

LFC Requester:	
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AGENCY BILL ANALYSIS
2018 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 Jan. 19, 2018
Bill No: HB 118

Sponsor: Antonio Maestas
Short Change Firearm Violation
Title: Classifications

Agency Code: 264
Person Writing Gary Cade
Phone: 505-507-7752 Email cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	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

BILL SUMMARY

Synopsis: HB 118 would simply change the charge of felon in possession of a firearm to a third degree felony, instead of the fourth degree felony that it is now.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

HB 118 would increase the felon in possession charge to a third degree felony which carries a maximum penalty of three years. Since the current felon in possession statute is a fourth degree felony the maximum sentence for that offense is 18 months. See, Sec. 31-18-15, NMSA (A)(11) and (12), NMSA 1978.

Under long established case law, it is a violation of double jeopardy to use a prior felony conviction to prove that someone is a felon in possession of a firearm (or destructive device) and then use the same prior felony to enhance their sentence as a habitual offender. See, *State v. Haddenham*, 110 N.M. 149 (Ct. App. 1990), cert. den. (1990). (If someone is convicted of multiple crimes involving a firearm, they can be split with one being used to prove they were a felon in possession and another one used to prove they are a habitual offender. See, *State v. Handa*, 120 N.M. 38 (Ct. App. 1995).

The increased potential penalty would bring a defendant's exposure closer to the level that someone convicted of a prior felony who was then convicted (within ten years) of another felony and charged as a habitual offender so their basic sentence was enhanced by one year would face. See, Sec. 31-18-17(A), NMSA 1978. The sentence imposed for being a habitual offender cannot be suspended or deferred if a violent offense was involved in either crime. Id. By comparison, the sentence imposed for a felon in possession conviction can be suspended in its entirety. If a person was imprisoned for being a felon in possession the parole period for a third degree felony is double what it is for a fourth degree felony so the person would have longer supervision after their release from custody. See, Sec. 31-21-10(D), NMSA 1978.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS