

LFC Requester:

**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}

Check all that apply:
Original **Amendment** _____
Correction _____ **Substitute** _____

Date 1/28/25
Bill No: Senate Bill 35 -280

Sponsor: Antonio Maestas
Short Title: Separate Shooting from Motor Vehicle Crimes

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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 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

Synopsis:

Senate Bill 35 (SB 35) appears to be identical to a bill that was introduced during the 2024 Regular Session; it proposes to amend five statutes.

Section 1 proposes to amend Section 30-3-8 NMSA 1978, defining shooting at or from a motor vehicle, by distinguishing between shooting “at” a motor vehicle and shooting “from” a motor vehicle, which are currently alternatives of the same crime, and by amending the penalty scheme, and reducing the “great bodily harm” requirement for heightened penalties to only “injury.”

It would do so by removing shooting “at” a motor vehicle from Subsection B and defining that crime separately in a new Subsection C. The bill would then modify the penalty scheme by increasing the felony level of shooting from a motor vehicle when *no injury* results from a fourth to a third degree felony and where any injury results, making the commission of shooting from a motor vehicle a second degree felony.

The bill would separately define the crime of shooting *at* a motor vehicle and punish it as a second degree felony regardless of the resulting harm (or lack thereof).

Sections 2, 3, and 5 propose amendments concerning the seizure and forfeiture of motor vehicles and revocation of driver licenses, to conform to the proposed amendments to Section 30-3-8.

Section 4, proposes to amend NMSA 1978, Section 31-18-23, the “three strikes” sentencing enhancement for violent felonies, which mandates a life sentence upon a third conviction for an enumerated “violent felony.” SB 35 would update the definition of “violent felony” relative to shooting at or from a motor vehicle, to conform to the proposed amendments in Section 1, and by removing the great bodily harm requirement therefor. It would meanwhile also amend the provision that currently includes “kidnapping resulting in great bodily harm” as a violent felony. The bill would remove the great bodily harm requirement and therefore include kidnapping resulting in “any physical injury or sexual offense.”

FISCAL IMPLICATIONS

Felonies carry significant collateral consequences. As a result, increasing the penalty for shooting at or from a motor vehicle to a higher degree of felony could result in a greater number of defendants choosing to exercise their right to a jury trial, rather than resolving their case by a plea agreement. This increase in trials could be absorbed by current staffing levels, but where the LOPD already has caseloads so high in some districts that offices must refuse to accept additional cases, this penalty increase could end up having a more significant fiscal impact depending on how often it is prosecuted.

SB 35 does not appear to substantively alter the conduct that currently constitutes the crime of shooting at or from a motor vehicle, but does include some significant increases the level of punishment while removing the requirement that great bodily harm must result to impose the highest level of penalty. Generally, the enactment of any higher criminal penalty has a tendency to result in more trials, as more defendants are likely prefer risking a trial rather than take a plea to the greater penalty. If there is a significant increase in higher-penalty trials as a result of enacting SB 35, LOPD may need to hire additional trial attorneys with greater experience to address the increase in trials so as to ensure compliance with constitutional mandates, including the effective assistance of counsel. (Additionally, courts, DAs, AGs, and NMCD could anticipate increased costs.)

Also, since a mandatory life sentence is at issue, pursuant to the proposed amendments to 31-18-23, a person charged with a third qualifying felony that did not result in any harm at all would be much more likely to demand a full trial in the hopes of either acquittal or at least conviction of a lesser included offense that would not trigger a life sentence.

A recent workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, “A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.” See American Bar Association, *The New Mexico Project: an analysis of the New Mexico Public Defender System and Attorney Workload Standards*, available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf.

The increase in LOPD workload would almost certainly result in the need for additional attorneys and investigators being hired by LOPD and, therefore, additional funding would be necessary. Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions with the potential for life sentences would bring a concomitant need for an increase in indigent defense funding. These felonies would be handled by, at a minimum, mid-level felony capable attorneys (Associate Trial Attorneys), but more likely higher-level attorneys (Trial Attorneys). A mid-level felony capable Associate Trial Attorney’s mid-point salary including benefits is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas. A senior-level Trial attorney’s mid-point salary including benefits is \$149,063.16 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51.

This increase in trials would also increase litigation costs for the courts and District Attorneys' offices. Moreover, life sentences, and even lifetime parole terms, are certain to impact the housing and parole budgets for the Department of Corrections.

