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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Block/Mirabal Moya/Duncan/Mason/Lord **ORIGINAL DATE** 1/31/23

BILL

SHORT TITLE Permitless Carry of Firearms **NUMBER** House Bill 164

ANALYST Torres, J

REVENUE*
(dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|---------|---------|------------------------------|----------------------------|
| FY23 | FY24 | FY25 | | |
| | (690.0) | (690.0) | Recurring | Carry Conceal Unit Fees |

Parenthesis () indicate expenditure decreases.
*Amounts reflect most recent analysis of legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------------------|-----------|-----------|----------------------|------------------------------|---|
| | No fiscal impact | (\$700.0) | (\$700.0) | (\$1,400.0) | Recurring | Concealed Carry Unit Operating Budget |
| Total | | | | | | |

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 114
Conflicts with Senate Bill 116

Sources of Information

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
New Mexico Attorney General (NMAG)
New Mexico Corrections Department (NMCD)
Department of Public Services (DPS)
Administrative Office of the Courts (AOC)

No Response Received

Administrative Office of the District Attorney (AODA)
Public Defender Department (PDD)
Department of Health (DOH)

SUMMARY

Synopsis of House Bill 164

House Bill 164 (HB164) creates a new section of Chapter 30, Article 7, NMSA 1978, that permits any person, 18 or older, to carry a loaded firearm on their person, either concealed or openly, as long as that person is not prohibited by federal or state law or court order from possessing or carrying a firearm.

Current New Mexico law requires a valid Department of Public Safety-issued concealed carry permit to carry a concealed, loaded firearm in a public place. The Concealed Carry Handgun Act requires the carrier be a U.S. citizen, 21 or older, who is not fugitives from justice or addicted to alcohol or controlled substances. The carrier must also complete a DPS approved firearm safety training course. House Bill 164 eliminates those requirements. Concealed carry permitting would only be continued for state reciprocity purposes.

HB164 amends Sections 30-7-1 and 30-7-2 by modifying and excluding the manner in which firearms are addressed. The current statutory definition of a “deadly weapon” includes “any firearm, whether loaded or unloaded.”¹ If HB164 were enacted, those carrying concealed loaded firearms would no longer be required to satisfy the current exceptions of Section 30-7-2 NMSA 1978 and would no longer face a criminal penalty for failure to do so.

HB164 also repeals 30-7-2.2; 30-7-2.3, 30-7-2.4 NMSA 1978.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

DPS states the agency:

Received \$899,300 in CCU [Carry Conceal Unit] Fees in FY 2021; \$640,200 in FY 2022; and is projecting to receive \$691,200 in FY 2023. Revenue funds two (2) Perm positions at \$151,200 and five (5) Term at \$316,700, for a total cost of \$467,900 in salary and benefit needs. The Unit also incurs operating costs of \$272,000 per year, as well for a total expenditure need of \$739,900 each year. While some New Mexico residents may still continue to purchase or renew a CCU license to maintain legal compliance with the laws of other states, the future impact on revenue is unknown.

This analysis assumes DPS will receive the bulk of the fees and incur the existing expenses for FY23. Beyond FY23, fee revenue would drop to essential zero, as would the expenses of the office.

SIGNIFICANT ISSUES

DPS states:

¹ See Section 30-1-12B NMSA 1978.

This bill would if not allow, at a minimum decriminalize, the carrying of firearms at New Mexico colleges and universities. This bill would also decriminalize the carrying of firearms in bars and other liquor establishments. Allowing guns in bars is likely to result in some additional violent gun crime.

DPS deals with numerous individuals with prior criminal history that are allowed to purchase a firearm but because of their criminal history are still prohibited from having a concealed carry permit. This bill will grant the right to carry a concealed firearm to all of those individuals

NMAG states:

HB164's proposed new section of law allows permitless carrying of a concealed firearm by a person who is not "prohibited by federal or state law or a court order" from doing so. The new law would appear to be in conflict with any current municipal ordinance in New Mexico that prohibits carrying a loaded, concealed firearm without a valid concealed carry permit, however. For example, Section 12-2-8 of Albuquerque's Municipal Code prohibits carrying a firearm "concealed in a manner making it not readily visible on the person or in close proximity thereto," subject to certain exceptions. Many municipalities across New Mexico have identical or similar ordinances in place.

