

---

**Bill Analysis 2020 Regular Session**

**SPONSORS:** Representatives William “Bill” Rehm, Gregg Schmedes, Candace Gould, Tim D. Lewis, and Rebecca Dow

**SHORT TITLE:** Enhanced Penalty for Firearm Used in Crime

**SYNOPSIS OF BILL:** Increases the current one-year sentence enhancement for a crime in which a firearm was used to three years. For a second or subsequent offense involving a firearm, increases the enhancement from three years to five.

**STRENGTHS:** Gun violence is a problem in our communities. With a goal of deterrence, HB 35 is intended to reduce gun violence.

**WEAKNESSES:** This bill triples the current first-time firearm enhancement and almost doubles the enhancement for a second-time offender. Moreover, many applicable cases involve multiple separate charges which are subject to the firearm enhancement where a firearm is present during a course of conduct. Each count is separately enhanced, quickly creating potential for 10 and 15-year enhancements, even for first time offenders. Firearm enhancements apply to all non-capital felonies, including lower-level third and fourth-degree felonies carrying three-year and eighteen-month sentences, respectively. HB 35 would triple a fourth-degree felony basic sentence and double a third-degree felony sentence. As noted, the enhancement can be applicable to multiple charges within a single case, adding 10, 15, or 20 years to a single sentence. This is a drastic increase. Moreover, the enhancement time is mandatory; a judge does not have discretion to suspend that prison time in favor of probation, no matter the circumstances. Meanwhile, an offender need not even pull the trigger to receive a firearm enhancement; not a single bullet need be fired.<sup>1</sup> This combination of factors means that HB 35 will significantly increase the incarceration rates in New Mexico’s prisons as an after-the-fact response to criminal conduct that does not narrowly address harmful acts of gun violence.

**ADDITIONAL INFO:** Rather than incarcerating after-the-fact, the only way to prevent gun violence is to make guns unavailable to high risk individuals. However, deterrence from penalties relies on offenders making deliberative choices. Unfortunately, far too many acts of gun violence result from intoxication, heat of passion, or fear, not the weighing of potential consequences. Still others are committed by individuals who simply are not deterred by prison sentences. Without requiring a gunshot or injury, this bill would increase the mandatory sentences in many cases by five-fold, ten-fold, or more for first-time gun offenders. The average annual cost to incarcerate an inmate is \$44,776 in a state-run prison and \$30,377 in a private prison. Any potential deterrent value is simply outweighed by the cost.

<b><u>S</u>afer</b>	<b><u>A</u>political</b>	<b><u>F</u>iscally-Responsible</b>	<b><u>E</u>vidence Based</b>	<b>Grade</b>
<p>Notably, this bill does not aim to deter underlying criminal conduct, only the use of a firearm when committing that crime.</p> <p>Once criminal activity is undertaken, most individuals will not be deterred as to method merely by an increased sentence.</p>	<p>Extreme increases in penalties, such as this drastic increase, are certainly intended to send a message to voters. However, for public safety results, proactive, rather than reactive solutions are more effective.</p>	<p>At between \$30,000 and \$45,000 per year per inmate, HB 35 would multiply the existing one-year enhancement by three and could do so on multiple counts per case, a cost primarily borne by the Corrections budget.</p> <p>Such penalty increases also lead to more cases going to trial, meaning additional burdens on the judiciary, prosecutors, and public defenders.</p>	<p>Increased sentences can result in some deterrence, but not drastic reductions in crime. Moreover, for something like an enhancement, the increase does nothing to deter the underlying crime; at most it only alters the method of committing the crime.</p> <p>There is little to suggest that this significant increase in incarceration rates would make New Mexico tangibly safer.</p>	<p><b>C</b></p>

1. *See State v. Zachariah G.*, 2019-NMCA-\_\_, ¶¶ 15-16, \_\_ P.3d \_\_ (No. A-1-CA-37584, Oct.1, 2019) (affirming a firearm was “used” when it remained concealed during a purely verbal interaction).