At this time, only such speculation is possible. An assessment would be necessary after implementing the proposed higher-penalty scheme, to more accurately determine the actual impact and performance implications on the existing, limited resources.

SIGNIFICANT ISSUES

The presumed purpose of Section 31-18-23, the "three strikes" law imposing a life sentence for a third violent felony is to target individuals who have shown a propensity to act violently, causing serious harm, so that community safety justifies a life sentence for a crime that would otherwise not carry a life sentence. SB 35 proposes to remove the physical harm component in defining shooting at or from a motor vehicle as a "violent felony," which greatly expands the number of individuals potentially exposed to a mandatory life sentence, without having caused any actual damage, injury, or specific, identifiable harm. Removing the great bodily harm requirement (for kidnapping as well) is inconsistent with the policies underlying Section 31-18-23.

LOPD expresses further concern with the penalty increases within Section 30-3-8. Currently shooting at or from a motor vehicle with no resulting injuries is a fourth-degree felony, which is consistent with aggravated assault for shooting at a person without causing injury. *See* NMSA 1978, § 30-3-2 (aggravated assault with a deadly weapon is a fourth-degree felony, carrying 18 months in prison). SB 35 would punish this conduct as a third degree felony carrying three years in prison if the person fires that gun *from* a vehicle (the classic "drive-by shooting" scenario this statute was designed to address), and as a *second* degree felony carrying nine years in prison if the person fires that gun *at* a vehicle. It is unclear why shooting *at* a vehicle (not a drive-by shooting scenario), which could be *unoccupied*, and with no resulting harm, would require a penalty six times the current felony sentence.

Furthermore, the heightened penalty for shooting *from* a motor vehicle currently requires resulting great bodily harm, but SB 35 would require only "injury." Injury can include minor cuts and scrapes or bruising, and great bodily harm properly accounts for the likely harm stemming from gunfire. SB 35 would not only *triple* the heightened penalty from 3 years to 9 years, but that penalty would apply even if someone scraped their knee if they stumbled while running away from the gunfire. This is not the harm from a shooting that the heightened penalty is designed to address and is incongruent with the overarching criminal sentencing scheme which almost always requires great bodily harm to incur a heightened penalty. The rare exceptions are kidnapping and sexual assault.

There has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

Punishment has been one of the preferred methods to address damaging and unwanted behavior. However, decades of empirical work about the effects of punishment (including

incarceration and capital punishment) on violent crime actually show that there is no conclusive evidence that stricter punishment deters criminal conduct. The research finds that the certainty of punishment is more important than its severity, and that punishment only deters if there is a threshold level of certainty of getting caught and punished. And it's not just violent crime. A large review of the empirical work comes to a similar conclusion for corporate misconduct: there is no conclusive evidence that punishment deters corporate crime. Also, most people and organizations do not have a proper understanding of how the law is enforced, and thus there is a large discrepancy between objective and subjective deterrence, meaning that how the law is enforced in reality is not how it is experienced and understood by norm addressees. These insights have three implications for enforcement practice and for compliance systems that use sanctions: focus more on detecting violations than on stronger sanctions, communicate about law enforcement and surveillance work, and keep in mind that relying on tougher punishment alone is destined to fail. *See* Benjamin van Rooij and Adam Fine, *The Behavioral Code: Four Behavioral Science Insights for Compliance and Enforcement*, available at https://wp.nyu.edu/compliance_enforcement/2021/12/28/the-behavioral-code-four-behavioral-science-insights-for-compliance-and-enforcement/.

The increased drain on limited resources and performance capabilities could result in a negative impact while not successfully producing the desired effect envisioned by SB 35. Also, as noted above, the proposed legislation would certainly affect LOPD attorneys' representation in cases where a potential third violent felony is charged, increasing the number of these cases that go to trial.

PERFORMANCE IMPLICATIONS

See Fiscal Implications.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Analyst notes that the bill title ("RELATING TO CRIME; PROVIDING THAT SHOOTING AT A MOTOR VEHICLE AND SHOOTING FROM A MOTOR VEHICLE ARE SEPARATE CRIMES; PROVIDING PENALTIES") does not include any reference to amending the three strikes law, and to amending the *kidnapping* provision of that law in particular. This appears to violate the constitutional requirement that "[t]he subject of every bill shall be clearly expressed in its title." *See* N.M. Const. art. IV, § 16.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS