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## FISCAL IMPACT REPORT

SPONSOR: Robinson DATE TYPED: 3/3/01 HB \_\_\_\_\_  
 SHORT TITLE: Personal Protection Act SB 148/aSJC  
 ANALYST: Rael

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
See Narrative			Recurring	New Fund Created

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates HB 277 (with minor differences)  
 Relates to HB 287

### SOURCES OF INFORMATION

Attorney General's Office (AGO)  
 Administrative Office of the District Attorney (AODA)  
 Administrative Office of the Courts (AOC)  
 Department of Public Safety

### No Response

State Treasurer (ST)  
 Office of Indian Affairs (OIA)  
 Association of Counties

### SUMMARY

#### Synopsis of Senate Judiciary Committee Amendment

New Sections 12, 13 and 14 provide for implied consent to submit to chemical testing by a law enforcement officer. The law enforcement agency at whose direction the chemical test is performed shall pay for the test, even if the person tested has exercised his right to choose a hospital or physician.

Section 15 provides that the results of the chemical test may be introduced into evidence in a civil or criminal action. Section 16 provides that if a person refuses to submit to a chemical test, the officer must obtain a search warrant authorizing the test, but it must be based upon probable cause that the

person caused death, great bodily injury or a felony while under the influence. However, even if there is no probable cause that the person caused death, great bodily harm or a felony, the officer must nonetheless revoke the person's concealed handgun license for one year. If the person submits to chemical testing and the blood alcohol level is above the legal limit, the license shall be suspended for 6 months.

Sections 17 and 18 provide for notice and the right to a hearing for a revoked license. A hearing request must be made in writing within 10 days of revocation and accompanied by a fee of \$25.00. Appeals may be taken within 30 days to the district court for a review of the record.

### **FISCAL IMPLICATIONS OF AMENDMENT**

The amendment creates an additional responsibility for law enforcement officials to administer chemical testing. See Fiscal Implications below.

#### Synopsis of Bill

The Act provides for statewide, uniform standards for the issuance of concealed handgun licenses for security and defense. The Act provides as follows:

- i) Definitions are contained in Section 3.
- ii) Licenses. The department of public safety is authorized to begin issuing licenses in July, 2001. Each license is valid for 4 years. (Section 4) The department may promulgate rules regarding licensure, confiscation, and provisions to allow property owners and employers to disallow the carrying of a concealed weapon on that person's property. (Section 12)
- iii) Applicants. Applicants for a license must meet minimum criteria including being a U.S. citizen and New Mexico resident (or being stationed in the armed forces here), not a fugitive from justice, not a felon or under indictment for a felony, not convicted of a misdemeanor offense involving a crime of violence in the previous five years, mentally competent, and not addicted to drugs or alcohol and having completed a firearms training course. (Section 5 and 8) The application must include several statements under oath, pay a fee of \$50.00, and provide two full sets of fingerprints and other certified documents proving that the applicant meets the minimum requirements. (Section 6) There is a \$50.00 renewal fee of a license. (Section 7)
- iv) Issuance of a License. The department is required to investigate whether the person is qualified to receive the license. The fingerprints are forwarded to the federal bureau of investigation for a national criminal records check. The sheriff is required to check the records to verify the accuracy. (Section 6) The department has 60 days to issue the license or deny it, giving grounds for the denial. An applicant who is denied a license may submit more information and can seek judicial review of the denial. (Section 7) A description of whether the weapons licensed are semi-automatic or not will be included. Additionally, a database of all licensees will be maintained. Employers will have the discretion to prohibit the carrying of handguns during a workshift.
- v) Court Review. The district court has jurisdiction to review a denial of a license. If the department is reversed, the applicant may be reimbursed the costs of bringing the appeal. (Section 7).
- vi) Citizen Safety Fund. All fees collected by the Act shall be placed in the Citizen Safety Fund to fund the department so that it may carry out the provisions of the Act. Any funds remaining do not revert back to the General Fund. (Section 13).

- vii) Amendment. Section 30-7-2 NMSA is amended to allow a person with a license to carry a concealed weapon lawfully. The amendment also adds a penalty of misdemeanor when a person unlawfully carries a deadly weapon. (Section 14).

### Significant Issues

This bill has significant New Mexico constitutional and federal tribal jurisdictional issues.

### **PERFORMANCE IMPLICATIONS**

This bill could affect the Public Safety Support Program's performance measure #7, "Number of unprocessed fingerprint cards;" the measure is currently 85,000. If this bill was enacted, this number could increase significantly because of the time required to meet the requirements outlined in the bill. It would also affect performance measure # 12, "Percent difference in number of arrest records with a final disposition compared to the baseline number." The FTEs necessary to implement and carry out the requirements of the bill are the same that are responsible for measure #12.

### **FISCAL IMPLICATIONS**

The bill creates the new Citizen Safety Fund (Section 13) and the money in the fund is appropriated to the Department of Public Safety to carry out the provisions of the Act. Balances do not revert to the general fund.

The amount of reserve is unknown. Each application requires a non-refundable fee not to exceed \$50.00. Each license expires at the end of four years. If the license is lost, stolen or destroyed, the duplicate license fee is \$15.00. The renewal fee is \$50.00. The late fee for renewal is \$15.00. It is unknown how many people would apply for a concealed handgun license.

