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## FISCAL IMPACT REPORT

**SPONSOR**     Rehm/Schemdes/ Gould/Fajardo     **ORIGINAL DATE** 1/26/2020     **LAST UPDATED** \_\_\_\_\_     **HB** 113  
**SHORT TITLE**     Felon Definition & Firearm Possession     **SB** \_\_\_\_\_  
**ANALYST**     Glenn

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Indeterminate-See Fiscal Implications				Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 35, HB 114

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Law Office of the Public Defender (LOPD)  
 Office of the Attorney General (NMAG)  
 Sentencing Commission (NMSC)  
 Corrections Department (NMCD)

#### No Response Received

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 113 amends Section 30-7-16 NMSA 1978 by increasing the penalty for any felon in possession of a firearm from a fourth degree felony to a third degree felony. The current penalty for a third degree felony is three years in prison and a \$5,000.00 fine.

Under current law, a convicted felon is eligible to possess a firearm if ten years have passed since the person completed serving a sentence or a period of probation. HB 113 eliminates the ten-year provision making a convicted felon permanently ineligible to possess a firearm.

The effective date of this bill July 1, 2020.

## **FISCAL IMPLICATIONS**

LOPD states that the broader definition of a felon proposed by HB 113 means that more people would be subject to conviction as felons in possession of a firearm. Higher-penalty cases are somewhat more likely to go to trial. If HB 113 is enacted and results in more trials, LOPD may need to hire more trial attorneys with greater experience. These felonies would be handled by mid-level felony capable attorneys (associate trial attorneys). Depending on the volume of cases in a particular location, there may be a significant recurring increase in needed FTEs for LOPD and contract counsel compensation. Assessment of the bill's impact on the LOPD would be necessary when and if HB 113's higher-penalty scheme and the broader definition of a felon are enacted.

AOC states that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judicial branch would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. Like LOPD, AOC notes that an increase in the number of jury trials and appeals is possible, given the increase in the penalty. In general, prosecutions brought pursuant to laws with increased penalties can take up a considerable amount of judicial time and resources.

NMCD notes that the fiscal implications of HB 113 are difficult to estimate, as incarceration and supervision costs are dependent on convictions. Increasing the penalty for being a felon in possession of a firearm from a fourth to third degree felony could result in a moderate increase in population as heavier penalties for third degree felonies include longer sentences, thus increasing population. Redefining "felon" to include any person convicted of a felony regardless of how much time has passed since serving their sentence could also moderately increase population, as this allows the penalty for possessing a firearm to apply to additional individuals previously convicted as felons. According to NMCD, the average annual cost to incarcerate a single inmate in state and private institutions is \$40,419. This includes all classification of inmates. Classification is determined by inmate's custody levels, and costs vary based on custody levels and particular facilities. The cost per client in Probation and Parole averages out to \$3,566 annually, including Community Corrections programs, standard supervision, and intensive supervision programs.

## **SIGNIFICANT ISSUES**

LOPD observes that eliminating the ten-year year window for using a prior felony to establish the crime of felon in possession of a firearm creates an inconsistency in the way felony offenders are perceived elsewhere in the law. For instance, the rules of evidence use ten years as the window for which a person's credibility may be impeached through a prior conviction and the Habitual Offender Act relies on the ten-year cap for sentence enhancements. In addition, AODA points out that the Criminal Record Expungement Act makes a felony offender eligible for expungement of arrest records and public records related to conviction four to ten years after completion of the person's sentence, depending on the degree of the felony. In essence, according to LOPD, HB 113, if enacted, would be unique in overlooking people's ability to reform.

LOPD further notes that applying the higher sentence to *all* felons who possess a firearm does not narrowly address public safety concerns. Because there are many non-violent felonies, this bill would treat violent felons in possession of a firearm the same as an embezzler or simple drug possessor whose gun possession does not carry the same public safety concern.

AOC points out that Section 30-7-16 currently increases the penalty for a felon in possession of a firearm from a fourth degree felony to a third degree felony for the offense of the receipt, transportation or possession of firearms or destructive devices by a felon when the person has been convicted previously of a capital felony or a serious violent offense. HB 113 would make a felon in possession of a firearm a third degree felony regardless of the level/classification of the previous felony conviction.

According to NMSC, as of June 30, 2019, there were 76 offenders committed to the custody of the New Mexico Corrections Department who had a conviction for felon receiving, transporting, or possessing a firearm or destructive device as their highest charge.

### **PERFORMANCE IMPLICATIONS**

AOC notes that the courts are participating in performance-based budgeting, and this bill may have an impact on the measures of the district courts in the following areas:

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

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 113 relates to:

- HB 114 – creates third degree felony crime of carrying a firearm while trafficking a controlled substance
- HB 35 - increases the sentencing enhancement for use of a firearm during the commission of a crime

BG/al