

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

**SPONSOR** Dixon/Garratt/Rehm      **ORIGINAL DATE** 1/24/2022  
/Figueroa/Hernandez      **LAST UPDATED** 2/8/2022      **HB** 69/aHJC  
**SHORT TITLE** Creating the Crime of Operating a Chop Shop      **SB** \_\_\_\_\_  
**ANALYST** Rabin

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	At least \$46.9	At least \$78.7	At least \$125.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)  
 Administrative Office of the Courts (AOC)  
 New Mexico Corrections Department (NMCD)  
 Attorney General’s Office (NMAG)  
 Public Defender Department (PDD)  
 Department of Public Safety (DPS)  
 Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 69 changes the crime of operating a chop shop from applying to those who operate a chop shop who “has reason to believe that it is a chop shop” to those who “should have known” that it is a chop shop. The HJC amendment further changes the definition of “chop shop” to exclude a premises where a person possesses, receives, stores, disassembles, or alters an unlawfully obtained motor vehicle engine or component. The definition now only includes a premises where such actions are taken on an unlawfully obtained motor vehicle.

#### Synopsis of Original Bill

House Bill 69 creates two new crimes: operating a chop shop (a third-degree felony) and criminal damage to property by theft or attempted theft of regulated material (a crime with tiered penalties ranging from a petty misdemeanor to a fourth-degree felony, depending on the value of the damage or loss due to the crime).

A chop shop is defined as “a premises where a person possesses, receives, stores, disassembles or alters an unlawfully obtained motor vehicle or vehicle or motor vehicle engine or component as defined in the Motor Vehicle Code, including the alteration or concealment of any identifying feature or number, including the manufacturer's serial number, engine number, decal or other distinguishing number or identification mark or number placed under assignment of the motor vehicle division of the taxation and revenue department.”

The crime of criminal damage to property by theft or attempted theft of regulated material consists of “the unlawful taking or attempted taking of any regulated material from another that results in any damage to real or personal property.” The regulated materials are aluminum material; copper or brass material; steel material; a utility access cover; a water meter cover; a road or bridge guard rail; a highway or street sign; a traffic directional or control sign or signal; or a catalytic converter that is not part of an entire motor vehicle. The crime has tiered penalties based on the value of the damage or property loss resulting from the crime:

- Less than \$1,000 is a petty misdemeanor;
- \$1,000 to less than \$2,500 is a misdemeanor; and,
- \$2,500 or more is a fourth degree felony.

HB69 also amends Section 57-30-2.4 NMSA 1978, regarding restricted transactions and the documentation required, so that a secondhand metal dealer must require both written documentation indicating that the seller is the rightful owner or has permission from the rightful owner, *and* that the material was otherwise lawfully obtained. (The present statute requires one or the other.) Additionally, HB69 adds that “[a] secondhand metal dealer shall not purchase or otherwise receive any regulated material that the secondhand metal dealer knows is not lawfully possessed by the person offering to sell or provide the regulated material.”

## **FISCAL IMPLICATIONS**

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the number of individuals in prison that might result from this bill. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico’s prisons and long-term costs to the general fund. The Corrections Department reports the average cost to incarcerate a single inmate in FY21 was \$49.6 thousand; however, due to the high fixed costs of the state’s prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$23.4 thousand per inmate per year across all facilities. This bill will likely increase the number of individuals incarcerated.

HB69 creates a new third-degree felony (operating a chop shop). Based on an estimated time served for third-degree property felonies of 703 days (based on actual length-of-sentence for individuals released from prison in FY21 whose highest charge was a third-degree property felony), each individual sentenced to prison for the crime of operating a chop shop could result in increased incarceration costs of \$45.2 thousand. Because the estimated time served is greater than one year, the costs of one year (\$23.4 thousand) would be incurred in the first year of incarceration, while the cost of the remaining 338 days would be incurred in the second year of incarceration.

HB69 further creates a new fourth-degree felony (criminal damage to property by theft or attempted theft of regulated material resulting in property damage or property loss of at least

\$2,500). Based on an estimated time served for fourth-degree property felonies of 522 days (based on actual length-of-sentence for individuals released from prison in FY21 whose highest charge was a fourth-degree property felony), each individual sentenced to prison for the crime of operating a chop shop could result in increased incarceration costs of \$33.5 thousand. Because the estimated time served is greater than one year, the costs of one year (\$23.4 thousand) would be incurred in the first year of incarceration, while the cost of the remaining 157 days would be incurred in the second year of incarceration.

It is unknown how many individuals would be arrested, charged, convicted, or sentenced to prison for the new crimes created in HB69. Assuming at least one individual per year is sentenced to prison for each of the new felonies created by this bill, costs to the state would increase by \$46.8 thousand in the first year of implementation and \$78.7 thousand in the next year and subsequent years, as new individuals are admitted to prison for the crimes while individuals admitted for the crimes in the prior year are released partway through the year. To account for time to adjudication, this analysis assumes no individuals are admitted to prison based on these crimes until FY23.

Additional system costs beyond incarceration, such as additional costs to the judicial branch for increased trials or increased costs of enforcement under HB69 are not included in this analysis, although the Administrative Office of the Courts (AOC) anticipates some additional costs.

The HJC amendment does not alter the analysis of fiscal implications.

### **SIGNIFICANT ISSUES**

The Attorney General’s Office (NMAG) raises concerns that HB69 does not specify the “unit of prosecution.” NMAG notes “it is not clear if the intended unit of prosecution is one crime per unlawfully obtained motor vehicle or component part; one per day the chop shop is operated, owned, maintained, controlled or operations are conducted there; or one per criminal episode.” The agency suggests considering adding a subsection that delineates the legislatively intended unit of prosecution. *This is not altered by the HJC amendment.*

NMAG further notes most criminal offenses require proof of a culpable mental state. The Supreme Court has held that the mental state of “should have known” is insufficient for a criminal conviction. *This is not altered by the HJC amendment.*

The Corrections Department notes removing the language “or motor vehicle engine or component” from the definition of chop shop may make it more difficult for law enforcement or prosecutors to prove parts or portions of vehicles found at a purported chop shop are indicative of the crime.

### **OTHER SUBSTANTIVE ISSUES**

According to the Administrative Office of the District Attorneys:

Motor vehicles are regularly stolen and then chopped up for parts. Many of the parts are sold in the black market or are shipped to other countries, specifically, Mexico, where they are sold. Additionally, the parts taken from a chopped vehicle are also taken to scrap yards. It is a very lucrative business and is often tied to

organized crime. It takes a toll on motor vehicle owners, the community, and insurance companies who cover the losses. Many times, however, persons can only pay for liability insurance and are not covered should their vehicles get stolen and chopped up.

Properties such as dwellings, garages, commercial buildings, etc. are frequently targeted by thieves who steal regulated materials (mostly Copper, brass and aluminum) that they sell or exchange for controlled substances. It is a common practice for drug addicts to do this so they can get money to afford drugs. The stealing of these materials causes significant damage to real or personal property. This bill will provide penalties based on the fair market value of the items stolen from petty misdemeanor to fourth degree felony.

AOC adds:

The changes to the statute refine the charging mechanism for scrap metals and chop shops. These are criminal acts that were heretofore charged under general theft statutes. The link below is from The Institute of Scrap Recycling Industries who published a document summarizing the scrap metal statutes in all of the states in September 2021, available here: <https://www.isri.org/docs/default-source/state-program/State-Metals-Theft-Statutes.pdf>.

ER/acv/al/rl