The Department of Public Safety believes that the revenue to the Citizen Safety Fund will not be sufficient to cover the cost of processing applications, software development, hardware (computers, desk, office space, license hardware/software). DPS anticipates that several FTE's would be required to be added in order to administer the application process. Although a \$50.00 application fee is provided for, currently background checks are being assessed a fee of \$31.00. The other remaining \$19.00 is inadequate to cover the cost involved in processing the fingerprint cards and running the background checks and otherwise processing the applications. DPS is also concerned about potential legal actions for denial of a license and the additional cost that it would impose, this is especially true given the substantive issues noted below.

### Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

### **ADMINISTRATIVE IMPLICATIONS**

The Act would have a significant administrative impact on the Department of Public Safety. However, the fee revenue from the applications would be applied to carry out the provisions of the act.

## TECHNICAL ISSUES

1. Section 3(D) provides the definition of a handgun. That definition is different than the definition provided in Section 30-7-2.2.
2. Section 5 (A)(9) does not define "residential treatment facility." With the variety of alcohol and controlled substance treatment options available, this term may need a specific definition.
3. Section 6 (D) states that DPS shall conduct an appropriate check of available records. It may be helpful to DPS to explain what this means with an "including, but not limited to" list.
4. Section 7 (G) does not explicitly state that the refresher firearms course must be approved by the department. (Compare with Section 5(A)(10)).
5. Section 5( B) provides that a license will be denied to anyone convicted of a misdemeanor offense "involving crimes of violence." This language is vague, and fails to specifically include misdemeanor weapons charges.

## OTHER SUBSTANTIVE ISSUES

1. The Department of Public Safety reports that it does not have access to information which would identify the applicant as a citizen of the United States, that the applicant is not under indictment for a felony in New Mexico or any other state or pursuant to the laws of the United States, that the applicant has not been adjudicated as mentally defective, or that the individual may have been committed to a residential treatment center. Therefore, the department is unable to satisfy these requirements of the licensing process.
2. An additional issue is that the legislation as drafted, does not provide the necessary language to allow the Department of Public Safety to process nationwide criminal history inquiries with the FBI because the statutory language does not meet the requirements of Public Law 92-544. In particular, Public Law 92-544 requires that information acquired through such a nationwide criminal history inquiry not be disseminated beyond the State Identification Bureau. Additionally, the statute must be approved by the Access Integrity Unit of the Federal Bureau of Investigation and the Attorney General of the United States. Because the proposed legislation does not have provisions comparable to the Criminal Record Screening for Caregivers Act, NMSA 1978, Section 29-17-1 through -5, it is uncertain whether the Access Integrity Unit would approve use of the Nationwide Criminal History Reporting inquiries under this act.
3. Currently, there is no statute that requires a law enforcement agency to submit the final disposition for criminal arrest. Consequently, approximately 65% of arrest record information is incomplete and inaccurate. The Department of Public Safety would need disposition information from the courts and district attorneys to make licensing decisions regarding criminal history information and to determine if the individual has pled guilty or nolo contendere to specific charges. Records without dispositions cannot be used to disqualify and therefore deny a license so in reality, approximately 65% of those individuals who have been charged with a crime would readily be allowed to have a license to carry a concealed handgun regardless of the disposition of the criminal charges.
4. All concealed weapons bills raise the question of what to do with Article II, Section 6 of the New Mexico Constitution. It reads: "No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons."
5. Section 6 (B)(3) states that an employee shall not be liable unless he/she has actual knowledge that licensee should not receive a license. This provision waives sovereign immunity, and arguably provides less protection to the employee as provided in the Tort Claims Act.

6. Section 7 does not provide for an appeal process for revocation or suspension of the license. (Compare with appeal process for denied applicant).
7. Section 11 states that this bill will apply to tribal land, except if a tribe passes its own law prohibiting concealed weapons. The Attorney General's Office believes that this may interfere with tribal jurisdiction. The Fourteenth Amendment to the United States Constitution provides that Indians are citizens of the state in which they reside. However in 1987, the United States Supreme Court held that if a state court jurisdiction over Indians or activities on Indian land would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law. Iowa Mutual Insurance Co. v. LaPlante, 480 U.S. 9 (1987). Whether this provision would be deemed legal would depend on whether a court would consider handgun regulation incident to tribal sovereignty and self-government.
8. According to the proponents of this type of legislation, allowing individuals to lawfully carry handguns may reduce the risk of becoming a crime victim, and may reduce the crime rate for certain offenses. On the other hand, some law enforcement agencies believe that this legislation would increase the indiscriminate use of handguns and thereby increase crime.
9. Because one of the requirements for application for the license is that the individual be a resident of New Mexico, and because residency is not defined with the act, DPS believes that individuals who are not really residents of the state will be able to easily circumvent the residency requirement inasmuch as it is not tied to normal indicia of residency, i.e., the filing of a tax return or withholding of state taxes and even if it were, the department does not have access to those documents because of the confidentiality provisions of the statutes involving their preparation and use.

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