

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date 6 February 2025

Bill No: HB 248-280

Sponsor: Randall Pettigrew, Joseph L.
Sanchez & Art De La Cruz
Short Title: Carrying a Firearm While
Trafficking

Agency Name and Code Number: 280 Law Offices of the Public Defender [LOPD]
Person Writing: Kate Baldrige
Phone: 505-395-2890 Email: Kathleen.baldrige@lopnm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB 253
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

This bill, HB 248, identical to one unsuccessfully proposed in the 2020, 2021, 2022, 2023, and 2024 Legislative Sessions as HB 114, 81, 26, 59, and 47, respectively, seeks to create a new third degree felony crime of carrying a firearm while trafficking drugs in Article 7 of the Criminal Code (Weapons and Explosives).

The legislation’s effective date would be July 1, 2025.

FISCAL IMPLICATIONS

Because a likely significant number of drug traffickers may possess a weapon, this bill would likely lead to a frequent “add-on” charge any time a person accused of trafficking is arrested in possession of their firearm, even if otherwise legally possessed. 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 higher-penalty trials result, LOPD may need to hire more trial attorneys with greater experience. Accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed higher-penalty scheme.

For estimation purposes, these felonies would be handled by mid-level felony capable attorneys (Associate Trial Attorneys). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. An Associate Trial Attorney’s mid-point salary including benefits is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas (due to necessary salary differential to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51. Again, assessment of the impact would be necessary after the implementation of the proposed legislation, but such is likely to result in a requirement for additional funds to LOPD in order to provide constitutionally required effective assistance of counsel.

Presumably the courts, and DAs would be affected in similar measure to LOPD.

The proposed legislation would also have a fiscal impact on DOC, given additional sentences in drug trafficking prosecution. The analysis of this bill in 2020, 2021, 2022, 2023, and 2024, noted the 2009 conclusion of a previous analysis which provided: “if the bill passes and it substantially increases the inmate population or probation/parole caseloads, it would increase the workloads of current prison and probation/parole staff. Individuals convicted of this crime would be more likely to need intensive supervision by probation/parole staff, and that higher level of supervision is more time consuming and more expensive to provide.”

SIGNIFICANT ISSUES

None noted.

PERFORMANCE IMPLICATIONS

See *Fiscal Implications*, above.

ADMINISTRATIVE IMPLICATIONS

See *Fiscal Implications*, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill was introduced as HB 23 in 2009, where it died and further action was postponed indefinitely until the 2020, 2021, 2022, 2023, and 2924 Legislative Sessions when it was reintroduced as HB 114, 81, 26, 59, and 47, respectively.

Use of a firearm during the commission of a felony is already addressed in NMSA 1978, § 31-18-16 (2022), the enhancements for which were just increased in 2022 under HB 68. Similarly, the separate crime of felon in possession of a firearm is already addressed in NMSA 1978, §§ 30-7-16 (2022). Both of these statutes underwent a comprehensive overhaul as part of the Governor’s crime package during both the 2020 and 2022 Legislative Sessions. In the 2023 Legislative Session, HB 61 sought to further enhance the penalty for third-degree felon in possession of a firearm from three years to five years in prison, and third-degree felon in possession of a firearm by a serious violent felon from three years to six years in prison.

Moreover, SB 253 introduced during the current legislative session seeks to further increase the penalty for a felon possessing a firearm in NMSA 1978, Section 30-7-16. Under current law, a non-violent felon possessing a firearm is guilty of a third degree felony (3 years) and a violent felon possessing a firearm is guilty of a special third degree felony (6 years). SB 253 would triple the non-violent felon penalty to a second-degree felony (9 years) while making the nine-year sentence *mandatory*; and would double the violent felon penalty to a special second-degree felony (12 years). A new Subsection E would also add a provision to preclude “earned meritorious deductions” (commonly known as “good time”) toward the prison sentence imposed for any offense under Section 30-7-16, functionally doubling the amount of incarceration actually served in most cases.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

Status quo.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None known.