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**Bill Analysis 2020 Regular Session****SPONSOR:** Representatives Rehm, Schmedes, Lewis, Dow and Fajardo**SHORT TITLE:** Firearms & Controlled Substance Penalty**SYNOPSIS OF BILL:** Creates a new crime for the unlawful carrying of a firearm while trafficking a controlled substance. HB114 would make the unlawful carrying of a firearm while trafficking a controlled substance a third degree felony.**WEAKNESSES:** Gun violence and substance abuse are persistent problems in our state. However, decades of tough on crime policies that crack down on drug dealers and people with guns have done nothing to make our communities safer.

Trafficking of a controlled substance is already a second degree felony for a first offense and a first degree felony for a second offense. Second degree felonies carry a basic sentence of nine years while a first degree felony carries a mandatory sentence of eighteen years. HB114 would create a new, additional crime carrying a three year basic sentence in addition the sentence for trafficking if the person were in possession of a firearm. As drafted, the firearm need not be used, fired, or even displayed in order to count as a separate distinct crime. Existing law already provides for penalty enhancements when a firearm is used in the commission of a non-capital felony. The enhancement carries a mandatory one year for a first offense, or three years for a second offense. This time must be served and may not be suspended or deferred.

According to the United States Department of Justice, increasing the severity of punishment does little to deter crime. In fact, long prison sentences may actually have the exact opposite effect. Since the War on Drugs began, the United States prison population has skyrocketed to the highest in the world, disproportionately impacting black and brown people while costing taxpayers billions of dollars.<sup>1</sup> Meanwhile, illicit drug use continues unabated. If these last few decades have taught us anything, it is that we cannot incarcerate our way out of a public health crisis.

**ADDITIONAL INFO:** Increasing the severity of punishment does little to deter crime. To clarify the relationship between the severity of punishment and the deterrence of future crimes, it is important to understand:

- The lack of any “chastening” effect from prison sentences,
- That prisons may exacerbate recidivism,
- The different impacts of the certainty versus the severity of punishment on deterrence, and
- That individuals grow out of criminal activity as they age.

More severe punishments do not “chasten” individuals convicted of crimes. Some policymakers and practitioners believe that increasing the severity of the prison experience enhances the “chastening” effect, thereby making individuals convicted of an offense less likely to commit crimes in the future. In fact, scientists have found no evidence for the chastening effect.<sup>2</sup>

<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>
There is little to no evidence that longer prison sentences deter crime. Existing law already provides for stiff penalties for someone convicted of trafficking, let alone if the sentence is increase for possessing a firearm.	This bill is typical of the myriad “tough on crime” bills aimed at cracking down on the War on Drugs. While tough approaches such as this may play well at the ballot box, they are ineffective at best.	At between \$30,000 and \$45,000 per year per inmate, HB114 would potentially create even longer sentences for people convicted of this crime, a cost primarily borne by the Corrections budget. Such penalty increases also lead to more cases going to trial, meaning additional burdens on the judiciary, prosecutors, and public defenders.	There is zero evidence to suggest that this increase in penalties and lengthy sentences would make New Mexico safer. In fact, decades of failed tough on crime policies have shown us that they have little to no effect on the consumption of illicit drugs.	<b>F</b>

1. See for instance, The Sentencing Project, Racial Disparity and Drug Policy at <https://www.sentencingproject.org/issues/>
2. United States Department of Justice, National Institute of Justice, “Five Things About Deterrence” (May 2016) see <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>