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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Pettigrew/Sanchez/De La Cruz **ORIGINAL DATE** 2/13/25

BILL

SHORT TITLE Carrying a Firearm While Trafficking **NUMBER** House Bill 248

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	Up to \$6,288.6	Up to \$6,288.6	Up to \$12,577.2	Recurring	General Fund
Cost to Counties	No fiscal impact	Up to \$4,281.6	Up to \$4,281.6	Up to \$8,563.2	Recurring	General Fund
Total	No fiscal impact	Up to \$10,570.2	Up to \$10,570.2	Up to \$21,140.4	Recurring	General Fund

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

Sources of Information

LFC Files

Agency Analysis Received From
Department of Health (DOH)

Agency Analysis was Solicited but Not Received From
Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Law Offices of the Public Defender (LOPD)
Office of the Attorney General (NMAG)
New Mexico Sentencing Commission (NMSC)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 248

House Bill 248 (HB248) proposes to amend 30-7 NMSA 1978, by creating a new criminal offense explicitly targeting individuals who carry firearms while engaging in drug trafficking. Currently, Section 30-31-20 NMSA 1978 criminalizes the trafficking of controlled substances, including manufacturing, distributing, or possessing drugs with intent to distribute, but it does not include an enhanced penalty or separate charge for possessing a firearm during such activities. Similarly, Section 31-18-15 NMSA 1978, provides sentencing guidelines for felony offenses, establishing that a third-degree felony is punishable by up to three years in prison and a fine of up to \$5,000 for a first offense.

The bill would introduce a standalone offense making it illegal to carry a firearm while violating Section 30-31-20 NMSA 1978. This change ensures that possessing a firearm during drug trafficking is not just considered an aggravating factor at sentencing but is instead a distinct criminal act. If enacted, an individual convicted under this new provision would face a third-degree felony charge, separate from any penalties imposed for the underlying drug trafficking offense, and would be sentenced according to Section 31-18-15 NMSA 1978. By establishing a clear and enforceable prohibition against carrying firearms while engaging in drug distribution, the bill strengthens existing criminal statutes. It creates an additional prosecutorial tool for addressing gun-related risks in drug crimes.

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

FISCAL IMPLICATIONS

HB248 does not include specific appropriations for FY25 or FY26, meaning state agencies will not receive additional funding to implement its provisions. However, the bill is expected to impact the criminal justice system, particularly for law enforcement agencies, the courts, and public defenders. The Department of Public Safety, the Administrative Office of the District Attorneys, and the Law Offices of the Public Defender may face increased caseloads and operational costs due to the enforcement and prosecution of new firearm-related trafficking offenses.

Additionally, while projections remain uncertain, the bill could lead to increased incarceration rates, which may require additional correctional resources in the long term. The New Mexico Sentencing Commission and Department of Health (DOH) also reviewed the bill, but their analyses indicate no direct fiscal impact on their operations.

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 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 Sentencing Commission's analysis notes 1,620 cases filed on or after July 1, 2023, had a violation of Section 30-31-20 as the lead offense. NMCD had 223 people enter incarceration with a lead offense statute of Section 30-31-20 during FY24. Based on this, LFC's analysis estimates could be up to \$6.28 million per year for NMCD and up to \$4.28 million per year for counties. This is based on 223 individuals being incarcerated at the marginal rate per additional inmate. These costs could be higher or lower depending on the number of individuals incarcerated. Still, this number is used to benchmark the estimated cost and used as a maximum because it is unlikely that 223 individuals would be incarcerated at both state and county levels at the same time.

SIGNIFICANT ISSUES

HB248 seeks to establish criminal penalties for carrying a firearm while trafficking a controlled substance, which could have implications for prosecutorial discretion and law enforcement priorities. While the legislation aims to deter firearm possession in drug-related activities, enforcement could lead to increased legal challenges, particularly concerning Second Amendment rights, due process protections, and potential disparities in enforcement across communities. The Department of Health's (DOH) analysis provides additional context, highlighting that firearm-related violence in New Mexico is a growing public health concern. According to the department, New Mexico has one of the highest firearm-related mortality rates in the country, with gun violence disproportionately affecting younger individuals and communities with higher rates of drug activity. Studies suggest that firearm-related injuries and deaths are frequently linked to illicit drug trade and substance use, reinforcing concerns about the overlap between drug trafficking and gun violence.

From a law enforcement perspective, the bill could shift agency priorities by requiring officers and prosecutors to devote more resources to firearm-related drug cases, which may, in turn, impact the handling of other criminal offenses. Additionally, the increased likelihood of incarceration resulting from this bill could contribute to existing challenges within the corrections system, particularly in counties with already strained detention facilities. Public defenders and court systems may also see an increase in caseloads, raising concerns about the ability to ensure due process and timely resolution of cases. DOH data further underscores the potential social impact, noting that exposure to firearm violence correlates with long-term trauma, economic instability, and negative health outcomes, particularly in communities already affected by high crime rates and substance abuse. While the bill does not provide new appropriations, its implementation may require agencies to reallocate existing resources, potentially impacting broader public safety initiatives, crime prevention strategies, and community-based interventions aimed at reducing both gun violence and substance abuse.

Analysis from the Administrative Office of District Attorneys notes:

House Bill 248 would make a crime to carry a firearm while trafficking a controlled substance, meaning that the trafficking charge would have to be proven first. The carrying of a firearm while trafficking would have the jury instruction of trafficking in the elements of the crime; the jury would then receive the elements of trafficking in a separate jury instruction. This could be confusing to a jury. It would be more reasonable to make it a firearm enhancement that would be given to a jury to determine if a firearm was present after the jury convicted the defendant of trafficking a controlled substance. The enhancement can add three years to the trafficking-controlled substance charge.”

SS/hj/SL2