
| <b>Total</b> |      | Indeterminate | Indeterminate | Indeterminate     | Recurring                 | General Fund/Other State Funds |

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB52

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 New Mexico Corrections Department (NMCD)  
 New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of House Floor Substitute

House Floor substitute for House Bill 17 proposes to amend Section 30-7-16 NMSA 1978, Firearms or Destructive Devices, changing the violation from a fourth degree felony to a third degree felony if the person was previously convicted of a serious violent offense or the court makes a specific finding that the prior felony conviction was a violent felony and justice would be served and there are substantial and compelling reasons to impose the sentence for a third degree felony.

### FISCAL IMPLICATIONS

Changing the violation from a fourth to a third degree felony adds one year and six months of prison time to a sentence upon conviction, which increases the cost to the state.

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A single change to a criminal statute may have minimal fiscal impact; however, an increase of these cases may require additional resources. Although it is difficult to accurately estimate the cost of increased trials because of this or similar legislation, it is important to note that the average salaries, benefits and other costs yearly for the district courts, district attorneys and public defenders are as follow:

- PDD: \$ 93.2
- District Attorneys: \$ 70.1
- District Courts: \$335.6

The Administrative Office of the Courts (AOC) in its response to HJC substitute for HB52 (duplicate to HB17 floor substitute) reports an increase in the number of jury trials and appeals is possible, given the potential increase in the penalty. LFC files show that the jury and witness fund shortfall for FY17 is estimated to be \$609 thousand even with a reduction in the hourly rate below the federal minimum rate of \$6.25 per hour. The FY16 shortfall was \$994.5 thousand.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison (public and private combined) is an average of \$123 per day, or about \$44,776 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD's general fund budget, not including supplemental appropriations, has grown by an average \$9.5 million per year, or three percent, since FY14 as a result of growing prison population and inmate needs. The LFC reported in its FY18 budget recommendations that NMCD ended FY16 with a \$9.9 million deficit.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

### SIGNIFICANT ISSUES

The Public Defender Department (PDD) notes since the questions of the specific findings that “the prior felony was a serious violent offense and that justice will be served by imposing a sentence for a third degree felony and that there are substantial and compelling reasons . . . for departing from the sentence of a fourth degree felony” are not facts alleged in an indictment and submitted to a jury, the sentencing scheme proposed in the Substitute for HB17 may well prove vulnerable to a Sixth Amendment challenge raised pursuant to the line of cases established by *Apprendi v. New Jersey*, 530 U.S. 466 (2000). See also *State v. Frawley*, 2007-NMSC-057, 143 N.M. 7. The United States Supreme Court does not mince words on the subject: “If the jury’s verdict alone does not authorize the sentence, if, instead, the judge must find an additional fact to impose the longer term, the Sixth Amendment requirement is not satisfied.” *Cunningham v. California*, 549 U.S. 270, 290 (2007).

The New Mexico Sentencing Commission (NMCS) reports that on June 30, 2016, there were 53

offenders committed to the custody of the New Mexico Corrections Department (NMCD) who had a conviction for felon receiving, transporting, or possessing a firearm or destructive device as their highest charge.

### **PERFORMANCE IMPLICATIONS**

This bill may have an impact on the following performance measures:

- NMCD:
  - Percent of prisoners reincarcerated back into the corrections department within thirty-six months due to technical parole violations;
  - Percent of prisoners reincarcerated back into the corrections department system within thirty-six months due to new charges or pending charges;
  - Percent of inmates testing positive for drug use or refusing to be tested in a random monthly drug test;
  - Percent of sex offenders reincarcerated back into the corrections department within thirty-six months; and
- District Courts:
  - Cases disposed of as a percent of cases filed;
  - Percent change in case filings by case type;
- District Attorneys:
  - Average caseload per attorney;
  - Number of cases prosecuted;
  - Number of cases prosecuted per attorney;
- Public Defenders:
  - Percent of cases taken by contract attorneys;
  - Percent of cases that go to trial with clients defended by contract attorneys.

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

Duplicates House Judiciary Committee substitute for HB52 Felon in Possession of Firearm Penalty.

### **OTHER SUBSTANTIVE ISSUES**

NMCD suggests that impact on potentially deterring criminal activity of previously convicted felons.

Additional information is available on attached fact sheet on federal law regarding felon in possession of a firearm, published by the United States Sentencing Commission and provided by the NMSC.

ABS/sb/al