

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: February 14, 2025

Check all that apply:

Bill Number: HB 309

Original Correction
Amendment Substitute

Sponsor: Rep. Joseph L. Sanchez
Rep. Randall T. Pettigrew

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

Short Title: Removing Unlawful
Occupants From Property

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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 – N/A

Duplicates/Relates to Appropriation in the General Appropriation Act – N/A

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: House Bill 309 (“HB309”) relates to property crime. It creates a mechanism by which a real property owner or the owner’s authorized agent can request that a police department or sheriff’s office remove anyone unlawfully occupying their real property. The bill seeks to amend the criminal damage to property statute and creates a civil cause of action for someone who is removed.

Each Section is summarized below:

Section 1 adds a new section to Chapter 31, Criminal Procedure, for the *immediate* removal of unlawful occupants. It defines "unlawfully occupying" as “a crime constituting trespassing pursuant to Chapter 30, Article 14 NMSA 1978 “

The requirements are:

- (1) the requester is the property owner or authorized agent of the property owner;
- (2) the real property that is being occupied includes a residential dwelling;
- (3) the purported unlawful occupant or occupants entered without permission from the property owner or the authorized agent of the property owner and continuously reside on the real property in question;
- (4) the real property was not open to members of the public at the time the unlawful occupant or occupants entered;
- (5) the property owner or authorized agent of the property owner has directed the unlawful occupant or occupants to leave the real property;
- (6) the unlawful occupant or occupants are not current or former residents of the real property at issue pursuant to a written or oral rental agreement pursuant to the Uniform Owner-Resident Relations Act;
- (7) the unlawful occupant or occupants are not immediate family members of the property owner; and
- (8) there is no pending litigation related to the real property between the property owner and any known unlawful occupant or occupants.

A verified complaint must be made a police station or sheriff’s office in the county where the real property is located. The statute prescribes the form of the complaint, which tracks the requirements’ text closely, with the following notable differences (emphasis added):

- (2) “the real property is a residential dwelling” [vs. “includes a residential dwelling]

(3) “an unlawful occupant trespassed, pursuant to Chapter 30, Article 14 NMSA 1978, and is residing unlawfully on the real property” [referring to a defined crime of trespass vs. the language in the requirements].

(7) the occupants are not “current or former tenants constituting holdover tenants pursuant to a rental agreement between the property owner and that tenant” [vs. simply not current or former tenants]

(8) the unlawful occupant or occupants sought to be removed are not owners or co-owners of the property and are not lawfully listed on the title to the property [not one of the 8 requirements listed]

(9) there is no pending litigation involving the real property between the property owner and any person sought to be removed [vs. against any known unlawful occupant].

The complaint includes a request for immediate removal, an acknowledgment that the “unlawful occupant” may bring a cause of action against the owner or authorized agent, and requires a copy of identification or documents showing power to act as agent for the property owner. The complaint is signed under penalty of perjury.

Section 2 adds another new section to Chapter 31, Criminal Procedure, describing the process for law enforcement officers in removing unlawful occupants. First, law enforcement must verify that the petitioner is the owner of record of the property or is an authorized agent. Second, law enforcement must serve notice to *immediately vacate* on all unlawful occupants to the unlawful occupants and “put the petitioner in actual possession of the property”. Next, they must attempt to verify the identity of all unlawful occupants. Lastly, they “may arrest any person found on the real property for trespass, outstanding warrants or any other legal cause, where warranted”.

Service is specifically allowed only be hand delivery to the occupant or by posting the notice on the front door or entrance of the real property.

The property owner/agent may also request the peace officer to stand by while locks are changed and personal property is removed—the police station or sheriff’s office is allowed to “charge a reasonable fee, and the person requesting the peace officer to stand by is responsible for paying the fee”. The bill also immunizes the owner/agent from damages to the occupant’s personal property unless the removal was “wrongful.”

Finally, there is language indicating this section does not limit property owners’ rights or the ability of peace officers to arrest for any crimes.

Section 3 amends Chapter 30, Article 15, Criminal Damage to Property. The amendment removes the gendered language “he” and replaces it with “the person.” It also makes criminal damage to property greater than \$1,000 a second degree felony, instead of a fourth.

Section 4 adds a new section to Chapter 42, Article 4, to create a civil cause of action for an occupant who is unlawfully removed from real property.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

HB309 appears to take what is already a judicial determination and grants power over it to any peace officer in the state. As referenced in Section 4, ejectment is already a statutorily enshrined cause of action in the civil courts NMSA 1978, Sections 42-4-1 to -30. NMSA 1978, Sections 35-10-1 to -6 allow an action for forcible entry and detainer for, among other grounds, when “the

defendant enter[s] and occupy[s] the lands and tenements of another against the will or consent of the owner and refuse[s] to vacate the premises after notice by the owner or his agent or attorney.” NMSA 1978, Section 35-10-1 (A)(1). The Uniform Owner-Resident Relations Act under NMSA 1978, Section 47-8-1 to -52, extensively covers the relationship between residential tenants and property owners, including Section 47-8-49, which states “The laws and procedures of New Mexico pertaining to complaints of unlawful and forcible entry shall apply to actions for possession of any premises not subject to the provisions of the Uniform Owner-Resident Relations Act or the Mobile Home Park Act.” HB309 appears to create an entirely new *non-judicial* eviction procedure which either supplants or interacts with the existing law in untested ways.

Constitutional issues:

Article III, Section I of the New Mexico Constitution establishes the three departments of the legislative, executive, and judicial, and states that “no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.”

The executive branch, and by extension peace officers generally, are tasked with carrying out the laws, while the judiciary is tasked with resolving disputes or disagreements under the laws. There are also many administrative departments with boards and commissions that are responsible for certain areas of the law, such as licensing, environmental improvement, etc. These boards act in a quasi-judicial capacity, but are required to promulgate rules of procedure, hold disputed hearings when requested, and their decisions are appealable to the District Courts. HB309 would essentially create a quasi-judicial authority for any peace officer, without any procedure or ability to appeal a decision. Referencing an existing right to bring an independent civil action is not a substitute for a judicial appeals process or for *any* procedural protections. This odd situation is illustrated by having the property owner/agent fill out a “verified complaint,” which is a procedure that invokes the judicial process or the administrative hearings process. However, as noted above, there is no adjudicative process to accompany the complaint.

Both Article II, Section 18 of the New Mexico Constitution and Amendment XIV, Section 1 of the United States Constitution provide a right to due process. “No person shall be deprived of life, liberty or property without due process of law” N.M. Const., art. II, § 18, and “nor shall any State deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. The United States Supreme Court has addressed due process many times and has stated “there can be no doubt that at a minimum [it] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313, (1950). There is no question that losing access to the place someone claims as their residence is a deprivation of life, liberty, or property. However, under HB309 the “unlawful occupant” is immediately dispossessed. The “notice” does not impart any protection when the notice is to “immediately vacate” the property. There is no procedure for the individual living at the property to object, only to file an entirely separate civil action after the fact.

New Mexico Constitution Article X, Section 2 states that “the people shall be secure in their persons, papers, *homes* and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause,

supported by oath or affirmation.” This is essentially the same language as in the U.S. Constitution: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. This procedure also is concerning as it empowers—requires, in fact—peace officers to seize a property, make a determination of ownership, and award possession to another party, all without *any* judicial involvement, any determination of probable case, and certainly without the historical safeguard of a warrant issued by a neutral magistrate or the ability to challenge that finding in court prior to any permanent disposition. The above-noted constitutional questions would guarantee a deluge of litigation and challenges to this law if it were enacted.

Redundancy:

As acknowledged in HB309, New Mexico already has a crime of trespass. “Criminal trespass consists of knowingly entering or remaining upon posted private property without possessing written permission from the owner or person in control of the land.” “Criminal trespass also consists of knowingly entering or remaining upon the unposted lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof.” NMSA 1978, Section 30-14-1. Defining “unlawfully occupying” as committing the crime of trespass points out the circular reasoning required to execute this law. A person can only be guilty of criminal trespass upon a judicial adjudication. However, HB309 appears to create a method for police to evict an individual without involving the courts. If someone has pled guilty or been found guilty at a trial of criminal trespass, then that person has already been adjudicated to not be the lawful owner of the property in question, mooting the entire complaint procedure.

New Mexico also has a crime of residential burglary. NMSA 1978, Section 30-16-3 states, “Any person who, without authorization, enters a dwelling house with intent to commit any felony or theft therein is guilty of a third-degree felony.” Both statutes are criminal statutes that peace officers are authorized to enforce. This is already done on a regular basis and can include arresting the suspected offender with or without a warrant if constitutional requirements are met. Importantly, these arrests are subject to judicial review for probable cause (and subject to challenge during the criminal case) in stark contrast to the eviction procedures set out in this bill.

Gaps:

HB309 requires only that “notice” be served upon the person occupying the property. The proposed language does have a form of notice, nor does it provide guidance on what happens if the resident does not vacate “immediately,” which is as a practical matter impossible.

HB309 does not appear to define or give guidance to how a peace officer would “verify that the person submitting the form is the record owner of the real property or the authorized agent of the owner and appears otherwise entitled to relief pursuant to this 2025 act.” (Section 2.) In a judicial proceeding, the burden of proof (preponderance, clear and convincing, etc.) would be specified as well as explaining what evidence would be considered (the Rules of evidence apply, do not apply, some modified standard applies, etc.) However, HB309 states only that the officer shall “verify”. Property ownership in New Mexico can be complex and differing through deed, title, liens, corporations, etc. To ask an officer to investigate this would undoubtedly take substantial time. Actions to quiet title are complex and illustrate the difficulty in ascertaining correct ownership of real property—this is not a reasonable expectation of a peace officer.

Contradictions and interactions with other laws

The “requirements” in Section 1 state that the real property being occupied *includes* a residential dwelling. This is inconsistent with the required complaint form, which states that the property *is* a residential dwelling. It is unclear whether that statute is meant to cover only dwellings or all real property that have a dwelling anywhere on them—a critical distinction. Taking this action against someone living on open land that has a house is very different from removing someone from a house. There is also inconsistent language about who is protected from removal—former tenants, or only *holdover* tenants. The problems with the confusing language highlight the complexities of property rights. If this bill struggles to explain who is subject to the law, a peace officer is unlikely to have the resources to act as a judge in this type of property dispute.

New Mexico also has an adverse possession statute. NMSA 1978, Section 37-1-22 allows someone to have legal title after ten years of occupation. HB309 does not acknowledge this existing statute in any way, though a peace officer would need to under this procedure.

HB309’s proposed amendments to NMSA 1978, Section 30-15-1, Criminal Damage to Property, also are inconsistent with NMSA 1978, Section 30-3-18 (B), which addresses Criminal Damage to Property of a Household Member. There is already a discrepancy between the existing language of Section 30-15-1 and Section 30-3-18(B). Under Section 30-15-1, criminal damage to property under \$1,000 is a petty misdemeanor, while criminal damage to property of a household member under \$1,000 is a full misdemeanor. HB309 does not change 30-3-18(B)—thus that statute would now punish criminal damage both *more* for under \$1,000 and *less* for over \$1,000.

Separately, it is a drastic change to increase a penalty from a fourth-degree felony to a second-degree. The basic sentence (without including any sentencing enhancements) would increase from 18 months to *nine years* for the same conduct. This could be problematic given that the penalty and threshold dollar value was set in 1963, 62 years ago. Accounting for inflation, \$1,000 in 1963 would be worth approximately \$10,000 today. (based on <https://www.inflationtool.com>) This could be seen as a wildly disproportionate increase in punishment. An increased incarceration by jurisdiction also comes with proportionately higher expenses.

Judges are already empowered to set conditions of release in a criminal case that could include staying out of the residence in question; and a defendant would have the ability to be heard by a court on the issue. Removing this process from the judicial system eliminates the ability to present evidence, and the ability for judicial review.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 332 creates a crime of “unlawful squatting” that is in many ways incompatible with this bill. SB 359 is essentially a duplicate of this bill but changes the penalty for fraud instead of criminal damage.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A