

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Cates/Little</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>1/29/25</u>
	<b>BILL</b>
<b>SHORT TITLE</b> <u>Possession Of Weapon Conversion Device</u>	<b>NUMBER</b> <u>House Bill 38</u>
	<b>ANALYST</b> <u>Sanchez</u>

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$28.2	At least \$28.2	At least \$56.4	Recurring	General Fund
Cost to Counties	No fiscal impact	At least \$19.2	At least \$19.2	At least \$38.4	Recurring	General Fund
Total	No fiscal impact	At least \$47.4	At least \$47.4	At least \$94.8	Recurring	General Fund

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

### Sources of Information

LFC Files

Agency Analysis Received From  
 Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Law Office of the Public Defender (LOPD)  
 Office of the Attorney General (NMAG)  
 Sentencing Commission (NMSC)  
 Department of Health (DOH)  
 Adult Parole Board (APB)  
 Department of Public Safety (DPS)

## SUMMARY

### Synopsis of House Bill 38

House Bill 38 (HB38) creates the crime of unlawful possession of a weapon conversion device that can convert a semiautomatic weapon into a fully automatic weapon. The bill defines the offense as knowingly possessing or transporting such a device and establishes that each device found in violation constitutes a separate offense. The legislation aims to regulate and penalize the possession of firearm modification devices.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

The fiscal impacts of HB38 vary across state agencies, primarily depending on enforcement levels, legal challenges, and potential incarceration costs. The Administrative Office of the Courts (AOC) anticipates minimal administrative costs for updating statewide documentation, but the actual impact depends on how often the law is enforced. New criminal statutes typically result in increased case filings, which could lead to a higher caseload for judges, clerks, and court staff. AOC did not provide a specific cost estimate, but similar laws have historically resulted in additional resource demands. If enforcement is aggressive, the courts could require additional funding to handle the influx of cases. However, since the judiciary already manages a broad array of felony cases, any impact is likely to be proportional to the number of prosecutions initiated under HB38.

The Administrative Office of the District Attorneys (AODA) expects enforcement of HB38 to increase prosecution costs, particularly if cases go to trial. The cost of prosecuting a third-degree felony varies but can reach thousands of dollars per case, especially if expert testimony or forensic analysis is required. AODA also highlights potential constitutional challenges based on the U.S. Supreme Court's recent ruling in *Garland v. Cargill*, which struck down the federal ban on bump stocks. If similar legal challenges arise, the state could face additional litigation costs, which are difficult to quantify but could include substantial legal fees for appeals and constitutional defenses.

The Law Offices of the Public Defender (LOPD) warns that HB38 could result in a wave of new felony cases if individuals are unaware of the change in law. Hundreds of weapon conversion devices are likely already in circulation in New Mexico, and without a grace period or public awareness campaign, many law-abiding residents could unknowingly violate the law. LOPD notes that complex felony cases require more experienced attorneys, and an increase in third-degree felony prosecutions may require additional staffing. Each felony case can cost the department thousands of dollars, particularly if it goes to trial rather than being resolved through plea bargaining. If a significant number of cases arise, LOPD may need additional funding to hire more felony-qualified public defenders.

The New Mexico Sentencing Commission (NMSC) suggests the new felony offense could contribute to a higher prison population. The average sentence length for a third-degree felony involving a firearm is approximately 2.8 years. With an average incarceration cost of \$155.63 per day per inmate, a single conviction under HB38 could cost the state approximately \$159 thousand over the course of a full sentence. The actual fiscal impact depends on how frequently the law is enforced and how many individuals receive prison time rather than probation. If dozens of new felony cases result in incarceration, the cumulative cost to the Corrections Department could be in the millions over time.

The overall financial impact on the New Mexico Corrections Department (NMCD) will depend on the number of new cases resulting from this legislation. Still, even a modest increase in convictions could lead to significant expenditures over time. 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. In addition to the potential for new crimes to send more individuals to prison and jail, longer sentences could result in fewer releases relative to admissions, driving up overall

populations. NMCD reports the average cost to incarcerate a single inmate in FY24 was \$59.3 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 \$28.2 thousand per year across all facilities. LFC staff estimate the cost to counties to hold an individual in jail prior to incarceration is \$19.2 thousand per year.

The Department of Public Safety (DPS) supports HB38, citing concerns that New Mexico lacks a state law addressing weapon conversion devices, making enforcement inconsistent with federal regulations. DPS argues a state-level statute would allow for more uniform enforcement and provide a clear legal basis for prosecuting individuals who modify firearms for automatic fire. While DPS does not anticipate significant administrative costs from enforcing the new law, its passage could lead to increased training needs for officers and forensic analysts to identify and document conversion devices in criminal cases properly.

The Department of Health (DOH) does not anticipate a direct fiscal impact from HB38 but provides context on firearm-related deaths in New Mexico. The agency reports that firearm-related homicides in the state have increased by 29 percent since 2019, and New Mexico now has the third-highest gun death rate in the nation. While HB38 is unlikely to significantly alter public health expenditures, DOH data supports the argument that stronger firearm regulations could help reduce violent crime. If HB38 leads to a measurable reduction in gun violence, the state could see long-term savings in emergency medical care and law enforcement costs.

## SIGNIFICANT ISSUES

When considering HB38, the Legislature should evaluate whether state-level enforcement is necessary given existing federal laws banning weapon conversion devices. The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) already classifies these devices as machine guns under the National Firearms Act, making possession illegal nationwide. However, federal enforcement is inconsistent, and DPS has expressed concern that without a state law, individuals found in possession of these devices may evade prosecution if federal authorities decline to take action. The question, then, is whether a state law would meaningfully enhance enforcement or if it would largely duplicate existing federal restrictions.

Another significant issue is the potential for legal challenges based on recent Second Amendment jurisprudence. AODA and other agencies note the U.S. Supreme Court's decision in *Garland v. Cargill* struck down the federal prohibition on bump stocks, finding they do not meet the statutory definition of a machine gun. While HB38 applies to a broader category of weapon conversion devices, the ruling signals increased judicial scrutiny of firearm regulations. If HB38 is challenged, the state could face protracted litigation over its constitutionality, and the Legislature may want to consider whether the law is crafted in a way that can withstand judicial review.

DOH reports firearm-related homicides in New Mexico have risen significantly in recent years, and DPS argues weapon conversion devices contribute to the lethality of shootings. However, it is unclear how often these devices are used in violent crimes in New Mexico. The Legislature may want to examine crime data to determine whether these devices are frequently recovered in criminal investigations and whether additional restrictions would have a measurable impact on public safety. If data on conversion device use is lacking, lawmakers may consider requiring law enforcement agencies to track and report their prevalence.

The bill's implementation may also present challenges, particularly regarding public awareness and compliance. LOPD has noted many individuals may unknowingly possess weapon conversion devices, and without a clear process for voluntary relinquishment or amnesty, otherwise law-abiding citizens could face felony prosecution. Other states that have enacted similar bans have included provisions for public education campaigns or buyback programs to encourage compliance. The Legislature may want to consider whether additional measures are needed to ensure enforcement efforts are focused on criminal misuse rather than unintentional violations.

Finally, the Legislature may want to consider the broader implications of criminalizing possession rather than use. Many firearm-related statutes focus on enhanced penalties for using modified weapons in the commission of a crime rather than criminalizing possession alone. If the goal of HB38 is to prevent firearm modifications from being used in violent crime, the Legislature may wish to examine whether targeting possession is the most effective deterrent or if enhanced penalties for criminal use would be a more focused approach.

SS/hg/sgs