

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: 1/28/25

Check all that apply:

Bill Number: SB 32

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Antonio Maestas

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

Person Writing

Short Title: Unlawful Possession of Stolen Firearm

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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 32 (herein after “SB 32”) seeks to create the crime of unlawful possession of a stolen firearm wherein an individual that knowingly possesses or transports a firearm that has been stolen or that the person has reason to believe has been stolen would be guilty of a fourth degree felony. SB32 seeks to add a new section to Chapter 30 Article 7 Weapons and Explosives.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

This conduct is already criminalized under Receiving Stolen Property; Penalties NMSA 1978, §30-16-11(I)(2006). §30-16-11 provides:

- A. Receiving stolen property means intentionally to receive, retain or dispose of stolen property knowing that it has been stolen or believing it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner. [...]
- I. Whoever commits receiving stolen property when the property is a firearm is guilty of a fourth degree felony when its value is less than two thousand five hundred dollars (\$2,500).

Inherently by receiving the stolen property they would be in possession of the stolen firearm which would duplicate the criminal charge. The level of penalty for both is a fourth degree felony so there is no difference there. This will create a charging issue for general vs. specific charging and may result in charges being dismissed if enacted may result in dismissals for lack of clarity under which statute is being charged.

One notable difference for SB 32 versus § 30-16-11(2006) is exclusion of Possession of a Stolen Firearm from charges for being a felon in possession of a firearm under NMSA 1978, §30-7-16 (2022) but does not exclude the other categories in § 30-7-16(A)(1)&(2). Additionally as it relates to this point of double jeopardy for felon in possession and possession of a firearm, it is important to note felon in possession and possession of a stolen firearm have already been found to be separate conduct so Double Jeopardy is not an issue. The New Mexico Court of Appeals

provided the ruling in *State v. Cummings* in 2018 to clarify this, “We therefore conclude that the Legislature intended to punish possession of a firearm by a felon and receiving a stolen firearm separately, and, as such, Defendant's convictions do not violate double jeopardy.” *State v. Cummings*, 2018-NMCA-055, ¶ 16, 425 P.3d 745, 751. The Court found that the purpose of punishing a felon in possession of a firearm was different than that of punishing an individual for being in possession of a stolen firearm so Double Jeopardy was not an issue.

A notable additional difference between SB 32 and §30-16-11(I)(2006) is that SB 32 creates distinction in conduct by the number of firearms. However, this has also already been resolved in case law. The New Mexico Court of Appeals in *State v. Watkins*, 2008-NMCA-060, 144 N.M. 66, 183 P.3d 951 provided clarity that double jeopardy was not violated for convictions on two counts of receiving stolen property even though property at issue was stolen from same victim at same place and time and was acquired and simultaneously possessed by defendant at same time; stolen property statute defined unit of prosecution in terms of nature of the property and referred specifically to firearms as an identifiable category separate from category of generic property so could be distinguished with multiple counts.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

None noted.

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

As previously noted, there is duplication with NMSA 1978, §30-16-11(I)(2006) and conflict with already established law related to double jeopardy.

#### **TECHNICAL ISSUES**

None noted.

#### **OTHER SUBSTANTIVE ISSUES**

None noted.

#### **ALTERNATIVES**

None.

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

Status quo, conduct already criminalized under §30-16-11(2006).

#### **AMENDMENTS**

N/A