| LFC Requester: | Scott Sanchez |
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# AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**
**AgencyAnalysis.nmlegis.gov** and email to **billanalysis@dfa.nm.gov**
***(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}***

**Date Prepared**: February 3, 2025 *Check all that apply:*
**Bill Number:** SB 228 Original x_ Correction __
Amendment __ Substitute __

**Sponsor:** George K. Munoz
**Short Title:** Felonies for Certain Thefts

**Agency Name and Code Number**: Administrative Office of the District Attorneys - #264
**Person Writing Phone:** 5052503302 **Email** akelly@da.state.nm.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 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**

**BILL SUMMARY**

Synopsis:

Section 1 amends Section 30-16-3 entitled "Burglary" of the Criminal Code to add a subsection D as new material which provides:

> Any person who enters a retail establishment, having previously received notice that the person is not authorized to enter the retail establishment, with the intent to commit a theft or felony therein is guilty of a fourth degree felony.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

This bill creates a new method of committing burglary whereas these acts could currently be prosecuted as either shoplifting or trespassing misdemeanors or both. This could increase the felony caseload of prosecutors' offices, the public defender, and the courts.

**SIGNIFICANT ISSUES**

There is New Mexico case law on this very issue.

In *State v. Archuleta*, 2015-NMCA-037, the Court of Appeals held that these actions – entering a place of business after being notified that a person could not longer shop there with intent to commit a theft or felony therein – did not satisfy the elements of burglary. The defendant in *Archuleta* entered a Walgreens, knowing that his permission to do so had been revoked by the store, and entered with the intent to steal a bottle of rum (which he did in fact steal).

The State charged him with burglary, arguing that the elements of burglary had been met; i.e. (1) unauthorized entry (2) with intent to commit a theft or felony therein. The Court of Appeals held this was too expansive a view of the burglary statute and this type of entry was not the type of "harmful" entry that the statute contemplates. The Court of Appeals relied on the then-recent case of *State v. Office of the Public Defender ex rel. Muqqddin*, 2012-NMSC-029, 285 P.3d 622, in which the Supreme Court conducted a comprehensive review of the burglary statute in the context of two burglary prosecutions for "entry" into a motor vehicle; the siphoning of gas and the removal of wheel wells. The Court concluded that these prosecutions expanded the term "entry" too far and that the term is reversed for actual intrusions into a protected personal space and/or an actual enclosure. ¶¶ 41-45. The Court of Appeals applied this holding to the facts of *Archuleta* to conclude that the burglary statute did not encompass such an entry into a public place.

In *Archuleta*, the Court of Appeals explicitly overruled its precedent of *State v. Tower*,

2002-NMCA-109. *Archuleta*, 2015-NMCA-037, ¶¶ 15-16. In *Tower*, the defendant had been given a no trespass order from Foley's Department store for previous acts of shoplifting. Sometime later, he entered the store again and stole merchandise. The Court of Appeals upheld his burglary conviction.

This bill would make it explicit that these actions can constitute the felony of burglary.

**PERFORMANCE IMPLICATIONS**

None noted.

**ADMINISTRATIVE IMPLICATIONS**

None noted.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 153 amends the aggravated burglary statute – Section 30-16-4 – to delete "dwelling" from the structures listed and to add a new crime of "home invasion" instead.

**TECHNICAL ISSUES**

None noted.

**OTHER SUBSTANTIVE ISSUES**

None noted.

**ALTERNATIVES**

None noted.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

n/a