

LFC Requester:	
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AGENCY BILL ANALYSIS  
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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

and

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*{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. 14, 2016  
Bill No: HB 100

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
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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 100 would increase the sentencing enhancements for use of a firearm in 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 personal and financial resources for the courts, prosecutors, defenders and corrections department.

**SIGNIFICANT ISSUES**

HB 100 just increases the mandatory prison time that must be served from one year to five years whenever 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. See, *State v. Charlton*, 114 N.M. 35 (Ct. App, 1992), cert. den. (1993). 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**