

Bill Analysis 2020 Regular Session

SPONSORS: Representatives Rehm, Hochman-Vigil, Matthews, et al.

SHORT TITLE: The Safer Communities Act*

SYNOPSIS OF BILL: 1) Expands permissible expenditures from the Law Enforcement Protection Fund for officers engaged in community policing; 2) Increases penalty for felon in possession of a firearm from a fourth to a third degree felony; 3) increases range of penalties for brandishing a firearm in the commission of a noncapital felony; 4) creates presumption that PTSD is proximately caused by employment as a law enforcement officer or emergency medical services first responder.

STRENGTHS: Gun violence is an issue in our communities and this bill is one of many policy proposals under consideration to address that issue. This bill clarifies that penalty enhancements for a firearm used in the commission of a crime apply when the gun is “brandished” as opposed to simply when a person “uses” a firearm, however minimally. The bill also makes penalty enhancements for brandishing a firearm discretionary instead of mandatory.

Additionally, law enforcement and emergency first responders are regularly exposed to trauma. Trauma should be more widely acknowledged in the work police and first responders are asked to do and creating a presumption of PTSD from their employment is an important step in that direction.

WEAKNESSES: Existing state and federal law already penalizes, as a felony, the possession of a firearm by a felon. HB19 (Gentry, Ivey-Soto) was signed into law in 2018 by Governor Martinez and created an enhanced penalty for violent offenders in possession of a firearm. This bill increases the basic sentence for simple possession of a firearm by a felon (including non-violent felonies) from a fourth degree felony to a third degree felony. The basic sentence for a fourth degree felony is eighteen months imprisonment while a third degree felony carries a basic sentence of three years.

This bill also triples the current first-time firearm enhancement and almost doubles the enhancement for a second-time offender when a firearm is “brandished” in the commission of a non-capital felony. While the penalty would be discretionary, the firearm enhancements would apply to all non-capital felonies, including lower-level third and fourth-degree felonies carrying three-year and eighteen-month sentences, respectively. This bill would potentially triple a fourth-degree felony basic sentence and double a third-degree felony sentence. The enhancement can be applicable to multiple charges within a single case, adding 10, 15, or 20 years to a single sentence, and could potentially dramatically increase penalties.

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;
- Increased sentences do little to nothing to deter crime; and;
- That most 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.¹

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Existing state and federal law already makes simple possession of a firearm a felony and it is unclear how this increased penalty would improve public safety outcomes.	Gun violence is an issue in our communities, but since existing law already makes it a felony for a felon to possess a firearm, this bill appears to be designed to send a message to voters. Symbolic legislation that does nothing to increase public safety is part of the reason why we have a system of mass incarceration in the U.S.	The Corrections budget would primarily bear the cost of the increased penalties at between \$30,000 and \$45,000 per year per person. Such penalty increases also lead to more cases going to trial, meaning additional burdens on the judiciary, prosecutors, and public defenders.	There is little evidence to suggest that this increase in incarceration rates would make New Mexico any safer. In fact, the United States Department of Justice and the New Mexico Legislative Finance Committee have both highlighted the fact that stiffer penalties do little to nothing to deter crime. ² Rather than increased penalties, swiftness, certainty, and addressing root causes are key for crime reduction.	C

1. United States Department of Justice, National Institute of Justice, “Five Things About Deterrence” (May 2016) see <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>
2. New Mexico Legislative Finance Committee Review of the Criminal Justice System in Bernalillo County, Report # 18-05, July 19, 2018.