

LFC Requester: \_\_\_\_\_

**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** Feb. 3, 2016

**Bill No:** HB 303

**Sponsor:** William "Bill" Rehm

**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
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 303 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.

**FISCAL IMPLICATIONS**

Unknown.

**SIGNIFICANT ISSUES**

If HB 303 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 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). 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).

## **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**