

<b>LFC Requester:</b>	<b>Sanchez</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

**[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)**

*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 1/21/25 *Check all that apply:*  
**Bill Number:** HB 38 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Kathleen Cates **Agency Name and Code:** AOC  
**Short Title:** Possession of Weapon **Number:** 218  
Conversion Device **Person Writing:** Kathleen Sabo  
**Phone:** 505-470-3214 **Email:** aoccaj@nmcourts.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

**Synopsis:** HB 38 creates the crime of “Unlawful Possession of a Weapon Conversion Device” within the Criminal Code, Section 30-1-1 NMSA 1978 et. seq. The crime consists of a person knowingly having in that person’s possession a weapon conversion device or knowingly transporting a weapon conversion device. The law defines “weapon conversion device” to mean “a part or combination of parts designed and intended to convert a semiautomatic weapon into a fully automatic weapon.” HB 38 provides that each weapon conversion device found in violation of this statutory section constitutes a separate offense. Under the law, a person who commits unlawful possession of a weapon conversion device is guilty of a third degree felony.

HB 38 defines the following terms:

- “Fully automatic weapon”: a weapon that shoots, is designed to shoot or can be readily restored to shoot more than one shot, without manual reloading, by a single and continuous held pull of the trigger.
- “Semiautomatic weapon”: a repeating rifle, shotgun or pistol, regardless of barrel or overall length, that uses a portion of the energy of a firing cartridge or shell to extract the fired cartridge case or spent shell and chamber the next round and that requires a separate pull of the trigger to fire each cartridge or shell.

#### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions, as well as challenges to the law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

#### **SIGNIFICANT ISSUES**

1. A conversion device on its own is considered an illegal machine gun under federal law and cannot be possessed, even without a pistol or rifle, as they are defined as machineguns under the National Firearms Act. A machine gun conversion device is a part, or a combination of parts, designed to modify a semi-automatic firearm so it is capable of firing automatically more than one shot by a single function of the trigger. These devices are considered machine guns under the law. The Bureau of Alcohol, Tobacco, Firearms and Explosives posits that the use of machine gun conversion devices poses a significant public safety risk, and reports that in the last five years, ATF has recovered more than 31,000 machine gun conversion devices.”

<https://www.ojp.gov/archives/pressreleases/2024/doj-releases-new-training-focus-detecting-machine-gun-conversion-devices#:~:text=A%20conversion%20device%20on%20its,significant%20threat%20to%20public%20safety> (2024). See also, *Machinegun Conversion Devices: Fact Sheet*, Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.justice.gov/usao-wdok/media/1366621/dl?inline>

18 USC 922(o) provides that it is unlawful to transfer or possess a machinegun. The maximum sentence for this offense is 10 years imprisonment and up to a \$250,000 fine. 18 U.S.C. 924(a)(2)

2. 26 U.S.C. § 5845(b) and 18 U.S.C. § 921(a)(24) define “machinegun”, in part as, “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.” HB 38, Section 1(D)(1) defines “fully automatic weapon” to mean “a weapon that shoots, is designed to shoot or can be readily restored to shoot more than one shot, without manual reloading, by a single and continuous held pull of the trigger,” a substantially similar definition.

3. Under Section 31-18-15 NMSA 1978, the basic sentence of imprisonment for a third degree felony is three years. The court may also impose a fine of up to \$5,000.

4. In October 2024, the U.S. Attorney, Homeland Security and the ATF charged a Belen, NM teen with unlawful possession of a machine gun for possession of a machine gun conversion device. See <https://www.justice.gov/usao-nm/pr/us-attorney-hsi-and-atf-charge-belen-teen-federal-firearms-offenses>

5. While the Supreme Court, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), ruled that the Second Amendment to the U.S. Constitution allows for the prohibition of dangerous and unusual weapons, it is possible that the HB 38 law could be challenged as an unconstitutional infringement upon Second Amendment rights.

#### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

#### **ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

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

None.

#### **TECHNICAL ISSUES**

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

#### **AMENDMENTS**