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FISCAL IMPACT REPORT

SPONSOR Dixon ORIGINAL DATE 02/24/21
LAST UPDATED _____ HB 353
SHORT TITLE Stolen Firearm Verification SB _____
ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB166, SB224

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Offices of the Public Defender (LOPD)

Administrative Office of the District Attorneys (AODA)

Office of the Attorney General (NMAG)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 353 (HB353) amends Section 30-16-11 NMSA 1978 of the Criminal Code, which addresses the crime of receiving stolen property, to provide that a person who receives a firearm without first verifying that the firearm was not stolen with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Tracing Center is presumed to know the firearm was stolen.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

LOPD states that HB353 likely would result in an increase in public defender caseloads and a corresponding need for additional personnel and other resources because the presumption created by the bill would allow additional charges against defendants in possession of firearms.

SIGNIFICANT ISSUES

LOPD notes that HB353 does not address how private citizens are meant to access information concerning a particular firearm from the ATF National Tracing Center, which does not seem to be typically available to private citizens. LOPD also states that while the presumption created by the bill would have a marginal effect on the traffic of stolen firearms, it would interfere with legitimate transfers of firearms, such as the gift of a firearm between family members of different generations, which would have to go through the verification process.

Like LOPD, AODA notes that it appears only law enforcement agencies can utilize the national tracing center, so a person would have to make a request to their local law enforcement agency to determine if a firearm was stolen or not. AODA points out that there would need to be some type of official written documentation that a person who received a firearm properly verified that it was not stolen.

NMAG explains that, as with the existing presumptions in Section 30-16-11 NMSA 1978, the presumption created by the bill is not a presumption that a gun is *actually* stolen if a person receiving it fails to check the ATF database; it creates a presumption the person *knew or believed* the gun to be stolen. To obtain a conviction, a prosecutor still would have to prove beyond a reasonable doubt the gun was actually stolen, which effectively means a person cannot be prosecuted just for picking up a gun without checking the ATF database first. *See* UJIs 14-1650 and 1651 NMRA (jury instructions for receiving stolen property and the applicable presumptions).

BG/rl