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## FISCAL IMPACT REPORT

**SPONSOR**     Rehm/Schmedes/     **ORIGINAL DATE**     1/25/2020  
                   Lewis/Dow/Fajardo     **LAST UPDATED**     1/27/2020     **HB**     114

**SHORT TITLE**     Firearms & Controlled Substance Penalty     **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 113

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Law Offices of the Public Defender (LOPD)
- Administrative Office of the District Attorneys (AODA)
- Administrative Office of the Courts (AOC)
- Sentencing Commission (NMSC)
- Corrections Department (NMCD)
- Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 114 creates a new third degree felony crime of carrying a firearm while trafficking controlled substances. Under current law, a third degree felony is punishable by up to 3 years in prison and a \$5,000.00 fine.

The effective date of HB 114 is July 1, 2020.

### FISCAL IMPLICATIONS

LOPD notes that because a significant number of drug traffickers likely possess a weapon, this bill may lead to a frequent “add-on” charge any time a person accused of trafficking is arrested in possession of their firearm. The additional third-degree felony carries a three-year sentence;

consequently, defendants may be less likely to take a plea and prefer to take the matter to trial. If more trials result, LOPD may need to hire more trial attorneys with greater experience. LOPD states that an accurate prediction of the fiscal impact is not possible at this time; assessment of the required resources would be necessary if and when the higher-penalty scheme proposed by HB 114 is implemented.

AOC states that, as penalties become more severe, more defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. These additional costs are not capable of quantification. AOC also notes that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary 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.

According to NMCD, the fiscal impact of HB 114 is difficult to estimate, as it would require conviction speculations. This bill references trafficking a controlled substance as a violation of Section 30-31-20 NMSA 1978, which can bring on a second degree felony (for the first offense) and a first degree felony (for the second and subsequent offenses). Sentences from those offenses, on top of the additional offense that this bill is proposing, could moderately increase population as it would result in longer sentences. NMCD states that the average annual cost to incarcerate a single inmate in a state or private institution 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. NMCD further notes that the cost per client in Probation and Parole averages out to \$3,566 annually. This includes Community Corrections programs, standard supervision, and intensive supervision programs.

## **SIGNIFICANT ISSUES**

NMSC notes that as of June 30, 2019, there were 586 offenders committed to the custody of the New Mexico Corrections Department who had a conviction for some level of trafficking in a controlled substance. It is not known how many of those may have been carrying a firearm at the commission of their crime.

NMCD states that HB 114 may result in a moderate increase in sentence lengths, as making carrying a firearm while trafficking a third degree felony would bring on additional penalties.

## **PERFORMANCE IMPLICATIONS**

AOC states that the courts are participating in performance-based budgeting. 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 114 relates to:

- HB 35 - increases the sentencing enhancement for use of a firearm during the commission of a crime
- HB 113 - makes the crime of felon in possession of a firearm a third degree felony

BG/rl/al