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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/28/25

SPONSOR Dixon/Borrego

BILL

SHORT TITLE Crime of Carrying a Gun While Trafficking NUMBER House Bill 549

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
LOPD	No fiscal impact	At least \$136.0	At least \$136.0	At least \$272.0	Recurring	General Fund
Total	No fiscal impact	At least \$183.4	At least \$183.4	At least \$366.8	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 248

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 Law Office of the Public Defender (LOPD)
 New Mexico Department of Justice (DOJ)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 549

House Bill 549 (HB549) proposes to enact a new section within Section 30-7 NMSA 1978 (Weapons and Explosives), making it a third-degree felony to carry a firearm while violating Section 30-31-20 NMSA 1978, which defines drug trafficking under the Controlled Substances Act. The bill defines "firearm" as any weapon designed to expel a projectile by means of an explosion, including its frame or receiver. Unlike existing firearm sentencing enhancement laws, such as Section 31-18-16 NMSA 1978, which increase penalties for using, brandishing, or discharging a firearm during a felony, HB549 establishes a separate offense based solely on firearm possession during drug trafficking. The bill prescribes penalties consistent with Section 31-18-15 NMSA 1978, setting a maximum sentence of three years imprisonment and a fine of up

to \$5,000.

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

FISCAL IMPLICATIONS

HB549 does not include a direct appropriation, but its enactment could increase costs for the judiciary, prosecution, public defense, corrections, and law enforcement due to additional trials, incarceration, and legal proceedings.

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. 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.

The Corrections Department (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 estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. HB549 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated. Additionally, individuals convicted under HB549 may require intensive probation or parole supervision, adding further costs to the NMCD's Probation and Parole Division. Intensive supervision is time-consuming and expensive, increasing workloads for probation officers.

The New Mexico Sentencing Commission (NMSC) notes that the bill may increase the state's prison population, as individuals convicted under HB549 could face longer incarceration periods than those sentenced under existing firearm enhancement laws.

The Administrative Office of the Courts (AOC) anticipates that more severe penalties could lead to an increase in jury trials, requiring additional judge time, courtroom staff, and jury-related expenses. The Law Office of the Public Defender (LOPD) projects a rise in felony caseloads, which may necessitate hiring additional trial attorneys. The estimated cost for an associate trial attorney, including salary and benefits, is between \$136 thousand and \$145 thousand per year, with additional operational costs. District attorneys' offices may face similar workload increases but have not provided specific cost estimates.

The Department of Public Safety (DPS) does not anticipate immediate fiscal impacts but acknowledges that law enforcement agencies may require additional training to document firearm possession in drug trafficking cases. While the exact financial impact remains difficult to quantify, the bill is expected to require additional state funding for the courts, public defense, and corrections system.

SIGNIFICANT ISSUES

HB549 raises questions regarding statutory overlap, prosecutorial discretion, and sentencing consistency. Section 31-18-16 NMSA 1978 already provides firearm enhancements for felonies involving firearms, increasing sentences by one, three, or five years depending on how the firearm was used. HB549 does not clarify whether a defendant could face both a firearm enhancement and a separate conviction under HB549 for the same conduct, which could lead to double jeopardy concerns and sentencing inconsistencies.

The bill does not require that the firearm be brandished, discharged, or used in furtherance of drug trafficking, meaning that mere possession of a firearm, even if legally owned, could result in criminal liability. This differs from federal law under 18 U.S.C. § 924(c), which requires a firearm to be used or carried "in relation to" a drug trafficking offense. The lack of a requirement for an intent or nexus between the firearm and the drug crime may raise constitutional or evidentiary challenges in court.

The bill could also impact prosecutorial discretion, as it provides an alternative charging option to existing firearm enhancements. This could lead to inconsistent application across judicial districts, depending on whether prosecutors choose to charge individuals under HB549 or rely on existing enhancement statutes.

PERFORMANCE IMPLICATIONS

HB549 could affect judicial efficiency, prosecutorial caseloads, public defense resources, and corrections system capacity. The courts measure performance through case clearance rates and time to disposition, both of which could be negatively impacted if felony trials increase due to HB549. LOPD tracks caseload per attorney, which may increase if more cases go to trial.

NMCD monitors incarceration rates, probation supervision, and recidivism rates. The bill may contribute to higher incarceration rates and longer prison sentences, which could require additional funding for NMCD. The bill does not specify whether individuals convicted under HB549 would be eligible for pre-prosecution diversion or alternative sentencing, which may affect rehabilitation outcomes and recidivism rates.

ADMINISTRATIVE IMPLICATIONS

The bill creates new administrative responsibilities for law enforcement, prosecutors, defense attorneys, and the courts. DPS and local law enforcement agencies may need updated reporting procedures and training for officers to properly document firearm possession in drug trafficking cases. Prosecutors may require new case management guidelines to determine when to apply HB549 versus existing firearm enhancements.

AOC would need to update jury instructions and case tracking systems. Corrections officials may need to adjust intake processing and parole monitoring for individuals convicted under HB549.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB549 relates to House Bill 248 – “Carrying a Firearm While Trafficking”.

TECHNICAL ISSUES

The bill does not define "carrying" a firearm, which may lead to interpretation challenges. Other sections of New Mexico law, such as Section 30-7-1 NMSA 1978, define "carrying a deadly weapon" as having it "on the person or in close proximity." Without a specific definition, courts may rely on existing case law, potentially resulting in inconsistent applications of HB549.

The bill's definition of "firearm" differs from the Uniform Jury Instruction (UJI) 14-704, which also includes silencers and firearm mufflers. Aligning the bill's definition with existing legal standards may improve clarity.

The interaction between HB549 and existing firearm enhancements in Section 31-18-16 NMSA 1978 is unclear. If a person could be charged under both statutes for the same conduct, it may raise double jeopardy concerns. Additionally, the bill does not specify whether it qualifies as a predicate offense for habitual offender sentencing under Section 31-18-17 NMSA 1978, which may lead to sentencing inconsistencies.

OTHER SUBSTANTIVE ISSUES

HB549 does not differentiate between legally owned and illegally possessed firearms, potentially subjecting lawful gun owners to additional penalties. The bill also applies to all drug trafficking offenses, regardless of drug quantity or intent, which could raise proportionality concerns in sentencing.

The bill does not clarify how it interacts with federal firearm laws, such as 18 U.S.C. § 924(c), which mandates longer federal sentences for firearm possession during drug trafficking. This could lead to jurisdictional conflicts between state and federal prosecutors.

SS/hj/SL2