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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Chavez, N./Reeb/De La Cruz **ORIGINAL DATE** 3/10/2025

BILL

SHORT TITLE Felon in Possession of Firearms Penalty **NUMBER** House Bill 166

ANALYST Valdez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
LOPD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

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

Relates to House Bills 38, 39, 83, and 496, and Senate Bills 32 and 253

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)
 New Mexico Attorney General (NMAG)
 New Mexico Sentencing Commission (NMSC)
 Department of Health (DOH)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From

Municipal League (ML)

SUMMARY

Synopsis of House Bill 166

House Bill 166 (HB166) amends two sections of the law to increase the penalties for a felon in possession of a firearm, adds a new crime of a felon in possession of a firearm or destructive device for a second or subsequent offense, and increases the penalty for a serious violent felon in possession of a firearm.

Section 1 of HB166 amends Section 30-7-16 NMSA 1978 to clarify the inclusion of destructive devices, broadly defined as explosives, along with firearms as part of the existing crime of felon

in possession of a firearm, as well as part of the new crime of a felon in possession of a firearm or destructive device for a second or subsequent offense. Subsection B adds the crime of possession of a firearm or destructive device for a second or subsequent offense as a second-degree felony. Subsection C makes it a second-, rather than third-degree felony, for a serious violent felon to possess either a firearm or destructive device. Consistent with these changes, Section 2 amends Section 31-18-15 NMSA 1978 on sentencing to specifically add “third-degree felony for possession of a firearm or destructive device by a felon” with a basic sentence of five years imprisonment to the list of other felony classifications and basic sentences.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

Increasing the charge and time of incarceration for serious violent felons in possession of a firearm or explosives and adding the new crime of possession of a firearm or explosives for a second and subsequent offense will both be costly for the state. First, the new crime is actually an enhancement. Under existing law, a felon caught with a firearm or explosive for the second and subsequent offense would be charged with a third-degree felony, with a basic sentence of three years, and the serious violent felon would be subject to a basic sentence of six years. Under HB166 that same offense would be charged as a second-degree felony, for which the basic sentence is nine years. HB166 would also increase the penalty for a felon in possession of a firearm or explosive for the first time. Currently, that offense is a third-degree felony with a basic sentence of three years; the bill would increase the basic sentence to five years.

The changes proposed by HB166 would alter the composition of those incarcerated under the law. One group would be non-violent felons on their first felony possession charge who would be charged with a third-degree felony with a basic sentence of five years, an increase of two years over current law. A second group would be serious violent felons on their first felony possession charge. They would face a second-degree felony. Finally, a third group would be felons on their second and subsequent possession of a firearm or destructive device charge and would be guilty of a second-degree felony.

Over the past six years, an average of 73.3 individuals have been incarcerated each year under Section 30-7-16 NMSA 1978. These individuals would have been charged with third-degree felonies under current law. Under HB166, all would face longer sentences, including a subset that would be charged with second-degree felonies. Without precise data on the breakdown, this analysis assumes that half (36.65) will be charged with second-degree felonies, and half will be charged with third-degree felonies (with the basic sentence increased from three to five years). Under these assumptions and using the marginal cost-per-inmate for the New Mexico Correction Department (NMCD) of \$28.2 thousand, the state would incur the first costs from this change of law in FY28 with a cost of \$1 million. These costs would increase and plateau in FY29 at \$5.7 million per year.

SIGNIFICANT ISSUES

Several agencies pointed out that Section 30-7-16(B) NMSA 1978 was amended in 2020, increasing the associated penalty from a fourth-degree to a third-degree felony. HB166 would make it second-degree if it were the offender’s second and subsequent such charge. In addition,

the sentence increase for an offender’s first charge of felon in possession of a firearm or destructive device from three years to five years would make it the only third-degree felony with a sentence of greater than three years.

The Law Offices of the Public Defender (LOPD) details the recent history of this section of the law and the impact of changes:

The Legislature has consistently increased penalties for this crime three times in as many years. In 2020, the penalty for this crime was increased from a fourth-degree felony to a third-degree felony only for SVO felons, leaving the fourth-degree felony for non-SVO felons. The next year, the Legislature removed the distinction, increasing the penalty for all felons to the third-degree felony carrying three years. In 2022, HB68 increased the basic sentence for SVO felons to six years, leaving the non-SVO felon penalty at three years. HB166 would thus constitute a fourth penalty increase to this crime in the span of as many years. LOPD is unaware of any evidence showing that these previous penalty increases have had any deterrent effect or resulted in any reduction in gun crime. LOPD is not aware of any research finding that increased criminal penalties have an increased deterrent effect on the commission of crimes. The bill would, at most, lead to an increase in incarceration.

In addition, LOPD notes that:

Because people charged with this crime must have a prior felony conviction, the vast majority will also already be subject to Habitual Offender Enhancements to the existing basic sentence, which involves a one-, four-, or eight-year enhancement depending on the number of prior felony cases. Thus, for the most egregious repeat offenders, the existing basic sentence could easily become either 11 years (for non-violent felons) or 14 years (for violent felons), even if this bill was not enacted.

PERFORMANCE IMPLICATIONS

LOPD notes that felon-in-possession charges are often “severed” from other counts in practice. This results in two trials rather than one. Along with more litigation associated with higher penalties, this separate trial will burden LOPD’s attorneys, investigators, and social workers.

ADMINISTRATIVE IMPLICATIONS

According to LOPD, the changes proposed by HB166 would complicate the law:

This bill would create a unique five-year basic sentence applicable to only one version of one crime, contributing to penalty confusion and statutory excess in the exhaustive list of basic sentences in Section 31-18-15(A), an issue that the Sentencing Commission is actively trying to address.

The New Mexico Sentencing Commission echoes this concern in their analysis:

In 2021, the New Mexico Sentencing Commission engaged the services of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to analyze the state’s Criminal Code for its strengths and weaknesses. One item of concern for the Robina Institute was that the Criminal Code has a number of special statutes that fall out of the normal penalty structure in the state. HB166 would add an additional special penalty into the Criminal Code through its addition of a five-year third-degree felony for

felons in possession of a firearm or destructive device. However, HB166 would also remove a special penalty from the Criminal Code, as it would remove the existing six-year third-degree felony for serious violent felons in possession of a firearm or destructive device.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB166 is related to:

- House Bill 38, which would create a third-degree felony for those with unlawful possession or knowingly transporting a weapon conversion device.
- House Bill 83, which would legalize permit-less carrying of a firearm by adults by creating a new section of Chapter 30, Article 7 NMSA 1978 that allows the open or concealed carry of a loaded firearm for individuals 18 and older who are not prohibited from possessing or owning a firearm by federal or state law or court order.
- Senate Bill 32, which would make it a fourth-degree felony to possess or knowingly transport a stolen firearm. (Each firearm possessed or transported in violation of this law would be charged as a separate offense.)
- House Bill 496, which increases penalties for felons possessing firearms but increases them more than HB166.
- Senate Bill 253, which also increases penalties for felons in possession of firearms but increases them more than HB166.

This would affect Section 30-7-16, which is also targeted for amendment in House Bill 39. The specific purposes of the bills are different, but they will need to be coordinated if both pass because they are proposing different amendments to Section 30-7-16.B.

HB166 is similar to 2024 House Bill 46 and related to 2023 House Bill 458, House Bill 61, and House Bill 113.

JV/SL2/sgs