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FISCAL IMPACT REPORT

SPONSOR Rehm/Pettigrew/Reeb/Garratt LAST UPDATED _____
ORIGINAL DATE 1/30/2023
BILL _____
SHORT TITLE Unlawful Firearms while Trafficking NUMBER House Bill 59
ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY27	FY28	FY29	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$230.5	\$629.3	\$996.4	\$1,856.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Public Defender Department (PDD)
New Mexico Attorney General (NMAG)
Sentencing Commission (NMSC)
Department of Health (DOH)
Corrections Department (NMCD)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 59

House Bill 59 creates the third-degree felony crime of unlawful carrying of a firearm while trafficking a controlled substance, consisting of carrying a firearm while violating the provisions of Section 30-31-20 NMSA 1978, governing the trafficking of controlled substances. HB26 provides that, as used in the act, “firearm” means a weapon “that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon.”

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the length of time individuals serve in prison that might result from this bill. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. The Corrections Department reports the average cost to incarcerate a single inmate in FY21 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per inmate per year across all facilities. This bill will likely increase the time individuals spend incarcerated.

Although HB59 creates a new crime, the crime of unlawful carrying of a firearm while trafficking a controlled substance requires an individual to also be convicted of the crime of trafficking a controlled substance. As a result, HB59 functions more as a sentence enhancement than a new crime. HB59 is not anticipated to result in more individuals being admitted to prison—those individuals would already be admitted to prison for drug trafficking—but is anticipated to increase the amount of time they spend there.

Overall, this analysis estimates HB59 will result in additional incarceration costs of \$703 thousand per year. Based on the number of individuals admitted to prison for drug trafficking in FY22 (134) and the percent of state prisoners incarcerated for drug trafficking who possessed a firearm at the time of their arrest according to a 2019 DOJ report (9.4 percent),¹ this analysis estimates the changes proposed by HB59 will impact approximately 12 individuals annually. Based on the average time served for individuals released from prison in FY21 whose highest charge was for a third-degree felony, these 12 individuals will spend an additional 912 days in prison each due to the new crime created by this bill, a cost of \$66.4 thousand per offender.

Because HB59 effectively enhances the sentence for an existing crime, the fiscal impacts of this change are not anticipated to be realized until the first group of offenders admitted under the enhanced sentence have served the term they would have served under the original sentence. Under the original sentence, offenders serve an average of about 2.4 years (based on the average time served for offenders released from prison in FY21 whose highest charge was for drug trafficking), but this bill is anticipated to lead them to serve an *additional* 2.5 years in prison. As a result, offenders admitted to prison in FY25 under HB59 would begin to impact costs in FY27. As more people are admitted to prison, costs increase. Costs continue to rise for each year until FY29, when offenders admitted in the first year the change takes effect begin to leave prison after serving the additional time.

This analysis does not include potential benefits of crime deterrence due to increased punishment, as research shows sentence length has little to no deterrent effect. Certainty of being caught is a significantly more effective deterrent to criminal behavior than the severity of punishment if convicted.

¹ <https://bjs.ojp.gov/content/pub/pdf/suficspi16.pdf>

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials (if more defendants invoke their right to a trial when facing more serious penalties), are not included in this analysis, but could be moderate.

SIGNIFICANT ISSUES

Public Safety Considerations. HB59 effectively enhances a sentence for drug trafficking in certain circumstances (having a firearm). Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment, and although laws and policies designed to deter crime focus mainly on increasing the severity of the punishment, this does little to deter criminals because most know little about sanctions for specific crimes. The Department of Health (DOH) notes research by the National Academy of Sciences suggests harsh determinate sentencing is ineffective at deterring crime, and is specifically ineffective at deterring drug dealing.² These findings suggest increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful than increasing penalties. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC’s evaluation team has found in the 2nd Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than heightened penalties.

Legal Considerations. The Administrative Office of the Courts (AOC), the Administrative Office of the District Attorneys (AODA), the office of the New Mexico Attorney General (NMAG) and the Public Defender Department (PDD) all note existing law provides for sentencing enhancements when a firearm is used during the commission of a noncapital felony. PDD further notes these enhancements were increased during the 2022 legislative session.

TECHNICAL ISSUES

AODA suggests a definition of the term “carrying” would be helpful.

AOC and NMAG note it is not clear if a conviction for the crime of unlawful carrying of a firearm while trafficking without a simultaneous conviction for trafficking would constitute a conviction for trafficking in subsequent prosecutions.

OTHER SUBSTANTIVE ISSUES

² <https://doi.org/10.17226/18613>

DOH reports a rate of firearm-related injuries in New Mexico of 23.1 per 100 thousand residents in 2020, a rate 3.4 percent higher than the prior year and 55 percent higher than 2010.³ DOH further notes that between 2016 and 2020, New Mexico had the 11th highest drug overdose death rate in the nation;⁴ drug overdose fatalities are largely attributed to fentanyl, fentanyl analogues, and methamphetamine.

ER/mg/ne

³ <https://www.nmhealth.org/news/awareness/2021/12/?view=1760>

⁴ <https://www.nmhealth.org/data/view/substance/2682/>