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## FISCAL IMPACT REPORT

**SPONSOR** Herndon/Stewart/Roybal Caballero/Sedillo **LAST UPDATED** \_\_\_\_\_  
Lopez/Ferrary **ORIGINAL DATE** 1/23/2023  
**SHORT TITLE** Unlawful Access to Firearm by Minor **BILL NUMBER** House Bill 9  
**ANALYST** Rabin

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$0.0	At least \$26.6	At least \$37.6	At least \$64.2	Recurring	General Fund
Costs to County Jails	Indeterminate but minimal	At least \$9.6 to \$19.2	At least \$9.6 to \$19.2	At least \$19.2 to \$38.4	Recurring	County General Funds

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)  
 New Mexico Attorney General (NMAG)  
 Sentencing Commission (NMSC)  
 Department of Health (DOH)  
 Corrections Department (NMCD)  
 Department of Public Safety (DPS)

## SUMMARY

### Synopsis of House Bill 9

House Bill 9 creates two new crimes: the crime of negligently making a firearm accessible to a minor (a misdemeanor, punishable by up to a year in jail) and the crime of negligently making a firearm accessible to a minor resulting in great bodily harm or death (a fourth degree felony, carrying an 18-month prison sentence).

Both crimes require the person charged with the crime to have kept or stored the firearm "in a manner that negligently disregards a minor's ability to access the firearm." If, in such circumstance, a minor accesses a firearm and unlawfully displays or brandishes the firearm in a threatening manner or causes injury to another person *not* resulting in great bodily harm or death, the person who stored the firearm is guilty of the crime of negligently making a firearm accessible to a minor. If the minor in question instead uses the firearm in a manner that causes

great bodily harm or death to another person, the person who stored the firearm is guilty of the crime of negligently making a firearm accessible to a minor resulting in great bodily harm or death.

The bill further specifies the new crimes do not apply in the following circumstances:

- The firearm is kept in a locked container and is securely stored or in a location a reasonable person would believe to be secure;
- The firearm is carried on the person or within close proximity to the person;
- The firearm is locked with a safety device that renders it inoperable;
- A minor obtains the firearm in the course of self-defense or defense of another; or,
- A minor obtains the firearm as a result of illegal entry to the premises.

The bill also specifies evidence the person attended a firearm training course prior the incident shall be considered a mitigating factor in any action, proceeding, trial, or sentencing with regard to these crimes, and the bill does not preclude claims under other sections of law or civil actions.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed.

## FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. HB9 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

Overall, this analysis estimates HB9 will result in increased annual incarceration costs of at least \$37.6 thousand to the state and between \$9,614 and \$19.2 thousand per year to counties. Costs to the state are estimated to be at least \$26.6 thousand in FY25 and will rise to \$37.6 thousand in FY26 and future fiscal years. More detailed information on these calculations is provided below.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under HB9, are not included in this analysis, but could be moderate.

***Detail of Incarceration Cost Calculations.*** Negligently making a firearm accessible to a minor: The proposed new crime of negligently making a firearm accessible to a minor is a misdemeanor, punishable by up to a year in jail; for purposes of this analysis, it is estimated an individual could spend between six months and one year incarcerated for this offense. Based on the marginal cost of each additional inmate in New Mexico's jail system, each offender

sentenced to jail for this crime could result in estimated increased costs of \$9,614 to \$19.2 thousand to counties.

It is difficult to estimate how many individuals will be charged, convicted, or get time in prison or jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to jail each year for this crime, a cost of \$9,614 to \$19.2 thousand. To account for time to adjudication, these costs are not anticipated to be incurred until one year after the bill takes effect, in FY25; however, a minimal cost may apply in FY24 for individuals who are detained for some period of time prior to adjudication.

Negligently making a firearm accessible to a minor resulting in great bodily harm or death: The proposed new crime of negligently making a firearm accessible to a minor resulting in great bodily harm or death is a fourth-degree felony, which carries an 18-month prison sentence; the Sentencing Commission estimates the average length of time served by offenders released from prison in FY21 whose highest charge was for a fourth-degree felony was 516 days. Based on the marginal cost of each additional inmate in New Mexico's prison system, each offender sentenced to prison for this crime could result in estimated increased costs of \$37.6 thousand to NMCD.

It is difficult to estimate how many individuals will be charged, convicted, or get time in prison or jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to prison each year for this crime, a cost of \$37.6 thousand. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred in the first year of incarceration, while the cost of the remaining 151 days (\$11 thousand) would be incurred in the second year of incarceration. To account for time to adjudication, no costs are anticipated to be incurred until one year after the bill takes effect, in FY25. Because the estimated time served is greater than one year, costs are anticipated to increase in FY26, as an offender admitted in FY25 serves the remainder of their term and another offender is admitted, but will level out that same year (as offenders begin to be released from prison) and remain level in future fiscal years.

## SIGNIFICANT ISSUES

**Gun Violence and CAP Laws.** The Department of Health (DOH) reports New Mexico's rate of firearm-related deaths in children under 18 years old between 2018 and 2022 was 4.7 deaths per 100 thousand residents, 81 percent higher than the national average of 2.6 deaths per 100 thousand residents and the seventh highest in the nation.<sup>1</sup> DOH further reports the 2021 New Mexico behavioral risk factor surveillance system found almost 35 percent of households in New Mexico with at least one child had a firearm in the home, and 11.5 percent of those households had firearms that were stored unlocked and loaded.

Evidence shows child-access prevention (CAP) laws, or safe storage laws, may improve public safety. According to a 2023 meta-analysis of research evidence on the effects of gun policies in the United States from the RAND Corporation:<sup>2</sup>

We find supportive evidence, our highest evidence rating, that child-access prevention (CAP) laws, or safe storage laws, reduce self-inflicted fatal or nonfatal

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<sup>1</sup> <https://wonder.cdc.gov/ucd-icd10.html>

<sup>2</sup> [https://www.rand.org/pubs/research\\_reports/RRA243-4.html](https://www.rand.org/pubs/research_reports/RRA243-4.html)

firearm injuries, including unintentional and intentional self-injuries, among youth. In this update to our review, there is also supportive evidence that these laws reduce suicides among young people, supportive evidence that such laws reduce firearm homicides among young people, and moderate evidence that they reduce firearm suicides for this group. There is also supportive evidence that CAP laws reduce unintentional firearm injuries and deaths among children, and limited evidence that they reduce unintentional firearm injuries among adults.

The RAND Corporation analysis and other research investigating the impact of CAP laws emphasize the distinction between negligence CAP laws and recklessness CAP laws. Negligence CAP laws are considered weaker than recklessness CAP laws. According to a study on the impacts of CAP laws on firearm fatalities in children under 14 published in 2020 in the pediatric medical journal *JAMA Pediatrics*, “[N]egligence laws were associated with relative reductions in firearm fatality rates in children aged 0 to 14 years. The most stringent negligence laws were associated with the largest reductions in unintentional firearm fatalities. Recklessness laws were not associated with reduced firearm fatality rates.”<sup>3</sup> HB9 proposes to create a negligence CAP law.

**Scope.** The office of the New Mexico Attorney General (NMAG) emphasizes “this bill does not provide for a felony charge if the minor discharges that weapon at people and DOES NOT strike a person with the projectile, or if the minor shoots at dwellings, animals, etc.”

## TECHNICAL ISSUES

More precise definitions of the following terms and phrases could help avoid legal ambiguity, especially as criminal statutes are strictly construed *against* the state:

- “securely stored” (page 2, line 23)
- “close proximity” (page 3, line 2)
- “attended” (page 3, line 8)
- “firearm safety training course” (page 3, lines 8-9)
- “mitigating” (page 3, line 10)

NMAG notes potential issues with the term “negligently disregards” (page 1, line 25, and page 2, line 12), which the office writes “may not provide sufficient clarity on the type of intent or *mens rea* required to prosecute offenders.”

The Public Defender Department (PDD) notes “Subsection E is not entirely clear about whether it authorizes only authorizes civil and administrative penalties on top of criminal penalties for HB9, or whether a person may be convicted and sentenced for the crimes in HB9 in addition to other crimes. Assuming that the penalties for HB 9 stack on top of existing criminal penalties, the likely effect of this bill would be to add 12 to 18 months to existing penalties in applicable cases.”

The Administrative Office of the District Attorneys (AODA) notes: “Subsection C (1) states that the firearm ‘was either securely stored or kept in a location that a reasonable person would

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<sup>3</sup> <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2761305>

believe to be secure.’ In practice, those two options mean the same thing. Unless there are other requirements, the reasonable person standard is what determines whether the firearm was ‘securely stored’ in a specific location.”

## OTHER SUBSTANTIVE ISSUES

**Legal Concerns.** PDD, AODA, and NMAG all raise concerns regarding Subsection D’s provision that attending a firearm safety course “shall be considered a mitigating factor” in prosecutions. The term “attendance” is not defined and could be interpreted broadly. NMAG notes the mitigation factor would likely automatically apply to anyone with a concealed carry permit, and AODA raises the possibility that someone who only attended a course for a couple of hours might have the mitigation factor applied.

Both AODA and PDD note adults who knowingly provide children with guns can be prosecuted for more serious crimes. AODA explains: “[t]his section covers those adults who may be unaware of a minor’s access to their weapon. It would nudge otherwise responsible gun owners to securely store their firearms rather than face criminal sanction.” PDD further notes the conduct prohibited by this bill could currently be prosecuted as contributing to the delinquency of a minor, a fourth-degree felony.

PDD raises concerns that “a negligence standard is a low standard of mental culpability for criminal liability, which typically requires actual knowledge or recklessness.”

AODA notes this law may be challenged under the Second Amendment, but thinks it would be likely to survive such a challenge.

NMAG notes: “There should be an update to the NMAC 10.8.2.1 et al. and NMSA §29-19-4 to allow for the revocation of a concealed carry license for a violation of this provision. Currently, the NMAC concealed carry provisions and NMSA §29-19-1 et al. have enumerated crimes and conduct that would result in revocation and they would likely need to be updated to reflect this crime.”

ER/rl/ne/mg