

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1 amends Section 30-7-16 entitled “Firearms or Destructive Devices – Receipt, Transportation or Possession by Certain Persons – Penalty”

Subsection B is amended to increase the penalty for a felon found in possession of a firearm from a third degree felony to a second degree felony and the defendant “shall be sentenced to a minimum term of nine years imprisonment.”

Subsection C is amended to increase the penalty for a serious violent felon to be found in possession of a firearm from a third degree felony to a second degree felony and increases the basic term of imprisonment from six to twelve years.

Subsection E is added as new material to provide that “a person convicted under this section is not eligible for earned meritorious deductions pursuant to Section 33-2-34 NMSA 1978.”

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

This bill increases the possible sentences for felons and serious violent felons found in possession of a firearm and attempts to take away the possibility of earning meritorious deductions (i.e. good time). This could increase the prison population and the workload of the corrections department as these inmates would be serving longer sentences.

SIGNIFICANT ISSUES

Increased Sentences

Recently, the Court of Appeals found the “unit of prosecution” for felon in possession of a firearm was “ambiguous” and therefore the rule of lenity must apply and the State must definitively prove two separate acts of possession to establish two offenses. In *Gonzales*, two firearms were found in the defendant’s bedroom pursuant to a search warrant. However, as the Court held, unless the State can somehow prove on remand that the defendant separately possessed those weapons, there can only be one conviction under the felon in possession of a firearm statute. *State v. Gonzales*, 2024-NMCA-062. Increasing the sentence for possession of one such firearm appears to address this issue.

Subsection B states: "shall be sentenced to a minimum of nine years." It should be noted that nine years is the maximum jurisdiction for a 2nd degree felony. Such a high mandatory sentence will create a backlog for these types of cases and provide no incentive for defendants to accept plea agreements for this charge.

Other Sentencing Considerations

Subsection E references Section 33-2-34, the Earned Meritorious Deductions Act. This statute provides that a defendant can receive 30 days good time per month in most cases unless the crime of which the defendant is convicted is an enumerated serious violent offense or is one of the felonies that can be found to be a serious violent offense by the court. *See* § 33-2-34(A)(1) and (2) (providing for four days per month good time if convicted of a serious violent offense or 30 days good time per month if convicted of a nonviolent offense); (L)(4)(a)-(n) (listing the fourteen crimes which are considered serious violent offenses); (L)(4)(o) (listing fifteen other crimes that can be classified as serious violent offenses if the court makes certain findings).

It is not clear if the intent is to allow for no meritorious deductions at all or to designate the crime as a serious violent offense under either (L)(4)(a)-(n) or (L)(4)(o) and allow only four days good time per month. The only offense that is not eligible for any meritorious deductions is one that carries a sentence of life imprisonment or life imprisonment without parole. *See* § 33-2-34(G). Therefore, it is possible that Section 33-2-34 should also be amended to clarify Subsection E.

Additionally, Subsection E by its plain terms applies to all persons convicted under Section 30-7-16, not just felons or serious violent felons. Subsection (A)(2) and (3) also make it a crime for a person subject to an order of protection to possess a firearm as well as persons convicted of battery against a household member, criminal damage to property of a household member, first offense stalking, or a crime listed in 18 U.S.C. 921. Subsection (D) provides that the penalty for those persons is a misdemeanor. It is doubtful that Section 33-2-34 would apply to misdemeanants where the maximum sentence is 364 days in county jail. *See* NMSA 1978, § 31-19-1(A).

Finally, Subsection C currently imposes a sentence for serious violent felons “notwithstanding the provisions of Section 31-18-15[.]” This is because the current version mandates a “basic” six year term of imprisonment for a third degree felony and Section 31-18-15 provides for only three years imprisonment for a third degree felony. This language is unchanged by this bill which is appropriate because a second degree felony carries a basic sentence of nine years imprisonment and the bill seeks to increase this to twelve years.

However, Subsection B increases the penalty for a felon from a third degree felony to a second degree felony and mandates “a minimum term of nine years imprisonment.” The basic sentence of imprisonment for a second degree felony is nine years under Section 31-18-15. Therefore, this language is somewhat unclear. If the intent is to allow for imprisonment of more than nine years, then the language “notwithstanding the provisions of Section 31-18-15” should be added to clarify the intent.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict

HB 166 – “Felon in Possession of Firearms Penalties” – changes Subsection B for felons to include possession of a “destructive device” and changes the sentence from a third degree felony to a “third degree felony for possession of a firearm or destructive device by a felon.” The bill also amends Section 31-18-15 to add this new sentencing designation and applies a basic term of imprisonment of five years. It further amends Subsection B to provide that a second or subsequent conviction under the subsection is a second degree felony.

Subsection C is amended for serious violent felons to include possession of a “destructive device” and raises the penalty from a third degree felony to a second degree felony. It also deletes the rest of the language in the subsection regarding the sentence, i.e. it does not reference Section 31-18-15 or otherwise provide a specific sentence.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

n/a