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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Sen. Brandt/Rep. Sanchez **ORIGINAL DATE** 2/3/2025

BILL

SHORT TITLE Felons in Possession of a Firearm **NUMBER** Senate Bill 253

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

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 38, 39, 83, 166 and 496, and Senate Bill 32

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 Sentencing Commission (NMSC)

Department of Health (DOH)

New Mexico Corrections Department (NMCD)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Senate Bill 253

Senate Bill 253 (SB253) amends Section 30-7-16 NMSA 1978 to increase the penalty for a felon possessing a firearm or destructive device from a third-degree to a second-degree felony. Serious violent felons would be subject to a minimum term of 12 years in prison, while other felons would be subject to a minimum term of nine years in prison. Anyone convicted of this crime would be ineligible to earn meritorious deductions to their sentences as outlined in Section 33-2-34 NMSA 1978.

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

SB253 would increase the penalties for felons possessing 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 for felons, and six years for serious violent felons. By increasing the third-degree felony to a second-degree felony, the bill would increase incarceration times with minimum sentences of six years for non-serious violent felons and 12 years for serious violent felons. While these are substantial changes, they would not make a difference in fiscal impact 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 SB253, all would face longer sentences, including a subset that would be charged with second-degree felonies with six-year minimum sentences, and a second subset that would be charged with second-degree felonies with 12 year minimum sentences. Without precise data on the breakdown, this analysis assumes that half (36.65) will be subject to sentences of six years, and half will be subject to sentences of 12 years. 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 \$517 thousand. These costs would increase steadily and plateau in FY37 at \$15 million per year thereafter.

In addition to incarceration costs, the Administrative Office of the Courts (AOC) and the Law Offices of the Public Defender (LOPD) note 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

LOPD highlights the number of times the Legislature has changed this law in recent years:

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 serious violent offender (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. SB253 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.

LOPD also raises concerns that Section 30-7-16 punishes mere possession, not use of any kind that would constitute a violent crime. LOPD calls this a regulatory offense and suggests that the current penalty is sufficient. They also raise concern with the wording of the penalty, “shall be sentenced to a minimum term...” This language makes the term of imprisonment mandatory and limits judicial discretion in a way unique to second-degree felonies in the state.

AOC and LOPD point out that without meritorious deductions, those imprisoned under this law will have less incentive to participate in rehabilitation programs while in prison. It may also disincentivize compliance with rules and orders from corrections officers.

The Administrative Office of the District Attorneys (AODA) points to a recent Court of Appeals finding that the “unit of possession” under this law is ambiguous. The result is that the state would have to prove separate acts of possession to convict an offender with multiple firearms or destructive devices. While this is difficult, AODA suggests that increasing the penalty for one charge of possession addresses this concern.

AODA also notes an issue with Subsection B which increases the minimum penalty to nine years for a felon possessing a firearm. AODA argues that because this is the maximum jurisdiction for a second-degree felony, this “will create a backlog for these types of cases and provide no incentive for defendants to accept plea agreements for this charge.” This is likely also the case for Subsection C which mandates 12 years for serious violent felons guilty of the same crime.

AODA highlights ambiguity in Subsection E which makes those convicted of violating this law ineligible for meritorious deductions. That subsection refers to Section 33-2-34 NMSA 1978 which details the crimes eligible for various levels of meritorious deductions. AODA suggests that this reference makes it unclear if the bill intends to include this crime with other serious violent offenses under Section 33-2-34 NMSA 1978, or if it means to eliminate any meritorious deductions for those guilty under Section 30-7-16, which is currently only reserved for those sentenced to life in prison. In addition, Subsection E, as it is written, applies to all offenders, even those who were not felons.

AODA additionally suggests clarifying Subsection B due to an issue also noted by LOPD:

Subsection B increases the penalty for a felon from a third-degree felony to a second-degree felony and mandates “a minimum term of nine years imprisonment.” The basic sentence of imprisonment for a second-degree felony is nine years under Section 31-18-15. Therefore, this language is somewhat unclear. If the intent is to allow for imprisonment of more than nine years, then the language “notwithstanding the provisions of Section 31-18-15” should be added to clarify the intent.

The New Mexico Sentencing Commission notes the proliferation of special status sentences that complicate New Mexico’s Criminal Code 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. SB253 would continue the use of a special penalty for serious violent felons in possession of a firearm through its increase of that term from six to twelve years (versus the standard basic term of three years imprisonment for a third-degree felony under Section 31-18-15 NMSA 1978). The bill would also add a special penalty via its mandatory minimum term of years for felons in possession of a firearm.

The Department of Public Safety cites the disparity between punishment at the state and federal levels:

The New Mexico Criminal Justice Data Snapshot report released on January 6, 2025 by the Bureau of Justice Assistance of the U.S. Department of Justice and the Council of

State Governments, for the most recent year with available data the average amount of time served for a violent crime in New Mexico was 40 percent lower than the national average. The average time served was 2.7 years when the national average is 4.5 years served. All of this occurred during a decade that saw homicides increase by 96 percent and aggravated assaults increase by 35 percent in New Mexico. At the same time, the prison population incarcerated for violent offenses in New Mexico decreased by 36 percent. One might expect this decrease was due to a higher number of people on probation or supervision, but this was not the case either, as the number of people on probation decreased by 53 percent during that time frame.

PERFORMANCE IMPLICATIONS

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

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

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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB253 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.)

SB253 is similar to:

- HB166, which also increases penalties for felons possessing firearms.
- HB496, which also increases penalties for felons possessing firearms.

This bill 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.

SB253 is similar to 2024 HB46 and related to 2023 HB458, HB61, and HB113.

JV/hj/SR