

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: 1/28/2025

Check all that apply:

Bill Number: SB 153

Original  Correction   
Amendment  Substitute

Sponsor: Sen. Antonio Maestas and Rep. Nicole Chavez

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

Short Title: Aggravated Burglary and Home Invasion 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
<b>Total</b>						

(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: Senate Bill 153 proposes an amendment to the criminal offense of Aggravated Burglary by removing “dwelling” and creates a new criminal offense of “Home Invasion.”

SB 153 would amend the existing language of the Aggravated Burglary statute, NMSA 1978 Section 30-16-4(A), by removing “dwelling” from the list of places in which an aggravated burglary may occur; and creates the new criminal offense of “Home Invasion” NMSA 1978 § 30-16-4.1, which includes an unlawful entry into a dwelling.

Section 1(A) (NMSA §30-16-4 (A)) provides minor grammatical change to the existing statutory language. The major change is removing “dwelling” from the list of places that constitute where the offense occurs.

Section 2, (NMSA §30-16-4.1(A)) is an addition that creates a new offense of “Home Invasion.”

### **FISCAL IMPLICATIONS**

N/A

### **SIGNIFICANT ISSUES**

The aggravated burglary statute has the added purpose of punishing conduct that increases the risk of danger to an innocent person. This is not merely an offense against property but also an offense against persons. The proposed criminal offense of “Home Invasion” in SB 153 would consist of:

the “unlawful entry of a dwelling *while an occupant is inside* with the intent to commit a felony or theft in it and the person either:

- (1) is armed with a deadly weapon;
- (2) after entering, is armed with a deadly weapon;
- (3) commits any unlawful act, threat or menacing conduct that causes another person to reasonably believe that the person is in danger of receiving an immediate battery.”

The newly proposed offense of Home Invasion has two significant differences from the currently enacted aggravated burglary offense, outlined below.

First, the significant difference with this proposed legislation is that “an occupant” must be in the dwelling at the time of the offense. This would create an additional element for the prosecution to prove. The statute as currently enacted, Aggravated Burglary NMSA 1978 § 30-16-4, does not require an occupant in the dwelling, thus it could penalize a person who breaks into a home, with a deadly weapon even if there is no occupant in the home. The proposed amendment could pose difficulties to the prosecution of the crime if, for example, the occupant walks in on a home invader, mid-robbery. There would be no unlawful entry of the dwelling *while* an occupant was inside, even if the offender was armed.

Also of note in regards to this issue is how this would relate to a crime in a vacant home, where there is no occupant. There has been litigation before the Courts in New Mexico, whether a vacant house is a “dwelling.” The Court in *State v. Ervin*, 1981-NMCA-068, 96 N.M. 366, held that a vacant house may be a dwelling for purposes of the burglary statute where there was no evidence that the occupant abandoned the house or had no intention of returning, even though the house had not been occupied for more than a year, there were no utilities like gas, water or electricity being supplied to the home and mattresses were stacked against the walls of the home.

The burglary statute mirrors the current aggravated burglary statute. Burglary consists of “the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the intent to commit any felony or theft therein.” *See generally*, NMSA 1978 §30-16-3. The criminal penalty for a burglary in a “dwelling house” is a third-degree felony. NMSA 1978 §30-16-3 (A). The penalty for “any vehicle, watercraft, aircraft or other structure...” is a fourth-degree felony. NMSA 1978 §30-16-3(B). Therefore, there is a heightened penalty for a crime committed in a “dwelling house.” The Aggravated Burglary statute notates “dwelling” not “dwelling house” in the list of enumerated places in which the crime may occur. This linguistic difference may infer a broader interpretation and ambiguity. New Mexico Courts have noted that the Legislature has not provided a statutory definition of “dwelling house” for purposes of the burglary statute. *State v. Shelby*, 2021-NMCA-064, ¶6. However, NMRA UJI 14-1631 defines a “dwelling house” as “any structure, any part of which is customarily used as living quarters.”

The second significant issue is, in regards to subsection (3), that outlines that if there is no weapon involved in the Home Invasion, the prosecution would have to prove the offender committed “*any* unlawful act, threat or menacing conduct that causes another person to reasonably believe that the person is in danger of receiving an immediate battery.” This is similar to the language of an assault, NMSA 1978 § 30-3-1. The Aggravated Burglary NMSA 1978 §30-16-4 statute as currently enacted requires the offender to commit a battery.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

**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