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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/2015

SPONSOR Rehm LAST UPDATED _____ HB 119aHJC

SHORT TITLE Larceny of a Firearm by a Felon Penalty SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of HCJ Amendment

The HJC amendment to HB 119 restores judicial discretion by striking ‘the sentence imposed by this subsection shall be the first year served and shall not be suspended or deferred’.

Synopsis of Original Bill

House Bill 119 would insert a new subsection (I) into Section 30-16-1 NMSA 1978 (Larceny) providing that ‘If the property of value stolen is a firearm and the person who stole the firearm is a felon as defined in Section 30-7-16 NMSA 1978, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased by one year.

FISCAL IMPLICATIONS

NMCD stated that while the amendment appears to assume that the felony offender convicted of larceny of a firearm will also likely be convicted of the fourth degree felony of receipt, transportation or possession of a firearm by a felon, and that the felony offender will then have his total sentence enhanced by one year, the amendment allows the one year enhancement to be deferred or suspended by the judge instead of requiring it to be a mandatory additional

incarceration period. NMCD estimates that the bill will result in a minimal to moderate increase in the number of offenders sentenced to NMCD custody, and thus a minimal to moderate increase to its prison population. The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The average cost to incarcerate inmates is \$97.62 per day or \$35.6 thousand annually.

SIGNIFICANT ISSUES

AODA provided the following:

The bill appears to overlap with the habitual offender statute. See, Section 31-18-17 NMSA 1978. A single prior felony may not be used to fulfill both a predicate felony and constitute an enhancement under the habitual offender statute. See, *State v. Haddenham*, 110 N.M. 149 (Ct. App. 1990). Since the prescribed sentence enhancement in this bill is one year then someone with two or more prior felonies could argue that the most their sentence for larceny of the firearm can be increased is just one year, not the four or eight years that might be applied under the habitual offender statute, because of the general vs. specific rule. If two statutes dealing with the same subject conflict, the more specific statute will prevail over the more general one absent a clear expression of legislative intent to the contrary. See, *State v. Santillanes*, 2001—NMSC—018.

Since it is impossible to commit larceny of a firearm without taking possession of it (except, perhaps, as an accessory to larceny) this raises double jeopardy issues if both charges are pursued. See, *Blockburger v. U.S.*, 284 U.S. 299 (1932). If a test of the statutory elements establishes that one statute is subsumed within the other, punishment cannot be had for both. Cf., *State v. Gutierrez*, 2011—NMSC—024 (Convictions for both armed robbery of a car and its keys based on a forcible seizure of the keys and a separate theft of the vehicle is double jeopardy).

There could be an issue with the existing statute for a sentencing enhancement when there is a separate finding that a firearm was “used” in the commission of a non-capital felony. See, Section 31-18-16 (A), NMSA 1978. If the defendant is a youthful offender they might claim that statute should apply since it doesn’t include the mandatory sentencing enhancement that HB 119 does.