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FISCAL IMPACT REPORT

SPONSOR Soules **LAST UPDATED** 2/9/2023
ORIGINAL DATE 2/6/2023
BILL Senate Bill
SHORT TITLE Prohibit Automatic Firearm Sales **NUMBER** 171/aSHPAC
ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$0.0	At least \$26.6	At least \$37.6	At least \$64.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 72 and House Bill 101

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 SHPAC Amendment

The Senate Health and Public Affairs Committee amendment to Senate Bill 171 removes mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms from the prohibitions established by the bill.

Synopsis of Original Senate Bill 171

Senate Bill 171 prohibits the manufacture, sale, barter, trade, gift, transfer or acquisition of:

- Assault pistols;
- Automatic firearms;

- Rifles with barrel lengths less than 16 inches;
- Shotguns with barrel lengths less than 18 inches;
- Mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms;
- Any type of ammunition or any projectile component thereof coated with Teflon or any other similar coating designed primarily to enhance its capabilities to penetrate metal or pierce protective armor; and
- Any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

Installing, removing, or altering a firearm part with the intent to convert the firearm to an automatic firearm is considered manufacturing an automatic firearm.

The penalty for violating any of these prohibitions is a fourth-degree felony, carrying a basic sentence of 18-months imprisonment.

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

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. 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 jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 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 year across all facilities. SB171 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

The proposed new crime in this bill is a fourth-degree felony, which carries an 18-month prison sentence; the Sentencing Commission (NMSC) estimates the average length of time served by offenders released from prison in FY21 whose highest charge was for a fourth-degree felony was 516 days. Based on the marginal cost of each additional inmate in New Mexico's prison system, each offender sentenced to prison for this crime could result in estimated increased costs of \$37.6 thousand to NMCD.

It is difficult to estimate how many individuals will be charged, convicted, or spend time in prison or jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to prison each year for this crime, a cost of \$37.6 thousand. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred in the first year of incarceration, while the cost of the remaining 151 days (\$11 thousand) would be incurred in the second year of incarceration. To account for time to adjudication, no costs are anticipated to be incurred until one year after the bill takes effect, in FY25. Because the estimated time served is greater than one year, costs are anticipated to increase in FY26, as an offender admitted in FY25 serves the remainder of their

term and another offender is admitted, but will level out that same year (as offenders begin to be released from prison) and remain level in future fiscal years.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under SB171, are not included in this analysis, but could be moderate.

SIGNIFICANT ISSUES

Gun Violence and Bans on Assault Weapons. The Department of Health (DOH) reports four incidents of firearm violence where four or more people (not including the perpetrator) were killed in the U.S. in the first half of 2022,¹ including two that occurred in states bordering New Mexico. DOH reports such incidents resulted in 33 percent more fatalities and 500 percent more injuries between 2017 and 2021 than between 2012-2016.²

According to a 2023 meta-analysis of research evidence on the effects of gun policies in the United States from the Rand Corporation, there is limited evidence high-capacity magazine bans may decrease mass shootings. Studies provided inconclusive evidence regarding both the existence and direction (increase or decrease) of the impact of assault weapons bans on mass shootings. Evidence of the existence and direction of the relationship between bans on either high-capacity magazines or assault weapons on firearm suicides or homicides was similarly inconclusive.³

The Department of Public Safety (DPS) states the agency “...believes that a prohibition on the manufacture, sale, barter, trade, gift, transfer or acquisition of the ‘automatic pistol’, ‘automatic firearm’ and ‘semiautomatic’ firearm, defined in this section, would enhance public safety.”

Lack of Exceptions. SB171 does not provide any exceptions from the prohibitions it establishes for law enforcement officers or members of the armed services who are using the prohibited items in the course of their duties.

Constitutional Concerns. The office of the New Mexico Attorney General (NMAG) explains SB171 may be subject to a challenge under the Second Amendment of the U.S. Constitution. NMAG explains, due to a recent supreme court ruling, “...the law will now need to be found ‘consistent with this Nation’s historical tradition of firearm regulation’ to be upheld if it is found to address conduct covered by the plain text of the Second Amendment.” NMAG states “The list of firearms that would be prohibited under SB171 is relatively broad and extensive, and runs the risk of being challenged as inconsistent with said historical tradition of firearm regulation.”

NMAG notes the prohibition on mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms removed by the SHPAC amendment were not included in its analysis of potential Second Amendment challenges and, therefore, the amendment does not alter that analysis.

¹ <https://www.themarshallproject.org/2022/07/06/what-you-need-to-know-about-the-rise-in-u-s-mass-shootings>

² <https://www.theviolenceproject.org/mass-shooter-database/>

³ https://www.rand.org/pubs/research_reports/RRA243-4.html

On the other hand, DPS argues the prohibitions in SB171 would not run afoul of the U.S. Constitution or the New Mexico Constitution. DPS writes:

While the U.S. Supreme Court has since revised its Second Amendment analysis and struck down New York’s “good cause” licensing requirement, two of the justices instrumental in the Court’s decision made clear that it “addresse[d] only the unusual discretionary licensing regimes, known as ‘may-issue’ regimes,” and therefore, “[n]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. . . . [as well as] laws “prohibiting the carrying of dangerous and unusual weapons” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2162 (2022) (Kavanaugh, J., concurring).

CONFLICT

SB171 conflicts with House Bill 72 and House Bill 101, both of which restrict equipment used for converting firearms to automatic firearms, with differing definitions and exemptions than provided for in SB171.

TECHNICAL ISSUES

NMAG raises concerns regarding the consistency of definitions in this and other related bills, writing

The definitions of a firearm and different types of firearms in SB171 do not align with the same definitions and similar terms used in related laws, including those proposed in HB101 and SB171. The inconsistent terminology and conflicting definitions creates a patchwork of interpretation that would vary on the application to different laws, causing avoidable confusion for law enforcement, courts, and the public. Standardizing these terms and definitions across state law is needed.

OTHER SUBSTANTIVE ISSUES

The Public Defender Department (PDD) notes while SB171 would not penalize possession of any of the banned weapons or ammunition, it does penalize any mode of transfer, leaving current owners of such items unable to dispose of them legally. PDD suggests state or local authorities may need to provide legal means to dispose of existing weapons, such as through gun buyback programs. PDD further notes the prohibitions under this bill seem not to apply to people who purchase the items outside the state, unless simply returning to New Mexico would qualify as a “transfer.”

ER/al/ne/mg