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| <b>LFC Requester:</b> |  |
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto: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. 24, 2019  
**Bill No:** HB130

**Sponsor:** Linda M. Trujillo  
**Short Title:** Additional Firearm Crimes & Penalties

**Agency Code:** 264  
**Person Writing** Gail MacQuesten  
**Phone:** 505 466-0532 **Email** gailmacquesten@gmail.com

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY19          | FY20 |                           |               |
| 0             | 0    | n/a                       | n/a           |
|               |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY19              | FY20 | FY21 |                           |               |
| 0                 | 0    | 0    | n/a                       | n/a           |
|                   |      |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

|              | <b>FY19</b> | <b>FY20</b> | <b>FY21</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b> |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| <b>Total</b> | 0           | unknown     | unknown     | unknown                      | recurring                            | general                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB8; HB40; HB35; HB87; HB105; HB130; SB8; SB201

Duplicates/Relates to Appropriation in the General Appropriation Act: none found

**SECTION III: NARRATIVE**

HB130 enacts a new section of the Criminal Code: Negligent Storage of a Firearm – Minors.

The amendments create the following new crimes:

**Negligent storage of an unloaded firearm** consists of the owner keeping an unloaded firearm within any premises that are under the owner’s custody or control and storing or leaving the unloaded firearm in a location where the owner knows or reasonably should know that a minor is likely to gain access to the firearm without the permission of the minor’s parent or legal guardian, unless the owner takes reasonable action to secure the firearm against access by a minor. This crime is a petty misdemeanor, subject to a fine of \$250.

**Negligent storage of a loaded firearm** has the same elements, but requires the firearm to be loaded. This crime is a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978, which provides for imprisonment in the county jail for a definite term not to exceed six months, or payment of a fine of not more than \$500, or both.

**Negligent storage of a firearm leading to threatening behavior** consists of the owner of a firearm keeping a firearm (whether loaded or unloaded) within any premise that are under the owner’s custody or control and storing or leaving the firearm and failing to secure it in a location where a minor gains access to the firearm and then possesses it in a public place or exhibits it in a threatening manner toward another person. This crime is a misdemeanor, and the person shall be sentenced to county jail for a definite term not to exceed nine months or to the payment of a fine of not more than \$750 or to both.

**Negligent storage of a firearm leading to death or injury** consists of the owner of a firearm keeping a loaded firearm within any premises that are under the owner’s custody or control and storing or leaving the firearm and failing to secure it in a location where a minor gains access to the firearm and then uses the firearm and causes death or injury to the minor or another person. This crime is a fourth degree felony, and the defendant may be subject to 18 months and a fine of up to \$5000.

A person is not guilty of the crimes listed above if:

- the minor was supervised by a person older than eighteen and use of the firearm was for hunting, sporting or other lawful purposes;
- the minor was engaged in the lawful defense of people or property; or

- the property where the firearm was stored was entered unlawfully by the minor.

A person who violates a provision of HB130 shall be subject to civil liability to any person injured by the violation for damages, attorney fees and costs of the action as determined by the courts.

“Secure” means to take steps that a reasonable person would take to prevent access to a firearm by a minor, including placing a firearm in a locked container or temporarily rendering the firearm inoperable by a trigger lock or other means.

## **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.

HB130 creates four new crimes. This will result in additional prosecutions, and more expenses for the district attorneys.

## **SIGNIFICANT ISSUES**

HB130 creates four crimes related to negligently storing firearms so that they can be accessed by minors.

All crimes only apply to the owner of the firearm. It is not clear if the crimes would apply to an owner who transferred the firearm to another person, and that other person acted negligently. For example, would the owner be liable if he lent the gun to an adult friend, and that friend left the gun on the coffee table of her home, where her 2-year-old could find it?

It also appears that HB130 only applies when the owner has the firearm within any premises that are under the owner’s custody or control. (This is not entirely clear, and will probably be the subject of litigation.) If so, an owner who leaves a firearm at the home of a friend who has children, for example, may not be liable.

The first two crimes of “Negligent storage” of a loaded or unloaded firearm apply when the owner keeps the firearm within any premises that are under the owner’s custody or control, in a location where the owner knows or reasonably should know that a minor is likely to gain access to the firearm without the permission of the minor’s parent or legal guardian. These two crimes make the negligent storage itself criminal – it is not necessary that a minor actually find the firearm.

The remaining two crimes provide increased penalties if the negligently stored firearm is actually found by a minor. The degree of offense depends on what the minor does with the firearm. If the minor “possesses it in a public place or exhibits it in a threatening manner toward another person” it is a misdemeanor. If the minor uses the firearm and causes death or injury to the minor or another person, it is a fourth degree felony. Both these crimes increase the criminal liability of the firearm owner based on the actions of another person: the minor who finds the firearm. It is a form of strict liability: if the owner stores the firearm negligently, he is responsible for the consequences.

## **PERFORMANCE IMPLICATIONS**

As discussed under Significant Issues, there will probably be issues of statutory interpretation to be litigated. Only after cases are brought, and taken through the appellate system, will we know the breadth of the statute.

## **ADMINISTRATIVE IMPLICATIONS**

The courts will need to develop jury instructions for the crimes, and, as discussed above, they will need to resolve some statutory interpretation issues.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

There are a number of bills pertaining to firearms:

- HB40: Background checks for firearm sales at gun shows
- HB35: Requiring firearms licensees who buy a gun to request the state Department of Public Safety check to see if the gun is stolen
- HB87: Domestic violence and firearm possession
- HB105: Increasing penalties under the firearm enhancement statute
- HB130: Adding firearms crimes and penalties
- SB8: Background checks
- SB201: Gun sales
- HB8 and SB8: Background check for firearm sales

## **TECHNICAL ISSUES**

Paragraph J of HB130 provides that a person who violates a provision of the Act “shall be subject to civil liability to any person injured by the violation for damages, attorney fees and costs of the action as determined by the court.” A person who suffers damages due to the negligence of another person may sue in tort – there is no need for a special provision in the statute to create a tort action. Because HB130 says a violator “shall be subject to civil liability,” it suggests that all a plaintiff would have to show is that the defendant violated a provision of HB130—in other words, it creates a statutory tort. It also provides for damages, fees and costs (“as determined by the court”). If the drafters did not intend to create a special tort, but just intended to recognize that the criminal statute did not preclude a civil action, Paragraph J could be changed to say “Nothing in this section precludes someone injured by negligent storage of a firearm from filing a civil action for damages.”

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

None noted.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

None proposed.