

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.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}*

*Check all that apply:*

**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date** January 31, 2025  
**Bill No:** HB 235-280

**Sponsor:** Jenifer Jones, Nicole Chavez,  
Andrea Reeb  
**Short Title:** Firearms & Certain Persons

**Agency Name and Code Number:** 280 – Law Office of the Public Defender (LOPD)  
**Person Writing:** Mallory E. Harwood  
**Phone:** 505-395-2890    **Email:** mallory.harwood@lopnm.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 Expenditure Decreases)

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

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: none known  
Duplicates/Relates to Appropriation in the General Appropriation Act: unknown

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB 235 would amend NMSA 1978, § 30-7-16 (Firearms or Destructive Devices—Receipt, Transportation or Possession by Certain Persons) to prohibit immigrants without lawful residency status from possessing firearms. The bill would make this a misdemeanor.

**FISCAL IMPLICATIONS**

The fiscal impact of changes in criminal procedure is difficult to predict. LOPD would have to engage in extensive litigation over constitutional challenges related to the proposed legislation. See **Significant Issues** and **Other Substantive Issues** below.

Further, LOPD would have to contract with immigration attorneys more often in order to determine and prove their clients' residency status to investigate and defend their clients at trial. Determining whether someone is unlawfully present in the United States can take years of investigation, even for trained immigration attorneys and officials. Putting this burden on the state legal system for the purposes of a misdemeanor possessory offense is almost certainly unworkable in a large number of cases and will lead to more trials, discovery delays, and other problems that lead to significant expenditures.

**SIGNIFICANT ISSUES**

A robust body of research shows that immigrants are 30-60% *less* likely than citizens to commit crimes or to end up incarcerated for criminal convictions. This has been the case for at least the last 140 years. See, e.g., <https://siepr.stanford.edu/news/mythical-tie-between-immigration-and-crime>. There is no rational reason, then, to bar people without lawful residency status from possessing firearms. Should they commit a crime *with* a gun, other criminal laws punish those crimes.

This bill would create significant constitutional questions, which will lead to extensive litigation. Most prominently, there is a three-way circuit split right now regarding whether people without lawful residency status are protected by the Second Amendment right to bear arms. See, e.g., Abby Vorhees, *The Constitutionality of Barring Undocumented Immigrants from Second Amendment Protections*, Comment, 73 AMER. UNIV. L. REV. 929 (2025). The Tenth Circuit, in which New Mexico resides, has assumed without deciding that the Second Amendment *does*

protect people without lawful residency status. *United States v. Huitron-Guizar*, 678 F.3d 1164, 1169 (10th Cir. 2012). *New York State Rifle & Pistol Ass’n v. Bruen*, 587 U.S. 1 (2022), makes the litigation more complicated, not less. *See, e.g., Huitron-Guizar*, 678 F.3d at 1169.

This bill risks creating the same Fourth Amendment and Equal Protection problems as Stop & Frisk: discriminatory stops, questioning, and searches based solely upon someone’s appearance or spoken language. *See, e.g., Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013). It is also difficult to imagine how a state police officer will determine someone’s immigration status in the field in an efficient manner, so as not to lead to unconstitutionally long detentions under the Fourth Amendment or violations of the Fifth and Sixth Amendments through improper questioning. *See Performance Implications below.*

## **PERFORMANCE IMPLICATIONS**

As noted above, if HB 235 were enacted, LOPD would possibly have to engage in extensive litigation on each case over constitutional challenges. This would be in addition to any litigation required due to searches and seizures, since the Supreme Court has made clear the Fourth Amendment does apply to people without lawful residency status. The bill may also implicate other constitutional rights due to downstream effects on criminal procedure. *See United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990) (criminal legal rights, including the Fourth Amendment, generally protect people without lawful residency status who have developed sufficient connection with United States to be considered part of their community).

## **ADMINISTRATIVE IMPLICATIONS**

None noted.

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

None noted.

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

It should be noted that “alien” is an offensive term for someone who is not a U.S. citizen, though it is consistent with the outdated terminology used in the Immigration & Naturalization Act. *See, e.g.,* 8 U.S.C. § 1101(a)(3) (2004); <https://www.nbcnews.com/news/latino/biden-seeks-replace-alien-less-dehumanizing-term-immigration-laws-n1255350>.

## **ALTERNATIVES**

Status quo.

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

*See Alternatives above.*

## **AMENDMENTS**

None noted.