

LFC Requester:	Theresa Rogers
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**AGENCY BILL ANALYSIS
2016 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: Date January 28, 2016
Original **Amendment** **Bill No:** HB 267
Correction **Substitute**

Sponsor: Rep. Javier Martinez **Agency Code:** 305
Short Violent Misdemeanant **Person Writing** Greer Rose, AAG
Title: Possession of Firearms **Phone:** 505-222-9034 **Email** grose@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	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

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

This bill adds to the prohibition of possession of firearms by felons, by including “violent misdemeanants” from possession of firearms. “Violent Misdemeanant” is defined in the bill as a person convicted of a misdemeanor from a list of 36 misdemeanor crimes. It also makes minor grammatical changes to the existing bill.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Article XI, Section 6 of the New Mexico Constitution provides that “[n]o law shall abridge the right of the citizen to keep and bear arms for the security and defense, for lawful hunting and recreational use and for other lawful purposes...”

In *District of Columbia, et. al, v. Heller*, the U.S. Supreme Court held that “[t]he Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.” *Heller*, 54 U.S. 570; 128 S. Ct. 2783. *Heller* further stated that the right to bear arms is not unlimited, and affirms longstanding interpretations such as preventing felons and the mentally ill from possession firearms as constitutional. *Id.*

The New Mexico Court of Appeals has considered whether a prohibition of switchblade knives was an infringement of the State Constitution under Article XI, Section 6. The court held that the government must show that the statute is substantially related to an important government purpose, and in that case, pointed to specific findings that a switchblades are most often used for a criminal purpose, and therefore the government was not violating the constitution by this narrow limitation of banning switchblade knives. *State v. Murillo*, 2015 -NMCA- 046.

The bill as written includes 36 misdemeanor convictions that would prevent gun possession

within 10 years of the conviction or end of the sentence or probation period. Some of the included misdemeanor crimes serving as the basis for prohibition of gun possession, such as Battery Upon a Household Member, Battery and Stalking, may very well withstand a constitutional challenge under the case law. However, some of the included misdemeanors are not necessarily violent offenses, based on the facts, such as Disturbing a Lawful Assembly, or Disorderly Conduct. If later challenged, this bill may be found unconstitutional if the state cannot show how the conviction and subsequent prohibition on firearm possession is related to an important government purpose. This may weaken the strength of the bill should this section be attacked as a whole.

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