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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Garratt **ORIGINAL DATE** 2/20/2025

BILL

SHORT TITLE Felon in Possession of Firearm Penalty **NUMBER** House Bill 496

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/LOPD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Incarceration Costs				See Fiscal Implications	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 38, 39, 83, and 166, 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)
 New Mexico Sentencing Commission (NMSC)
 Corrections Department (NMCD)
 Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From

Law Offices of the Public Defender (LOPD)

SUMMARY

Synopsis of House Bill 496

House Bill 496 (HB496) amends Section 30-7-16 NMSA 1978 to increase the penalty for a felon in possession of a firearm or destructive device. Under current law, a felon in possession of a firearm or destructive device is guilty of a third-degree felony, while a serious violent felon who commits the same crime is guilty of a third-degree felony with a basic term of imprisonment of six years. HB496 would amend the law to make a felon in possession of a firearm or destructive device for the first time guilty of a second-degree felony and a felon in possession of a firearm or destructive device for the second and subsequent offense guilty of a first-degree felony. The law would do away with the distinction between felons and serious violent felons for purposes of Section 30-7-16 NMSA 1978. Instead, the distinction is between those who broke this law for the first time and those breaking this law for the second and subsequent time.

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

HB496 would increase the penalties for felons in possession of a firearm or destructive device. The bill would lead to longer incarceration for offenders and greater associated costs for the state. Under current law those guilty of this crime are charged with a third-degree felony which carries a basic sentence of three years, and six years for serious violent felons. By increasing the third-degree felony to either a second- or first-degree felony, the bill would increase incarceration times with basic sentences of nine years for second-degree felonies and 18 years for first-degree felonies. While these are substantial differences, they would not affect state finances for at least 2.5 years, which is the average length of time served for third-degree felonies under current law.

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 HB496, all would face longer sentences, including a subset that would be charged with second-degree felonies and another that would be charged with first-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 first-degree felonies. Under these assumptions and using the marginal cost-per-inmate for the New Mexico Corrections 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 steadily and plateau in FY40 at \$14.1 million per year.

In addition to incarceration costs, the Administrative Office of the Courts (AOC) notes that increasing penalties lead to more trials, litigation, judge time, courtroom staff, and jury costs. In addition, some administrative costs will be associated with statewide updating of the statutory changes.

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. HB496 would make it a second-degree felony if it were the offender's first felon in possession charge and a first-degree felony if it was their second and subsequent charge.

AOC detailed the recent history of this section of the law and the impact of changes:

Section 30-7-16(B) NMSA 1978 was amended in 2020 to increase the penalty for the offense of felon in possession of a firearm from a fourth-degree felony to a third-degree felony. HB496 would again increase the level and sentence for this felony offense up to a second-degree felony, with a basic sentence of nine years imprisonment. HB496 also creates a new offense and penalty for a second and subsequent offense for a felon in possession of a firearm or destructive device. A person guilty of a second or subsequent offense under Section 30-7-16(B) NMSA 1978 would be subject to a basic sentence of 18 years imprisonment.

The New Mexico Sentencing Commission notes that HB496 would simplify the state criminal code by removing “special statuses that fall out of the normal penalty structure in the state.” The current six-year basic sentence for the third-degree charge of felon in possession of a firearm or destructive device is one of these special penalties. HB496 would change the penalties to fall in line with other second- and first-degree felonies.

PERFORMANCE IMPLICATIONS

AOC notes the courts participate in performance-based budgeting, and this bill may have an impact on:

- Cases disposed of as a percentage of cases filed
- Percent change in case filings by case type

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB496 is related to:

- HB38, which would create a third-degree felony for those with unlawful possession or knowingly transporting a weapon conversion device.
- HB83, 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.
- SB32, 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.)

HB496 is similar to:

- HB166, which increases penalties for felons possessing firearms but increases them less than HB496.
- SB253, which also increases penalties for felons in possession of firearms but increases them less than HB496.

This would affect Section 30-7-16 NMSA 1978, which is also targeted for amendment in HB39. 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.

HB496 is similar to 2024 HB46 and related to 2023 HB458, HB61, and HB113.

JV/rl/hg