
Bill Analysis 2018 Regular Session**SHORT TITLES and SPONSORS:**

HB19 Increase Penalty for Felon with Firearm (Representative Nate Gentry)

HB 25 Increased Penalty for Felon with Firearm (Representative Bill Rehm)

HB 29 Use of Firearm Sentencing Enhancements (Representatives Bill Rehm and Moe Maestas)

SYNOPSIS OF BILL: HB 19 increases the penalty for a person in possession of a firearm that has previously been convicted of a serious violent offense. HB 25 increases the penalty for in possession of a firearm that has previously been convicted of a felony. HB 29 increases the current one-year sentence enhancement for a non-capital crime in which a firearm was used to three years. For a second or subsequent offense involving a firearm, HB 29 increases the enhancement from three years to five years.

WEAKNESSES: Gun violence is an issue affecting New Mexico, but prosecutors already have sentencing enhancements available to them for the use of a firearm in commission of a felony. These bills each increase penalties from the already existing penalties on the books. Firearm enhancements apply to all non-capital felonies, including lower-level third and fourth-degree felonies carrying three-year and eighteen-month sentences, respectively. An enhancement can be applicable to multiple charges within a single case, adding many 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. This combination of factors means that these bills could 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 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, fear, or not weighing the 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 three-fold or more for first time gun offenders. In 2015, the average annual cost to incarcerate an inmate in a state run prison in the United States was \$33,274 and in New Mexico it was \$36,832.¹ Any potential deterrent value is simply outweighed by the cost.

<u>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
<p>Notably, this bill does not aim to deter underlying criminal conduct, only the use of a firearm when committing that crime. 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 three-fold increase certainly send a message to voters. However, for public safety results, proactive, rather than reactive solutions are more effective.</p>	<p>The average annual cost per inmate in New Mexico of over \$36,000 is already significant. These bills would incarcerate more people for longer periods of time. Such penalty increases also lead to more cases going to trial, meaning additional burdens on the judiciary, prosecutors, and public defenders. While gun violence is an issue in our communities, we should insist our tax dollars go to solutions that will truly make a difference.</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. There is little to suggest that this significant increase in incarceration rates would make New Mexico any safer.</p>	<p>C</p>

¹ Mai, Chris and Ram Subramanian. 2017. "The Price of Prisons: Examining State Spending Trends, 2010-2015." Vera Institute of Justice. Retrieved: <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends>