

LFC Requester:

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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:

Original **Amendment** _____
Correction _____ **Substitute** _____

Date January 21, 2025
Bill No: HB 31-280

Sponsor: Joy Garratt
Short Title: Fourth Degree Felony for Shooting Threat

Agency Name and Code Number: 280-Law Offices of the Public Defender
Person Writing: Nina Lalevic
Phone: 505-395-2890 **Email:** Nina.lalevic@lopdm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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

The crime of “Making a shooting threat” is currently a misdemeanor punishable by up to one year pursuant to a new statute enacted in 2022. This bill proposes to increase that punishment to a fourth degree felony punishable by 18 months in prison.

FISCAL IMPLICATIONS

Defendants are generally more likely to go to trial to defend against felony charges, rather than to accept a plea. Because this crime already exists and would now be punished more severely, analyst believes there would be a workload impact for LOPD, but it would not be as significant as with the creation of a new crime. Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

SIGNIFICANT ISSUES

In 2022, SB 34 was introduced and proposed creating the new crime of making shooting threats. Initially, it proposed to punish the crime as a felony, as does HB 31. Eventually, the bill was amended to a misdemeanor, and thus became part of HB 68, an omnibus crime bill which passed and was signed into law. The misdemeanor shooting threat crime was chaptered as NMSA 1978, § 30-20-16 (B) and (D) (2022). Now, HB 31 proposes to go back to the original bill version and make that offense a felony.

Because school shootings (which are themselves punished under a different statute) have unfortunately become common in our society, the Legislature enacted a crime to deter and punish them. However, criminal law tends to tie punishment to multiple factors, including mental culpability, actions taken, and resulting harm. This law punishes the conduct as a misdemeanor, likely in recognition that the criminal conduct includes insincere threats, even when no actions support the words and no shooting was actually intended or results. If this bill becomes law, these threats would be charged and punished as felonies.

Felonies also carry collateral consequences that misdemeanors do not, including subjecting offenders to “habitual offender enhancements” that can have significant impacts on the resulting sentence, including requiring mandatory prison time in most cases. This not only compounds the fiscal implications outlined above, but is consistent with the law’s differentiation between misdemeanor and felony conduct, the latter of which is reserved for serious offense (in the terms discussed above, involving mental culpability, acts undertaken, and resulting harm).

The mental culpability for “shooting threats” requires a person act with an intent to cause fear, interrupt activities, or cause a law enforcement response. There is no harm required; the intended harm does not need to occur. The “act” requirement is to “communicate” a person’s intent to “bring a firearm to a property or use the firearm”; despite the name of the offense, it does *not* require communicating an intent to *discharge* a firearm or to *shoot* any person.

In the grand scheme of the criminal code, the existing misdemeanor penalty is appropriate. At the time the 2022 bill was proposed, a number of issues with felonizing this crime were pointed out. Most of these are still true:

- 1) First, the elements of the shooting threat offense are different from those of the bomb threat subsection. For example, unlike the bomb threats portion of statute, shooting threats must “place a person or group of persons in fear of great bodily harm.” It does not, however, require that a person or group experience fear. Assault under NMSA 1978, Section 30-3-2, if the threat is of an imminent battery, requires that the victim actually experience fear of imminent great bodily harm. Here, there is no requirement of imminence and no requirement that a person actually suffer the intended fear. Thus, a threat to shoot someone ten years from now would violate the proposed offense even if the threatened person did not experience fear.
- 2) Similarly, the second and third alternatives only require that the person makes a threat “with the intent to” disrupt occupation or use of a building or cause an emergency response. It does not require that the disruption actually occur or that emergency responders actually react.
- 3) It is currently a misdemeanor (when it is a first offense) to use a telephone to threaten to inflict injury or physical harm to the person or property of any person. See NMSA 1978 § 30-20-12. With the proposed elements of this crime, there are likely to be double jeopardy problems.
- 4) The 2022 analysis pointed out that children are most likely to be offenders under this statute, as they are least likely to understand the gravity of an insincere statement that may sound like a threat. Children, however, can be brought into the system under the Children’s Code and treated to rehabilitation without the need for felonizing thoughtless behavior. Although the SJC amendment reduces the penalty to a misdemeanor, both misdemeanors and fourth-degree felonies are treated as “delinquent acts” for juveniles, presenting no possibility of an adult sentence. For juvenile defendants, the amendment has no practical consequence.
- 5) As the 2022 analysis predicted, children have, at least recently, been the people charged with this crime. Google search results for “making a shooting threat New Mexico” show that every recent reported case involves a teenager.

- 6) Finally, criminalizing the communication of someone's "intention" to commit an act without additional elements of a crime (i.e. showing the words had an effect) may have First Amendment freedom of speech implications).

PERFORMANCE IMPLICATIONS

See supra Fiscal Implications.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None noted.