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FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/15

SPONSOR Campos LAST UPDATED _____ HB _____

SHORT TITLE Prohibit Firearm Possession by Some Offenders SB 495

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

SUMMARY

Synopsis of Bill

Senate Bill 495

Section 1 creates a new statute that prohibits people with misdemeanor domestic violence convictions from receiving, transporting or possessing firearms. The court imposing a sentence must inform the defendant of this prohibition. Section 1 also requires all such defendants to transfer their firearms to a licensed firearms dealer or to a law enforcement agency. A law enforcement agency is authorized to dispose of the firearms, though any value derived from disposal would be returned to the defendant.

Section 2 amends the assault on a household member statute, Section 3-3-12 NMSA 1978. The amendment requires the sentencing court to inform the defendant on which subsection the conviction is based, attempted battery (subsection A1) or threatening or menacing (subsection A2). If the conviction is based on attempted battery, the defendant must surrender firearms pursuant to Section 1. If the conviction is based on threatening or menacing, the court must make a finding on whether a firearm is involved. If so, the defendant must surrender firearms pursuant to Section 1.

Section 3 amends the battery on a household member statute, Section 3-3-15 NMSA 1978, to include a new provision prohibiting an offender from receiving, transporting or possessing firearms, and requiring the defendant to give up firearms pursuant to Section 1.

Section 4 amends Section 30-7-16 NMSA 1978 which criminalizes firearm possession by persons with felony convictions. The amendment would now include persons with a misdemeanor domestic violence conviction or a domestic violence order of protection. Language is added that allows possession of firearms when a misdemeanor domestic violence defendant successfully completes the terms of a deferred sentence.

Section 5 amends the criminal sexual contact statute in Section 30-9-12 NMSA 1978, by adding language such that when a criminal sexual contact conviction involves a household member, the court must inform the defendant of the prohibition against possession of firearms. The defendant must also surrender firearms pursuant to Section 1.

Section 6 amends the disorderly conduct statute, Section 30-20-1 NMSA 1978. The amendment adds a provision that requires the sentencing court to determine whether the disorderly conduct involved “use or attempted use of force or the threatened use of a deadly weapon against a household member” and inform the defendant. In such circumstance, the defendant must surrender firearms pursuant to Section 1.

Section 7 amends the order of protection statute, Section 4-13-5 NMSA 1978. The amendment applies when an order of protection is issued, after notice and an opportunity for the respondent to appear. In such a case, the order restrains the respondent from receiving, transporting or possessing firearms and requires the respondent to surrender firearms pursuant to Section 1.

Section 8 specifies that when an order of protection is issued, after notice and an opportunity to appear, the respondent has 24 hours to transfer the respondent's firearms to a licensed dealer or law enforcement agency. The respondent must report back to the court within 48 hours that the transfer is complete. If the order of protection is temporary, the dealer or agency can return the firearms to the respondent after checking records to make sure the respondent is eligible to possess the firearms. Law enforcement agencies and federally licensed firearms dealers may establish policies for the disposition of abandoned firearms and may charge a fee in connection with the storage of any firearm held for a respondent (however the fee charged by a law enforcement agency may not exceed the actual cost of storage).

SB 495 would go into effect on July 1, 2015.

FISCAL IMPLICATIONS

SB 495 carries no appropriation.

NMCD analysis states:

This bill expands the crime of convicted felon in possession of a firearm, a fourth degree felony carrying a potential incarceration period of 18 months in a NMCD custody or probation in lieu of incarceration, to include those individuals convicted of a misdemeanor domestic violence crime and those individuals restrained by a civil domestic violence order of protection.

It is difficult to estimate the fiscal impact of this or any bill which expands a crime. This is especially true in this case, since the NMCD does not normally supervise misdemeanor

offenders on probation and does maintain any statistics on misdemeanor offenders or those individuals restrained by civil domestic violence orders of protection.

However, domestic violence is often a part of the criminal or social history of NMCD's inmates and probationers/parolees and is a significant problem in New Mexico and this entire country. The NMCD therefore reasonably estimates that the bill will result in a minimal to moderate increase in the number of new fourth degree felony convictions, and accordingly a minimal to moderate increase to its prison population and probation/parole caseloads.

It is important to note that the bill appropriates no money to NMCD to cover any increases it may cause to NMCD's prison population or probation and parole caseloads. However, it is also important to consider the bill's impact on deterring criminal activity and the ultimate economic savings or benefits it could garner for the state.

SIGNIFICANT ISSUES

This bill amends the state criminal statute prohibiting a convicted felon from receiving, transporting or possessing any firearm or destructive device (Section 30-7-16 NMSA) and it expands that prohibition to include:

- individuals convicted of a misdemeanor crime of domestic violence and
- those who are subject to a domestic violence order of protection.

The criminal penalty remains a fourth degree felony.

AGO analysis states:

As proposed a person convicted of a misdemeanor may be charged with a fourth degree felony for violation of 30-7-16, imposing a greater penalty than [for] the underlying crime of a misdemeanor.

A restrained party may not have committed any misdemeanor domestic violence crimes or criminal sexual conduct or disorderly conduct that has been charged and may still incur a felony penalty if in violation of 30-7-16.

Federal law already restricts those either convicted of misdemeanor crimes of domestic abuse or subject to a domestic order of protection from owning or possessing firearms or ammunition under 18 USCA § 922(d)(8)&(9).

PDD analysis states that the bill's envisioned method of transfer of firearms to law enforcement, stating it:

...appears to mis-inform convicts and those subject to restraining orders in a way that would encourage *violation* of federal law. As noted, federal law disallows firearms possession by such individuals at the moment of conviction. By instructing these individuals to take certain steps (transferring them to law enforcement or to a FFL) with their firearms within twenty-four hours, the proposed law encourages them to maintain possession and actually *handle* the firearms after they are no longer permitted to do so

under federal law.

Under current law there is no mechanism providing for the transfer of these firearms from a restrained party, as is written in SB 495. However, SB 495 provides that law enforcement can dispose of the firearm provided the individual is notified of the disposal and provided with “any financial value received from the disposal less costs.”

PDD advises that this would “seem to be an invitation to corrupt practices that would be difficult to audit or police,” and that “Nothing requires the law enforcement agency to maximize value.”

The storage fees are also not defined. PDD states:

Further, if nothing comes of a domestic violence allegation and the firearms are to be returned, charging a fee for storage would likely be subject to a Second Amendment challenge. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago, Ill.*, 561 U.S. 742 (2010).

ADMINISTRATIVE IMPLICATIONS

For AOC there will be some administrative implications related to changing case management software codes, court forms, and similar tasks needed to accommodate the added process this bill provides.

TECHNICAL ISSUES

AOC advises that this bill:

Requires judges to inform criminal defendants and order of protection respondents of consequences of convictions and orders of protection. Generally, the Supreme Court regulates what judges are required to say in court. For instance, the Supreme Court has specifically dictated a number of things the magistrates must say to defendants at arraignment pursuant to NMRA 6-501(A) and at guilty plea proceedings at 6-502(B). The Supreme Court makes every effort to accommodate legislative changes. That said, the New Mexico constitution, article VI, section 3, confers upon the Supreme Court superintending control of inferior courts. The Supreme Court understands this to be solely its responsibility.

CAC/je/bb