

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: February 21, 2025

Check all that apply:

Bill Number: HB 549

Original Correction
Amendment Substitute

Sponsor: Rep. Meredith A. Dixon, Rep. Cynthia Borrego

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: CRIME OF CARRYING A GUN WHILE TRAFFICKING

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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 revenue 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:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: House Bill 549 would create a new third-degree felony offense for carrying a firearm while trafficking controlled substances in violation of NMSA § 30-31-20. A third-degree felony offense is punishable by up to 3 years in prison and a fine of up to \$5,000.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 549 is a duplicate of HB 248.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

Double Jeopardy: There are currently firearm enhancements in relation to drug transactions.

- NMSA § 31-18-16(A): “When a separate finding of fact by the court or jury shows that a firearm was used in relation to a drug transaction...the basic sentence of imprisonment prescribed for the offense shall be increased by one year.”
- NMSA § 31-18-16(D): “For a second or subsequent offense, when a separate finding

of fact by the court or jury shows that a firearm was used, brandished, or discharged in relation to a drug transaction...the sentence shall be increased by five years.”

- HB 549 could create double jeopardy issues, particularly with NMSA § 31-18-16(A), since the carrying of a firearm and the use of a firearm could constitute unitary conduct depending on the facts of a particular case.

Definition of “Carry”: The definition of “carry” is not defined in HB 549. Incorporating the definition of “carrying a deadly weapon” as outlined in NMSA 1978, § 30-7-1 could be beneficial to avoid litigation over this issue. NMSA 1978, § 30-7-1 states, “‘Carrying a deadly weapon’ means being armed with a deadly weapon by having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use.” Replacing the words “deadly weapon / weapon” with the word “firearm” derived from NMSA 1978, § 30-7-1 could be beneficial for HB 248 by properly defining the action of “carrying” a firearm.

Definition of “Firearm”: The definition of “firearm” in HB 549 differs from the definition in Uniform Jury Instruction (“UJI”) 14-704, which defines the term as follows: “A firearm means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of a firearm, any firearm muffler or firearm silencer. Firearm includes any handgun, rifle or shotgun.” Using the definition for a firearm in UJI 14-704 may help keep uniformity in the law.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

N/A