

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(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}

Date Prepared: February 10, 2025 *Check all that apply:*
Bill Number: HB 278 Original _ Correction ___
 Amendment ___ Substitute ___

Sponsor: Nicole Chavez
Short Title: Voluntary Manslaughter Exclusions

Agency Name and Code Number: Administrative Office of the District Attorneys
Person Writing: M. Anne Kelly
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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 revenue 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

Synopsis:

Section 1 amends Section 30-2-3 entitled “Manslaughter” to the following:

Subsection A which defines voluntary manslaughter as “manslaughter committed upon a sudden quarrel or in the heat of passion” to include the following language “except that a sudden quarrel or heat of passion shall not include any conduct in the course of or during an escape from the commission of a felony offense or while resisting a lawful arrest by a law enforcement officer or other person.”

Subsection B which defines involuntary manslaughter changes “which” to “that.”

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.

None noted.

SIGNIFICANT ISSUES

Under current New Mexico law, the difference between second degree murder and voluntary manslaughter is the presence of provocation. *Compare* UJI 14-210 and 14-211 (second degree murder with voluntary manslaughter as a lesser included offense and second degree murder without voluntary manslaughter as a lesser included offense). *See also* UJI 14-222 (definition of sufficient provocation as “any action, conduct or circumstances which arouse anger, rage, fear, sudden resentment, terror or other extreme emotions. The provocation must be such as would affect the ability to reason and to cause a temporary loss of self control in an ordinary person of average disposition. The ‘provocation’ is not sufficient if an ordinary person would have cooled off before acting.”).

This bill seeks to except two distinct courses of conduct from being considered as provocation.

Recently, the Court of Appeals held in a split decision that a second degree murder conviction should be reversed for failure to give a voluntary manslaughter instruction even though the defendant had initiated the fatal encounter by attempting to rob the victim at an ATM. *State v. Chavez*, 2022-NMCA-007, 504 P.3d 541. The dissent strongly argued that the defendant was not entitled to a self-defense instruction as the first aggressor and that:

Imperfect self-defense is itself akin to a lesser included instruction insofar as an element of ordinary self-defense - that being the requirement that a defendant act reasonably in employing self-defense - is missing. But in my view, prohibitions limiting the availability of general self-defense well illuminate why imperfect self-defense has no place in a case

such as this, where felonious aggressors who ultimately, if not initially, take lives having first committed inherently dangerous felonies should not be provided a tool of law to escape full fault for the natural consequences of those acts.

I urge that the Court accept certiorari in this case and to clarify that acting lawfully in the context of imperfect self-defense excludes circumstances where an initial aggressor commits an underlying felony. In my view, New Mexico Supreme Court Justices or lawmakers should determine whether imperfect self-defense may be employed to mitigate the criminal liability of defendants who kill citizens who exercise lawful force to repel violent and felonious criminal acts.

Id. ¶¶ 56, 60 (Hanisee J., dissenting). The New Mexico Supreme Court quashed its writ of certiorari and did not answer the questions in the dissent.

To the extent that the phrase of “action . . . in the course of or during the escape from a commission of a felony offense” is intended to answer this question, and provide that felonious aggressors are not entitled to a sufficient provocation instruction, the language is not entirely clear and could cause some confusion as to what constitutes an “escape from the commission of a felony offense.”

As to the language that a lawful arrest by a law enforcement officer or another person does not qualify as a sudden quarrel or heat of passion, there are New Mexico cases that have addressed this. In *State v. Chamberlain*, 1991-NMSC-094, 112 N.M. 723, law enforcement officers arrived at the defendant’s house in response to a call from a female prostitute who alleged defendant had been beating her. When they arrived and wanted to continue their search in the defendant’s bedroom, the defendant shot and killed one of the officers. Defendant received jury instructions on self-defense, provocation, and voluntary manslaughter. However, he claimed he was also entitled to instructions “to support his theory that the police officer’s unconstitutional presence at his home constituted provocation so as to reduce murder to manslaughter” because he had withdrawn his consent to the search and the police remained. *Id.* ¶ 18. The Court disagreed and held that “[e]ven if [defendant] had terminated his consent to search, and even if the officers would not have had probable cause to continue the search, [the officer] was acting within the scope of his official duties when he continued the search. If the search had been illegal, there are remedies within the law to protect appellant’s rights. Those remedies do not include resort to self-help measures.” *Id.* ¶ 25. *See also State v. Manus*, 1979-NMSC-035, ¶ 17, 93 N.M. 95 (“A law enforcement officer performing lawful acts in the discharge of his duty is engaged in the exercise of a legal right. Acts of a peace officer exercising his duties in a lawful manner cannot rise to the level of sufficient provocation.”); *State v. Martinez*, 1982-NMCA-020, ¶ 4, 97 N.M. 540 (there must be evidence that the police officer victim action’s “were not in the exercise of his duties in a lawful manner” in order to warrant an instruction on sufficient provocation).

The section also includes a lawful arrest “by another person” which seemingly contemplates a citizen’s arrest. *See* NMSA 1978, § 31-4-13 (“The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year[.]”).

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

n/a