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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/13

SPONSOR Rehm LAST UPDATED 02/20/13 HB 297/aHCPAC

SHORT TITLE Firearm Penalties for Sentencing SB _____

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	Significant	Significant	Significant	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Corrections Department (NMCD)
 Attorney General's Office (AGO)
 Public Defender Department (PDD)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 297 will affect the mandatory sentence enhancements for larceny of a firearm or use of a firearm in a noncapital felony. The amendment will, for a first conviction of larceny of a firearm, impose an increase of 3 years to the sentence, and for a second or subsequent offense impose an increase of 6 years to the sentence. The amendment will, for a first conviction of use of a firearm in the commission of a noncapital felony, impose an increase of 3 years upon the sentence, and for a second or subsequent offense impose an increase of 6 years to the sentence.

The changes made by the amendment will result in an annual fiscal impact to the New Mexico Corrections Department (NMCD) of approximately \$10.8 million.

Synopsis of Original Bill

House Bill 297 (HB 297) increases penalties and sentencing enhancements relating to possessing, stealing and using a firearm, as follows:

- amends Section 30-7-16 NMSA 1978, governing the receipt, transportation or possession of firearms or destructive devices by a felon and providing a penalty, to increase the penalty for the current fourth-degree felony and provide that a first offense is a third degree felony requiring a minimum prison term of 5 years, provide a second degree felony penalty for a second or subsequent offense requiring a minimum term of 5 years, and clarifying that the imposition of a minimum, mandatory term of imprisonment shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the Criminal Sentencing Act;
- amends Section 30-16-1 NMSA 1978, governing the crime of larceny, to provide a sentence enhancement of 5 years for a first offense and 10 years for a second or subsequent offense, when the property stolen is a firearm,; and
- amends Section 31-18-16 NMSA 1978, governing the alteration of a basic sentence when a firearm is used in the commission of a crime, to provide an increase in the sentence enhancement for a noncapital felony from the current 1 year enhancement to 5 years for a first offense and from the current 3 year enhancement to 10 years for a second or subsequent noncapital felony involving the use of a firearm.

The effective date of the Act is July 1, 2013.

FISCAL IMPLICATIONS

Based on the data provided by the NMCD, the LFC estimates that this legislation may result in an annual cost to the NMCD of \$15.8 million. This estimate is based on the following assumptions:

The NMCD currently incarcerates 428 offenders for convictions of being felons in possession of a firearm. If the average time served for these inmates is 7.5 years then 57 offenders per year will be incarcerated for this offense ($428/7.5=57.1$). These 57 offenders will be facing a sentencing enhancement of 3.5 years if it is assumed that the current sentence for a fourth degree felony is 18 months. The Average cost to house these inmates will be \$31.7 thousand per year in a private facility. Based on these assumptions, the annual cost if the number of offenders remains constant will be \$6.3 million; $57x(3.5x31.7) = \$6.3$ million.

The NMCD currently incarcerates 84 offenders for larceny of a firearm. If the average time served for these inmates is three years then 28 offenders per year will be incarcerated for this offense ($84/3=28$). These 28 offenders will be facing a sentencing enhancement of 3.5 years (18 months current to 5 years under HB 297) at an annual cost of \$31.7 thousand. If these assumptions hold then the annual cost of HB 297's larceny of a firearm will be \$3.1 million; $28x(3.5x31.7) = \$3.1$ million.

The NMCD currently incarcerates 377 offenders serving enhances sentences for using a firearm in the commission of a non-capital felony. If the average time served for these inmates is 7.5 years then 50 offenders per year will be incarcerated for this offense ($377/7.5=50$). These 50 offenders will be facing a sentencing enhancement of 4 years at an annual cost of \$31.7 thousand for a total annual cost of \$6.3 million; $50x(4x31.7) = \$6.3$ million.

The NMCD has stated the following:

While these offenders do not constitute a high percentage of the NMCD's prison population, these types of offenders will constitute a significant cost to the NMCD over the years because of the SB 297's enhanced or expanded sentences. SB 297 would add significant enhancements for those offenders convicted of larceny of a firearm and more importantly, would substantially increase already existing sentence enhancements for those offenders who used a firearm in the commission of a noncapital felony.

SIGNIFICANT ISSUES

Should this legislation become law, it may have the effect of deterring the possession of firearms by felons as well as the larceny of firearms and the use of firearms in the commission of felonies. Should this legislation have the effect of deterring criminal behavior it is possible that the fiscal impact stated could be significantly reduced.

The Administrative Office of the District Attorneys (AODA) states:

There are significant increases in the punishment for use of a firearm in commission of a non-capital felony: from one to five years for a first offense, and from three to ten years for a second or subsequent offense. When punishments are increased, especially significantly, it usually results in more litigation and fewer cases are resolved by pleas.

NJC/bm:svb