

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. 19, 2017

Bill No: HB 52

Sponsor: Nate Gentry

Agency Code: 264

Short Felon In Possession of Firearm

Person Writing Gary Cade

Title: Penalty

Phone: 505-507-7752 Email cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(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: HB 17

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 52 would increase the penalty for a felon in possession of a firearm or destructive device to a third degree felony from the fourth degree penalty currently provided. It would also add language to the statute to try to clarify that certain devices are not included in the list of destructive devices that may not be possessed by someone who is a convicted felon.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

If HB 52 is adopted to change the penalty for felon in possession of a firearm from a fourth degree felony to a third degree felony, the potential punishment would be increased from 18 months imprisonment and/or \$5,000 fine to three years imprisonment and/or a \$5,000 fine. (See, Sect. 31-18-15(A)(9)-(10), NMSA 1978). If imprisoned, the parole period for a third degree felony is two years, double what the parole is for a fourth degree felony. (See, Sect. 31-22-10(D), NMSA 1978). The court can still defer or suspend—in whole or in part—the execution of the sentence for a third degree felony, just like it can suspend or defer the sentence now that the charge is classified as a fourth degree felony. (See, Sect. 31-20-3(A)-(B), NMSA 1978). The felon in possession statute cannot be applied to anyone who has received a deferred sentence. (See, Sect. 30-7-15(C)(2)(c), NMSA 1978). It also cannot be charged for anyone who has been pardoned, or at least ten years have passed since they completed serving their sentence or probation for their prior felony). (See, Sect. 30-7-15(C)(2)(a)-(b), NMSA 1978).

There are certain restrictions on trying to make certain persons are incarcerated even if they are convicted of being a felon in possession which means they have at least two felony convictions. The same prior felony conviction cannot be used to convict someone of being a felon in possession and being a habitual offender. (See, *State v. Haddenham*, 110 N.M. 149 (Ct. App. 1990, cert. den.

1990). However, if a defendant has multiple prior felony convictions, even if they resulted from the same incident, they can be “split,” with one used as the basis for a felon in possession charge and another one used for enhancement as a habitual offender. (See, *State v. Calvillo*, 112 N.M. 140 (Ct. App. 1991, cert. den. 1991). However, if the crimes are split each one must be separate and distinct with different elements. (See, *State v. May*, 2010-NMCA-071). In addition, the prior felony used as the basis to convict someone as a felon in possession, and that subsequent felon in possession conviction, can both be used to prove someone was a habitual offender with two prior convictions. (See, *State v. Ypparrea*, 114 N.M. 805, cert. den. 1993 and *State v. Robertson-Little*, 2016-NMCA).

HB 52 would also add to the introductory language regarding a “destructive device” to attempt to further specify that if a device has been redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device, possession would not be prohibited by a felon, even if the device was originally designed, or redesigned to be a weapon. The bill would also make a minor change in the statute to make it gender neutral.

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