

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: 1/29/2025

Check all that apply:

Bill Number: SB35

Original Correction
Amendment Substitute

Sponsor: Sen. Antonio Maestas

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

Person Writing

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 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

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:

SB35 proposes to separate Shooting From a Motor Vehicle from Shooting at a Motor Vehicle into two separate crimes, amending NMSA 1978 Section 30-3-8(B), by adding subsection (C) to Section NMSA 1978 §30-3-8. As proposed, the elements of the crime of Shooting From a Motor Vehicle will remain in §30-3-8(B), and 30-3-8(C) will provide elements for the crime of Shooting at a Motor Vehicle.

Section 1(B). the proposed legislation removes the more specific requirement of “great bodily harm” as an element of Shooting from a motor Vehicle, replacing it with “injury” – a more broad element of harm, which could potentially expand the element of harm to include mental health repercussions and anguish as injury, in addition to physical injury. SB35 also amends §30-3-8(B) to include increased penalties for shooting from a motor vehicle dependent on whether injury is caused as a result. Shooting from a motor vehicle wherein the result is an injury to a person, is increased to a second-degree felony, from a third. The penalty for Shooting from a motor vehicle that does not result in injury to a person is increased from a fourth-degree felony to a third-degree felony.

Section 1(C) creates a separate subsection for the crime of Shooting at a Motor Vehicle, with a proposed penalty of a second-degree level felony.

Section 1(D) amends the subsection pursuant to the addition of subsection (C), Shooting at a Motor Vehicle, and amends the pronoun for law enforcement officer from “his” to “and officer’s.”

Section 2 amends NMSA 1978 §30-3-8.1 by providing for the mentioned separate crimes.

Section 3 amends NMSA 1978 §30-3-8 and would affect the administration of NMSA 1978 §30-3-8.1 and 8.2, which relate to Seizure and Forfeiture of Motor Vehicle and Court Record of Convictions – Revocation of Driver’s License. SB 35 includes amendments to NMSA 1978 §§30-38.1 and 8.2, to account for the separation of the crimes of Shooting From a Motor Vehicle and Shooting at a Motor vehicle in 30-3-8(B) and (C), and for clearer administration of motor vehicle seizure and revocation of a driver’s license as they relate to the separated crimes of Shooting From a Motor Vehicle, and Shooting at a Motor Vehicle.

Section 4 proposes to amend NMSA 1978, §31-18-23, “Three Violent Felony Convictions – Mandatory Life Imprisonment,” to reflect the separation of Shooting From a Motor Vehicle and Shooting at a Motor Vehicle and defining each crime as a “violent felony” for purposes of counting each separate occurrence as the basis for the count of three violent felony convictions and sentencing to life imprisonment. Section 4(E) separates the two crimes as distinct crimes, and removes the element of “great bodily harm,” as proposed in the amendment in Section 1 (B) - (C).

Section 4 (E)(2)(c) does not address the Shooting From or At a Motor Vehicle crimes identified in SB35’s short title, but rather, amends the definition of Kidnapping as a Violent Offense. The proposed edits to the definition of Kidnapping as a “violent felony” remove the required element of “great bodily harm” and replace it with “physical injury or a sexual offense.” This amendment does not relate to the edits in Section 1. Section 4 (E)(2)(c) does away with the requirement of great bodily harm for a kidnapping to be a “violent felony.” The language is changed to “physical injury or a sexual offense.” The kidnapping statute NMSA 1978 § 30-4-1(B) provides that kidnapping is a first-degree felony, except when the offender voluntarily frees the victim in a safe place and does not inflict physical injury or a sexual offense. The statute as written requires both. This may create criminal liability for an offender where there is physical injury or a sexual offense, but not the element of voluntarily freeing the victim in a safe place. This would create a broader category for kidnapping to be considered a “violent felony.”

Section 5(F) amends NMSA 1978 §66-5-29(F), “Mandatory Revocation of License By Division,” separating out Shooting From a Motor Vehicle and Shooting at a Motor Vehicle as separate crimes, upon receipt of evidence of which, for either crime, the Motor Vehicle Division shall revoke the driver’s license or driving privileges of a person convicted of these crimes.

This proposed amendment to remove “great bodily harm” and replace it with “injury” would be consistent with the holding in State v. Hice, S-1-SC-39211, dec. ¶ 39 (N.M. Dec. 4, 2023) (nonprecedential), providing that “the Legislature intended to punish the act of shooting at or from a motor vehicle rather than the resulting harm.”

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

NMSA 1978, Section 31-18-16 is a mandatory sentence enhancement for any noncapital felony offense involving a firearm. This is important to note because SB35 is proposing to increase the

degree of the offenses, which also increases the potential sentence of an offense that is already subject to a sentencing enhancement. If this is the legislator's intent, it can be helpful to specifically note that the enhancement is still intended to apply. See Missouri v. Hunter, 459 U.S. 359, 368-69 (1983) ("Where a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the 'same' conduct under Blockburger, a court[] . . . may impose cumulative punishment under such statutes in a single trial.").

There has been significant case law regarding double jeopardy implications of the firearm enhancement. The NM Supreme Court has weighed the question of whether an offense that requires the use of the firearm (e.g., shooting at or from a motor vehicle) can qualify under the firearm enhancement without violating double jeopardy. See State v. Baroz, 2017-NMSC-030, ¶ 24 ("The legislative policy behind the firearm sentence enhancement is that a noncapital felony, committed with a firearm, should be subject to greater punishment than a noncapital felony committed without a firearm because it is more reprehensible."); see also State v. Young, S-1-SC-39956. Absent articulated legislative intent, this bill could implicate double jeopardy concerns.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A