

LFC Requester: _____

**AGENCY BILL ANALYSIS
2018 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. 18, 2018

Bill No: HB 29

Sponsor: William Rehm/Antonio Maestas

Agency Code: 264

Short Sentencing for Firearms In

Person Writing Gary Cade

Title: Non-Capital Felonies

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

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	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 29 would increase the sentence enhancement for the first time a firearm was used in the commission of a non-capital felony to three years, which must be the first three years served, but the sentence enhancement for first time use of a firearm could be suspended or deferred. The sentence enhancement would be increased to five years for the second felony when a firearm was used, which must be the first five years served, and that could not be suspended or deferred. Currently the enhancements are one year for the first time a firearm was used and three years for the second time, both of which must be the first sentence served, and neither enhancement can be suspended or deferred.

FISCAL IMPLICATIONS

Unknown. Because the sentence enhancements are an increase over the current enhancements, and enhancement for a second firearm enhancement cannot be deferred or suspended, HB may result in more people being incarcerated in the department of corrections. Any time there is an increase in sentences, more defendants are likely to litigate and go to trial instead of entering a plea so more pre-trial motions will be filed, and more cases could be tried in those criminal cases since prevailing on the use of a firearm might mean they could avoid incarceration, or at least get a lesser sentence. More litigation could contribute to a need for more judges, prosecutors, public defenders and, longer sentence may require more resources for the department of corrections.

SIGNIFICANT ISSUES

The sentence imposed for any crime that is not a capital or first degree felony may be deferred or suspended. See, Sec. 31-20-3(A)(B), NMSA 1978. Since HB 29 would permit someone found to have used a firearm for the first time when they committed a non-capital felony to have that enhancement also suspended or deferred, then even someone convicted of violent crimes that involved use of a firearm could have their entire sentence suspended or deferred, including crimes where someone was killed or seriously injured or in fear of being killed or seriously injured.

Among those crimes where the sentence could be deferred or suspended in its entirety, even if a firearm was used, could be second degree murder, aggravated battery causing great bodily harm (on an ordinary citizen, or household member or peace officer), aggravated assault with a firearm (on an ordinary citizen, a household member, school personnel, sports official, health care personnel, or peace officer), second degree kidnapping, second and third degree criminal sexual penetration, robbery, aggravated burglary, and others.

By way of comparison, federal statutes impose a much more severe penalty for use of a firearm in a crime of violence or drug trafficking. If a firearm used or carried in furtherance of those crimes an additional penalty of at least five years imprisonment is added; if it was brandished the additional penalty is seven years; and if the firearm was discharged the additional penalty is ten years. See, 18 U.S.C. Sec. 924(7)(c). If the firearm involved is a short barreled rifle or shotgun, or semi-automatic assault rifle, the minimum term is ten years, and if a machine gun, destructive device or firearm equipped with a silencer or muffler is used, the minimum sentence is 25 years. Second convictions for use of a firearm carry a minimum sentence of 25 years, unless the firearm was a machine gun, destructive device or equipped with a silencer or muffler and if so the penalty is life imprisonment. Id.

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