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FISCAL IMPACT REPORT

SPONSOR Jones/Chavez, N/Reeb LAST UPDATED _____
ORIGINAL DATE 2/12/25
SHORT TITLE Firearms & Certain Persons BILL NUMBER House Bill 235
ANALYST Sanchez

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 Offices of the Public Defender (LOPD)
Corrections Department (NMCD)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 235

House Bill 235 (HB235) amends Section 30-7-16, NMSA 1978, to expand the list of individuals restricted from firearm possession. The bill prohibits undocumented immigrants from receiving, transporting, or possessing firearms or destructive devices in the state of New Mexico. The current statute prohibits firearm possession by felons and individuals subject to protective orders. The legislation establishes criminal penalties for violations of this restriction.

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

While the bill does not create a direct appropriation or revenue impact, it could have significant operational costs for the judiciary and public defense. The Administrative Office of the Courts (AOC) notes that the bill could lead to an increase in trials and jury trials, requiring additional

judge time, courtroom staff, and jury costs. These costs are difficult to quantify but could be substantial depending on the number of cases prosecuted under the new provision. The Law Office of the Public Defender (LOPD) highlights that the bill may result in extensive litigation over constitutional challenges, leading to increased legal costs. Additionally, LOPD anticipates a greater need for contracted immigration attorneys to assess clients' residency status, which could be a complex and time-consuming process. While the Department of Public Safety (DPS) does not anticipate significant fiscal impacts, the additional enforcement burden on law enforcement agencies should be considered. Lastly, potential conflicts with federal immigration enforcement may create indirect costs related to compliance and coordination with federal agencies.

The overall financial impact on the 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 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.

SIGNIFICANT ISSUES

HB235 may be duplicative of existing federal law. Under 18 U.S.C. § 922(g)(5), undocumented immigrants are already prohibited from possessing firearms, raising questions about the necessity of this state-level restriction. Additionally, some of the agency analysis anticipates the bill will face constitutional challenges, particularly regarding Second Amendment protections and equal protection rights under the Fourteenth Amendment. There is currently a split among federal courts on whether undocumented immigrants are protected by the Second Amendment, with the Tenth Circuit (which includes New Mexico) assuming but not deciding that they may have such rights.

Another significant issue is the potential for civil rights violations, particularly related to Fourth and Fifth Amendment protections. Law enforcement officers would need a method to determine an individual's immigration status in the field, which could lead to prolonged detention, racial profiling, and unconstitutional stops and searches. This raises concerns similar to those seen in "stop and frisk" policies, which have been ruled unconstitutional in some cases.

Additionally, the bill may create enforcement challenges and conflicts with federal immigration policy. Immigration status is often complex and difficult to verify, requiring legal proceedings that can take years. This could complicate state-level prosecutions and create conflicts between state and federal law enforcement agencies regarding deportation and criminal jurisdiction.

PERFORMANCE IMPLICATIONS

Analysis from LOPD notes:

“As noted above, if HB235 were enacted, LOPD would possibly have to engage in extensive litigation on each case over constitutional challenges. This would be in addition to any litigation required due to searches and seizures, since the Supreme Court has made clear the Fourth Amendment does apply to people without lawful residency status. The bill may also implicate other constitutional rights due to downstream effects on criminal procedure. *See United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990) (criminal legal rights, including the Fourth Amendment, generally protect people without lawful residency status who have developed sufficient connection with United States to be considered part of their community).”

SS/hj/SL2/sgs