

LFC Requester: _____

**AGENCY BILL ANALYSIS
2016 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. 27, 2016

Bill No: SB 200

Sponsor: Michael S. Sanchez

Agency Code: 264

Short Suspension of Concealed

Person Writing Gary Cade

Title: Handgun Licenses

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)

	FY15	FY16	FY17	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: SB 200 would add a new subsection to the Concealed Handgun Carry Act that anyone convicted of certain designated crimes could have their concealed carry license suspended or revoked. The bill would include convictions for: a felony in New Mexico or other jurisdictions, and for misdemeanor convictions for: driving while intoxicated (“DWI”); or, “...involving the possession or abuse of a controlled substance”; or “...involving assault, battery or battery against a household member.” It would also apply to any person who “...receives a conditional discharge, a diversion or a deferment or is convicted of, pleads guilty to or enters a plea of nolo contendere to a misdemeanor offense involving a crime of violence.”

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

SB 200 would apply to anyone convicted of a felony in New Mexico, another state, the United States “or any other jurisdiction.” Cf., Sect. 31-18-17(D)(1) (Conviction within New Mexico) and Sect.31-18-17(2)(a),NMSA 1978. (“[T]he conviction was rendered by a court of another state, the United States, a territory of the United States or the commonwealth of Puerto Rico.”) Although it is probably unlikely, someone might be convicted of a crime in a foreign country punishable by a term of more than a year, i.e. a felony, and be subject to revocation of their concealed carry license. None of the provisions relating to misdemeanor convictions indicate whether they are limited to just misdemeanor convictions in New Mexico, or would also include misdemeanor convictions from other jurisdictions. The bill also duplicates, at least in part, those portions of federal law that make it unlawful for someone convicted of a felony, or convicted of a misdemeanor domestic violence offense, to even possess a firearm. (See, 18 U.S.C. 922(g) (1) [convicted of any crime punishable by a term of more than one year], and 18 U.S.C. 922(g)(9) [convicted in any court of a misdemeanor crime of domestic violence].

SB 200 would apply to anyone convicted of a misdemeanor DWI. It is possible that a person convicted of DWI for driving a commercial motor vehicle with a breath or blood alcohol concentration of .04 or anyone convicted because “impaired to the slightest degree,” even as a first offender, could have their concealed carry license suspended or revoked. Of course, the bill could also apply to persons convicted with a high BAC or of their third DWI, and persons in between. See generally, Sect. 66-8-102(A)—(F), NMSA 1978.

SB 200 would also apply to anyone “convicted of a misdemeanor offense involving the possession or abuse of a controlled substance.” Cf., 18 U.S.C. 922(g)(3) (Possession of a firearm is prohibited to anyone who is an unlawful user of or addicted to any controlled substance.) Since there is no limit on the controlled substance, someone convicted of possessing more than one ounce (but less than eight ounces) of marijuana, or convicted of possession of less than an ounce of marijuana—if it was within a posted drug-free school zone—could have their concealed carry license suspended or revoked. (See, Sect. 31-31-23(B) and Sect. 30-31-23(F), NMSA 1978) That could also be the sanction for anyone convicted of possessing any amount of any controlled substance listed in Schedule I, II, III or IV or possession of any analog of those substances. , except for certain other substances specifically listed in the statute. (See, Sect. 30-31-23(D), NMSA 1978) It’s unclear what is intended by the term, “abuse,” in SB 200, and if that also requires some kind of conviction for “abuse” of a controlled substance.

Any person who “...receives a conditional discharge (“CD”), a diversion or a deferment or is convicted of, pleads guilty to or enters a plea of nolo contendere to a misdemeanor offense involving a crime of violence,” and anyone “...convicted of a misdemeanor offense involving assault, battery or battery against a household member” could face loss of their concealed carry license under SB 200. It is unclear what is meant by the term “involving” as applied to a crime of violence. One possible construction is that applies to persons who were unsuccessful in their attempt to commit a fourth degree violent felony and so their crime was a misdemeanor. (See, Sect. 30-28-1(D), NMSA 1978.) However, other constructions of how “involving” should be applied seem likely.

There is also no guidance on what would constitute a “crime of violence.” It could be something like disorderly conduct or public affray, both of which are petty misdemeanors but usually require what is considered as violent behavior. (See, Sects. 30-20-1 and 30-20-2, NMSA 1978.) Or it probably would apply to aggravated battery which can be a misdemeanor if the injury(ies) inflicted is/are less severe. (See, Sect. 30-3-5(A), NMSA 1978.) However it is unclear which other crimes would be considered violent offenses. Some, like stalking (first offense) (See, Sect. 30-3A-3, NMSA 1978), harassment (See, Sect. 30-3A-2., NMSA 1978), enticement of a child (See, Sect. 30-9-1, NMSA 1978), arson (See, Sect. 30-17-5(A)—(C), NMSA 1978), telephone harassment (first offense) (See, Sect. 30-20-12(D), NMSA 1978), are considered violent by some people but not by all. And, depending upon the facts, some crimes like assaults on school officials, sports officials, and health care personnel (See, Sects. 30-3-9(B), 30-3-9.1(B) and 30-3-9.2(B), NMSA 1978) probably would be included but a number of other crimes are similar but it’s unclear if they would be considered violent offenses.

SB 200 is also confusing because it allows a variety of dispositions on most misdemeanor offenses “involving a crime of violence,” but specifically states it would apply to someone “convicted of a

misdemeanor offense involving assault, battery or battery against a household member.”

(Emphasis added) The first two of those listed offenses are petty misdemeanors but battery on a household member is not so that cannot be the applicable distinction. It is not clear if someone charged with one of those three specific offenses if an actual conviction would be required before they could lose their license. The bill could also lead to potential anomalies involving school personnel, sports officials and health care personnel (noted above) as opposed to regular or ordinary assaults involving other persons, and even a potential anomaly between regular battery on a household member and aggravated battery (misdemeanor) on a household member which frequently involves more significant injuries than simple battery on a household member. (See, Sect. 30-3-16(B), NMSA 1978) Since a concealed carry license could still be revoked or suspended if a crime of violence was involved, even for someone choosing an alternative disposition that did not result in a conviction, persons who must carry a firearm for work, e.g. police and private security personnel, could face losing their jobs. With more to lose than it's likely at least some of those persons would contest the charges so more resources would be needed for that litigation.

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.