The New Mexico Supreme Court has recognized that "an ordinance will conflict with state law when state law specifically allows certain activities or is of such a character that local prohibitions on those activities would be inconsistent with or antagonistic to that state law or policy." *Stennis v. City of Santa Fe*, 2008-NMSC-008, ¶ 21, 143 N.M. 320. HB164 would permit activities that local ordinances specifically prohibit, and would therefore conflict with those local ordinances. However, nothing in the proposed new law indicates whether the Legislature intends to preempt municipal authority in this area or discusses the proper interaction between the statute and municipal ordinances. The conflict could lead to confusion and require clarification through litigation.

The AOC states:

Currently, 25 states allow concealed carry of a firearm without a permit. HB 164 would allow any person who is not prohibited under federal or state law to carry a firearm, either concealed or open. New Mexico has assigned the Department of Public Safety to issue concealed handgun licenses since the Concealed Handgun Carry Act, Section 29-19-3 NMSA 1978, became effective on July 1, 2003. The Concealed Carry Act was found not to violate Article II, Section 6 of the New Mexico Constitution in *State ex re. N.M. Voices for Children, Inc. v. Denko*, 2004-NMSC-011, 135 N.M. 439, 90 P.3d 458....

Section 29-19-4(B) NMSA 1978 directs the Department of Public Safety to deny a concealed handgun license to an applicant who has: (1) received a conditional discharge, a diversion or a deferment or has been convicted of, pled guilty to or entered a plea of nolo contendere to a misdemeanor offense involving a crime of violence within ten years immediately preceding the application; (2) been convicted of a misdemeanor offense involving driving while under the influence of intoxicating liquor or drugs within five years immediately preceding the application for a concealed handgun license; (3) been convicted of a misdemeanor offense involving the possession or abuse of a controlled substance within ten years immediately preceding the application; or (4) been convicted

of a misdemeanor offense involving assault, battery or battery against a household member.

The Supreme Court issued an opinion last year in *New York State Rifle & Pistol Association v. Bruen*, 597 US ____ (2022). The case involved a New York law that required applicants for concealed carry permits to provide a special reason why they needed one, such as a specific threat to their safety. The Supreme Court ruled that the requirement violates the Second Amendment right to bear arms, in a 6-3 decision but made clear that more objective requirements are constitutional and can remain. It classified state restrictions for concealed carry permits into two groups: “shall-issue” and “may-issue.” Shall-issue laws require licensing officials to give permits to anyone who meets a list of criteria. May-issue laws leave the decision of whether to issue the permit up to licensing officials, even if the applicants meet all the objective criteria. “Shall-issue regimes may require a license applicant to undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements,” Justice Brett Kavanaugh explained in a concurring opinion. Since New Mexico’s Concealed Handgun Carry Act falls under a “shall-issue” structure, it is not affected by the Bruen decision.

While HB 164 is silent with regards to the Concealed Handgun Carry Act, it effectively renders the Act unenforceable by removing any criminal liability for carrying a gun without a permit.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMAG states:

HB164 conflicts with SB116, which proposes to enact a new section of Chapter 30, Article 7 NMSA 1978 that would make it unlawful for a person under the age of 21 to possess certain types of firearms.

HB164 is related to SB114. HB164 proposes to repeal Section 30-7-3 NMSA 1978, whereas SB114 proposes to amend that section to permit the concealed carry of firearms by valid concealed carry permit holders in a larger class of licensed liquor establishments than what the statute currently permits.

