

Conflicts with: HB 166
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 253 amends Section 30-7-16 NMSA 1978, regards transportation or possession of a firearm or destructive device by certain persons, to increase the penalty for a felon in possession of a firearm from a third degree felony to a second degree felony, and to provide a minimum sentence of nine years imprisonment.

SB 253 further amends Section 30-7-16 to increase the penalty for a serious violent felon in possession of a firearm from a third degree felony to a second degree felony, and to increase the minimum sentence for that offense from six years imprisonment to twelve years imprisonment.

SB 253 also amends Section 30-7-16 to provide that a person convicted under that section shall not be eligible for earned meritorious deductions pursuant to Section 33-2-34 NMSA 1978.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

In 2021, the New Mexico Sentencing Commission engaged the services of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to analyze the state's Criminal Code for its strengths and weaknesses. One item of concern for the Robina Institute was that the Criminal Code has a number of special statutes that fall out of the normal penalty structure in the state. SB 253 would continue the use of a special penalty for serious violent felons in possession of a firearm through its increase of that term from six to twelve years (versus the standard basic term of three years imprisonment for a third degree felony under Section 31-18-15 NMSA 1978). The bill would also add a special penalty via its mandatory minimum term of years for felons in possession of a firearm.

SB 253 would increase the basic term of years of imprisonment for felons and serious violent felons in possession of a firearm. While it is difficult to determine what the effect of passing SB 253 would be on the state's prison population, it is likely that these changes would lead to more people being incarcerated by the Corrections Department. The average per day cost to incarcerate someone in the state's prison system is \$155.63/day; this average includes private and public facilities.

Section 30-7-16 NMSA 1978 has been amended several times in recent years to increase the penalty for felons in possession of firearms. The Sentencing Commission is currently compiling multi-year data regarding charges and convictions pursuant to Section 30-7-16 to examine

whether there is any correlation between the increased penalties and the rate of offense. We will submit a revised FIR with the compiled data as soon as possible. **See compiled data below.**

Cases Filed with Section 30-7-16 as the Lead Offense (including those not disposed)

Date Case Filed	# Cases Filed
FY2019	370
FY2020	304
FY2021	490
FY2022	464
FY2023	441
FY2024	513
Total	2,582

Outcome of Charges under Section 30-7-16 by Year*

Date Case Filed	# Disposed Cases	Incompetency	Dismissal	Acquittal	Conviction
FY2019	779	1%	67%	<1%	32%
FY2020	682	1%	69%	<1%	29%
FY2021	969	1%	71%	<1%	28%
FY2022	851	1%	65%	1%	34%
FY2023	733	1%	63%	<1%	36%
FY2024	476	<1%	79%	<1%	20%
Total	4,490	1%	68%	<1%	31%

*Please note that only disposed cases are included (hence lower numbers in more recent years).

NMCD Admissions with Section 30-7-16 as the Lead Charge

Year Entered NMCD	# Persons Incarcerated	Avg. Sentence not counting EMD
FY2019	71	1,262
FY2020	73	1,447
FY2021	57	1,465
FY2022	70	1,309
FY2023	84	1,620
FY2024	85	1,562

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with: HB 166, which also provides new penalties for felons and serious violent felons in possession of a firearm.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS