

LFC Requester:	
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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

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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 1/29/25
Bill No: SB-32 - 280

Sponsor: Antonio Maestas
Short Title: Unlawful Possession of a Stolen Firearm

Agency Name and Code LOPD 280
Number: _____
Person Writing Toni Amicarella
Phone: (505) 395-2890 **Email** anne.amicarella@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:

- HB 38 would criminalize possession of a machine gun conversion device.
- HB 39 would add juvenile offenders to the Felon in Possession statute.
- HB 166 would amend penalties for Felon in Possession of a Firearm.
- HB 235 would add undocumented immigrants to the Felon in Possession statute.

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

SECTION III: NARRATIVE

Synopsis:

SB 32 would create a new fourth-degree felony crime for knowingly possessing or transporting a firearm that has either been stolen or that “the person has reason to believe” has been stolen. The bill provides exceptions for receipt or retention of a stolen firearm with “intent to restore it to the owner or to participate in firearm buyback program.” The unit of prosecution is each individual firearm so that each firearm possessed would constitute a separate felony charge. The bill states that persons with prior felony convictions charged under this statute “shall not” be simultaneously charged under the felon in possession statute NMSA 1978, Section 30-7-16.

FISCAL IMPLICATIONS

The fiscal impact of SB 32 on the LOPD may be minimal given the significant issues discussed below. However, it is possible that publicizing the creation of a “new” criminal statute that penalizes possession of a stolen firearm would engender an interest in increasing prosecutions in this area. Any increase in number of prosecutions would require additional funding for indigent defense services in order to protect the Sixth Amendment rights of defendants.

SIGNIFICANT ISSUES

This proposed statute seemingly overlaps in numerous factual scenarios with Section 30-16-11(I) NMSA 1978, a generic statute for receiving or retaining *any* type of “stolen property,” which ties the penalty to the value of general property but which specifically addresses stolen firearms in the penalty provisions:

- Section 30-16-11(A) NMSA 1978 defines receiving stolen property as “intentionally to receive, retain or dispose of stolen property **knowing that it has been stolen or believing it has been stolen**, unless the property is received, retained or disposed of with

intent to restore it to the owner.” (Emphasis added.)

- Subsection (I) then expressly addresses firearms, indicating that “[w]hoever commits receiving stolen property when the property is a firearm is guilty of a fourth degree felony when its value is less than two thousand five hundred dollars (\$2,500).” The penalty would presumably be higher under Subsections (G) and (H) if the firearm’s value was *more* than \$2,500.

It is possible that there could be some attempt at differentiation between “receiving/retaining” and the proposed new crime addressing “possessing or transporting” such that prosecutors would have a clear choice between one statute or the other, but the existence of a genuine distinction seems improbable. Either way, the new crime appears wholly unnecessary as the conduct is clearly already a fourth-degree felony under Section 30-16-11.

Moreover, the concern exists that a person could be charged under both the newly proposed statute and the receiving stolen property statute leading to double jeopardy litigation, or, if charged under the generic property statute, a defendant could assert that only the new (proposed) firearm law could apply under the general-specific rule. In terms of subsequent appellate interpretation, were the seemingly more general newly proposed statute found to conflict with the apparently more specific receiving stolen property statute, the more specific statute would prevail since we presume the legislature does not intend a conflict between two of its statutes.

One significant difference between the two statutes is that SB 32 expressly authorizes the unit of prosecution of *one charge per firearm*, exposing people to potentially very significant sentences if they possess multiple firearms. While Section 30-16-11 permits one charge for stolen firearms and a second charge for any other non-firearm property, *see State v. Watkins*, 2008-NMCA-060, 144 N.M. 66, it does appear to allow only one “firearm” count per case, even if there are multiple firearms received or retained (although their value may be aggregated for penalty purposes).

As a matter of mental culpability, in contrast with existing “receiving” crimes, the language in the newly proposed statute – “has reason to believe has been stolen” – is an objective standard that differs from the subjective requirement in Section 30-16-11(A) that the person acts “knowing ... or believing it has been stolen.” This difference is notable; it means that a person could be guilty under SB 32 even if they sincerely believed the gun was *not* stolen, but had information from which a jury concludes they *should have known* otherwise. This negligence standard is inconsistent with norms for criminal liability. LOPD encourages the committee consider omitting the “should have known” standard and limiting liability to those who *actually know* the firearm is stolen.

There is at least one other difference with the proposed unlawful possession statute – prosecutors would not be able to also charge a convicted felon under the felon in possession statute (30-7-16(E)(3) NMSA 1978), which they are currently able to do without double jeopardy implications if they bring charges against a convicted felon under the receipt of stolen property statute. *See State v. Cummings*, 2018-NMCA-055, ¶ 16, 425 P.3d 745 (authorizing convictions for both “felon in possession of a firearm” and “receiving a stolen firearm” for the unitary act of possessing the same firearm). However, the potential disparate treatment of the convicted felon being prosecuted under the receiving statute as well as the felon in possession statute versus being prosecuted solely under the newly proposed statute at the discretion of a prosecutor may

generate equal protection arguments down the road.

The receiving stolen property statute defines “stolen property” (“property acquired by theft, larceny, fraud, embezzlement, robbery or armed robbery”) while the newly proposed unlawful possession statute does not. While “stolen property” could potentially be defined more broadly under the newly proposed statute, the notion that the term is too vague to provide notice regarding what behavior is punishable seems remote.

Finally, felonies carry a significant number of collateral consequences, including loss of the rights to vote and to bear arms, as well as exposure to habitual offender sentencing enhancements that do not apply to misdemeanor convictions. LOPD would urge against imposing such consequences on a person who has come into possession of a stolen firearm but neither stole it nor committed any other secondary crime involving the firearm.

In sum, in most factual scenarios, the newly proposed unlawful possession of a stolen firearm statute poses overlap, conflict, and constitutional issues with the receipt of stolen property statute.

PERFORMANCE IMPLICATIONS

See Fiscal Implications.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

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HB 39 would add juvenile offenders to the Felon in Possession statute.

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TECHNICAL ISSUES

See above.

OTHER SUBSTANTIVE ISSUES

LOPD notes that the exceptions for returning the firearm to its owner or “to participate in a firearm buyback program” may be too limiting. Not every community in New Mexico has ready access to a firearm buyback program, so a broader exception for an intent to hand the firearm over to law enforcement by any means is worth including.

ALTERNATIVES

At least one possible alternative is that the newly proposed statute acknowledge the receipt of stolen property statute and make clear individuals could not be prosecuted under both. It could also more clearly define the goal to differentiate it from the receiving stolen property statute.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None noted.