OTHER SUBSTANTIVE ISSUES

NMAG states:

HB164 implicates public safety concerns. The New Mexico Supreme Court has observed that the “[t]he purpose of Section 30-7-3 is to protect the innocent patrons of an establishment serving alcoholic beverages” from the “obvious danger in the combination of firearms and liquor consumption,” which “exists regardless of whether the person possessing the firearm in a liquor establishment is drinking.” *State v. Torres*, 2003-NMCA-101, ¶ 11, 134 N.M. 194. The court has also recognized that bringing a firearm onto school grounds poses a “high risk of danger,” and that “the very real dangers of deadly weapons” on school campuses “are obvious.” *State v. Rowell*, 2008-NMSC-041, ¶33, 188 P.3d 95. HB164 would repeal the statutes that address and aim to mitigate the dangers presented by firearms in liquor establishments and on university campuses.

NMCS states:

According to data from the Centers for Disease Control and Prevention, New Mexico has one of the highest firearms death rates in the country (7th worst in the nation in 2020 data, the latest available – CDC data can be seen here:

https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm).

While HB 164’s “Permitless Carry” Section would only expressly permit people 18 and older to carry firearms, its repeal of Section 30-7-2.2 NMSA 1978 would legalize handgun possession for people 17 and younger, and its repeal of Section 30-7-2.3 would prohibit law enforcement agencies from lawfully seizing handguns possessed or carried by people 17 and younger.

Firearm-related injury is the leading cause of death in people 0 to 24 years of age in the United States, and firearm homicides disproportionately affect younger people. See, e.g., “Current Causes of Death in Children and Adolescents in the United States” published in the New England Journal of Medicine, May 2022, available here:

<https://www.nejm.org/doi/full/10.1056/NEJMc2201761>.

According to the Rand Corporation’s Gun Policy in America initiative, which analyzes research evidence on the effects of gun policies in the United States, “There is now supportive evidence that child-access-prevention laws reduce firearm homicides and self-injuries among youth, and that shall-issue concealed-carry laws . . . increase levels of firearm violence.” (See “Evidence About Effects of Gun Policies Grows and Supports Laws Intended to Restrict Child Access to Guns” available here: <https://www.rand.org/news/press/2023/01/10.html>.) Shall-issue concealed-carry laws are more restrictive than the “permitless” concealed carry law proposed in HB 164; New Mexico is currently a shall-issue state.

The American Academy of Pediatrics also supports stronger gun laws to limit firearm availability, particularly to youth: “Greater firearm availability is associated with increased risks of firearm suicide and unintentional deaths in youth 0 to 24 years of age. Increased state-level firearm household ownership and prevalence has been associated with higher state-level rates of firearm suicides, homicide, and unintentional deaths in children 5 to 14 years of age. Stronger state-level legislation is associated with lower state-level firearm prevalence and access and decreased firearm deaths in children and youth.” (See “Firearm-Related Injuries and Deaths in Children and Youth: Injury Prevention and Harm Reduction” by the American Academy of Pediatrics, citations omitted, available here:

<https://publications.aap.org/pediatrics/article/150/6/e2022060070/189686/Firearm-Related-Injuries-and-Deaths-in-Children?autologincheck=redirected>.)

Advocates of stronger concealed carry laws cite studies indicating that more people carry guns in public in states with more permissive concealed carry laws, and that higher levels of violent crime, including homicide, occur when more people carry guns in public. See, e.g., “Concealed Carry” published by the Giffords Law Center, available at: <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/>.

As noted by the AOC, legislation abolishing concealed carry permitting requirements has been

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enacted in 25 states. (Fact Sheet: October 4, 2022: *Weakening Requirements to Carry a Concealed Firearm Increases Violent Crime: States weakening concealed carry requirements is an increasing trend resulting in rising violent crime.*)²

Four of the five responding state agencies cite public safety concerns pertaining to the passage of House Bill 164.

JT/rl/hg

² <https://www.americanprogress.org/article/fact-sheet-weakening-requirements-to-carry-a-concealed-firearm-increases-violent-crime/>