

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 1/29/24

SPONSOR Rehm/Vincent/Reeb

BILL
NUMBER House Bill 46

SHORT TITLE Felon in Possession of a Firearm Penalty

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY27	FY28	FY29	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	At least \$573.4	At least \$893.3	At least \$893.3	At least \$2,359.9	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Conflicts with HB198

Relates to HB47, HB78, HB79, HB88, HB101, HB114, HB127, HB129, HB168; SB5, SB69, SB90 and SJR12

Sources of Information

LFC Files

Agency Analysis Received From
Administrative Office of the Courts (AOC)
Law Offices of the Public Defender (LOPD)
New Mexico Attorney General (NMAG)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of House Bill 46

House Bill 46 adds “or destructive device” as another, alternative, element to the crime of felon in possession of a firearm, currently a third degree felony, and increases the penalty from a three year to a five year sentence. A second or subsequent offense becomes a second degree felony with a nine year sentence. The current requirement that the time since completion of the sentence or period of probation on the underlying conviction be less than 10 years is removed.

As to serious violent felons, HB46 also adds “or destructive device” as another, alternative, element to this crime and upgrades the offense to a second degree felony with a nine year sentence. The 10-year period from sentence or probation completion is retained in the definition of a serious violent felon.

The effective date of this bill is July 1, 2024.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. In addition to the potential for new crimes to send more individuals to prison and jail, longer sentences could result in fewer releases relative to admissions, driving up overall populations. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. HB46 is anticipated to increase the time individuals spend incarcerated.

Felon in Possession. In FY22, 1,196 people were admitted to prison for offenses that were not serious violent offenses, 82 percent of overall admissions. Assuming a similar share of the 39 individuals admitted to prison with their highest charge being felon in possession of a firearm in FY21 were admitted for offenses other than serious violent offenses, this change would increase the sentences of about 32 individuals each year. Based on estimates of actual time served for a two-year sentence enhancement provided by the Sentencing Commission (NMSC), these 32 individuals will spend an additional 383 days in prison each due to the increased sentence, a cost of \$27.9 thousand per offender. Overall, this analysis estimates HB46 will result in increased incarceration costs of \$893.3 thousand per year. These additional costs will begin to be realized in FY27, increasing over the following year (as more individuals serve longer sentences) and leveling out at \$893.3 thousand in FY28 (as offenders begin to be released from prison) and future fiscal years.

Serious Violent Felon in Possession. Using those same FY22 figures, approximately six people will face increased sentences under the serious violent felons provisions of HB46. Based on NMSC estimates of actual time served, these six individuals will spend an additional 4.2 years in prison, at a cost of \$111.9 thousand per year per offender. Overall, this analysis estimates increased costs of \$675.2 thousand per year. Because these additional costs will not be realized until FY30, they are not reflected in the table.

In addition, these costs are likely an underestimate, as a felon in possession of a firearm is often not the highest charge for which someone is admitted to prison. Last year, NMCD estimated 10 percent of the New Mexico prison population, or close to 540 individuals, were serving time for this crime.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials (if more defendants invoke their right to a trial when facing more serious penalties), are not included in this analysis, but could be significant.

SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment, and although laws and policies designed to deter crime focus mainly on increasing the severity of the punishment, this does little to deter criminals because most know little about sanctions for specific crimes. These findings suggest increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful than increasing penalties. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC’s evaluation team has found in the 2nd Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than heightened penalties.

LOPD first points out that the Legislature has increased penalties for the crime of felon in possession three times in the last four years: In 2020, the penalty was increased from a fourth degree to a third degree felony for serious violent offenders. In 2021, the distinction was removed and the penalty for even non-violent offenders was increased to a third degree felony. In 2022, the basic sentence for serious violent offenders was increased to six years (leaving the non-violent offenders at three years). HB46—increasing the sentence for non-violent offenders to five years, and that for serious violent offenders to nine years—would be the fourth increase in five years.

LOPD also comments that, unlike sentencing enhancements for using a firearm during the commission of another, perhaps violent crime, this section punishes a felon for simply possessing a gun, which does not present the same level of risk or danger associated with violent felonies like armed robbery or aggravated burglary. In addition, use of a firearm in committing a new crime would be punishable by whatever penalty attaches to that offense, plus, for most crimes, a firearm enhancement. Further, as LOPD reported in its analysis of HB198 (which also increases penalties for both felons and serious violent felons in possession), by definition, individuals charged with this crime have a prior felony conviction, and the majority will already be subject to the habitual offender enhancements to the existing sentence, which involve a one, four, or eight year increase in sentence depending on the number of prior felony convictions. As a result, LOPD comments, for the most egregious repeat offenders, the existing basic sentence could easily be 11 years for non-violent offenders or 14 years for serious violent offenders even if this bill were not enacted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill (HB46) conflicts with HB198. HB46 adds “or destructive device” to both the felon and serious violent felon in possession of a firearm section. As to serious violent felons in possession, it changes the degree of felony designation from third to second but does not specify

the sentence to be imposed. HB46 does provide that a second or subsequent violation of this section by a non-serious violent felon constitutes a second degree felony. HB46 also strikes from the definition of felon the requirement that less than 10 years have passed since the felon has completed a sentence or period of probation for the underlying felony.

Numerous other bills introduced in the 2024 legislative session relate to firearms in some way.

OTHER SUBSTANTIVE ISSUES

LOPD comments on the provision in HB46 that removes the existing statutory limitation period of ten years from the date of completion of a felon's sentence or period of probation. It notes the bill would thus subject former felons to permanent exposure to the penalties of the bill without regard to any subsequent rehabilitation and undermine the goal of the limitation period to promote the reform and subsequent good behavior of felons. It points out that, oddly, HB46 does not include an abolition of the 10-year limitation period from its definition of serious violent offender; after the conclusion of the 10-year limitation period, it appears that such an offender would be subject only to the penalties for non-violent offenders. Similarly, NMAG also comments on the seemingly contrary result that serious violent felons would only be prevented from possessing a firearm or destructive device for 10 years after they have completed serving a sentence or a period of probation, but offenders who are not serious violent felons would be similarly prohibited for life.

MD/al/ne