

LFC Requester: _____

**AGENCY BILL ANALYSIS
2017 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. 11, 2017
Bill No: HB 19

Sponsor: William "Bill" Rehm
Short Use of Firearm Sentencing
Title: Enhancements

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
FY17	FY 18		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	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 19 would increase the sentencing enhancements for the first time a firearm was used in committing a non-capital felony from one year to five years imprisonment and from three years to seven years imprisonment for a second, or subsequent, non-capital felony in which a firearm is used.

FISCAL IMPLICATIONS

Unknown, although it seems likely that the increased exposure to more time in prison will result in more litigation over use of a firearm which will require more personnel and financial resources for the courts, prosecutors, defenders and corrections department.

SIGNIFICANT ISSUES

HB 19 increases the mandatory prison time that must be served from one year to five years for the first time that the factfinder (judge or jury) finds that a firearm was used in the commission of a non-capital felony. It would also increase the mandatory prison time from three years to seven years if a firearm was used in a second, or subsequent, non-capital felony. The sentence imposed for the firearm enhancements must be the first period served, and cannot be suspended or deferred. Whenever a sentence of confinement exceeds 18 months it must be served in a corrections facility designated by the corrections department. See, Sect. 31-20-2(A).

The firearm enhancement is a generally applicable deterrent to the use of firearms and can apply to almost any felony other than a capital felony. However if the felony cannot be committed without use of a firearm it may violate the double jeopardy clause of the Constitution. See, *Blockburger v. United States*, 284 U.S. 299 (1932) and *State v. Swick*, 2012-NMSC-018. If the underlying crime includes use of a firearm as one of its elements then the punishment cannot be enhanced because a firearm was used. See, *State v. Varela*, 1999-NMSC-045, and *State v. Branch*, 2016-NMCA-___, *cert. granted*, 2016-NMCERT-007. However, an initiatory crime—conspiracy, was not subject to the firearm enhancement since the crime, of armed robbery, was complete when the agreement was reached without any overt act. See, *State v. Padilla*, 118 N.M. 189 (Ct. Ap. 1994) *cert. den.* (1994). Because no physical act is required, other than communication, then the firearm enhancement (as it is presently or with the proposed increase) would not apply to enhance the punishment imposed for conspiracy.

It is unclear if the sentence enhancement imposed for use of a firearm in the commission of a serious violent felony offense listed in the Earned Meritorious Deduction Act (See, Sect. 33-2-34,

NMSA 1978) would be limited like the sentence imposed for the underlying offense or if the firearm enhancement would be eligible for a greater reduction, which can be day for day of the time served.

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