

LFC Requester:	
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**AGENCY BILL ANALYSIS
2019 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 Feb. 5, 2019
Bill No: HB316

Sponsor: Rehm, Lewis and Schmedes
Short Title: Increase Penalty for Felon Possessing

Agency Code: 264
Person Writing Gail MacQuesten
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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)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	unknown	unknown	unknown	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB87
Duplicates/Relates to Appropriation in the General Appropriation Act: none found

SECTION III: NARRATIVE

HB316 amends Section 30-7-16 NMSA 1978, the statute prohibiting a felon from possessing a firearm, raising the basic offense from a fourth degree felony to a third degree felony.

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.

HB316 raises the basic penalty for “felon in possession of a firearm.” It is difficult to determine if this will increase plea agreements, or provide incentive for defendants charged with the offense to go to trial. If the change increases pleas, it may reduce costs for the district attorneys. If it increases trials, it will increase costs for the district attorneys.

SIGNIFICANT ISSUES

Under current law “felon in possession of a firearm” is a fourth degree felony, punishable by 18 months imprisonment, a fine of \$5000, or both. Current law raises the offense to a third degree felony if the person has previously been convicted of a capital felony or a serious violent offense provided in Subparagraphs (a) through (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978. A third degree felony is punishable by three years imprisonment, a fine of \$5000, or both.

HB316 makes “felon in possession of a firearm” a third degree felony, without regard to the nature of the person’s existing felony. Note that HB316 does not remove existing language about raising the offense to a third degree felony in certain circumstances. That language is no longer relevant.

PERFORMANCE IMPLICATIONS

See Fiscal Implications, above.

ADMINISTRATIVE IMPLICATIONS

See Fiscal Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB87 also amends Section 30-7-18 NMSA 1978, New Mexico's "felon in possession of a firearm" statute. It expands the categories of persons who cannot receive, transport or possess a firearm to include a person subject to an order of protection or a person convicted of any of the following:

- Battery against a household member pursuant to Section 30-3-15 NMSA 1978;
- Aggravated battery against a household member pursuant to Section 30-3-16 NMSA 1978;
- Criminal damage to property of a household member pursuant to Section 30-3-18 NMSA 1978; stalking pursuant to Section 300-3A-3 NMSA 1978; or
- A crime listed in 18 U.S.C. 922 (federal firearm offenses).

HB87 provides that a person in possession of a firearm who is subject to an order of protection or convicted of one of the crimes listed above shall be guilty of a misdemeanor.

TECHNICAL ISSUES

Although HB316 makes every "felon in possession" offense a third degree felony, it does not remove the existing language in the statute raising the offense to a third degree felony based on the type of felony conviction the defendant has. That language should be removed.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A first offense violation of the "felon in possession of a firearm" statute will continue to be a fourth degree felony.

AMENDMENTS

Remove the language following the semicolon in Subsection B, as indicated:

B. Any person violating the provisions of this section shall be guilty of a [fourth] third degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act; ~~provided that the violation of and the sentence imposed pursuant to this subsection shall be increased to a violation of and the sentence for a third degree felony if the person has previously been convicted of a capital felony or a serious violent offense provided in Subparagraphs (a) through (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978.~~