

LFC Requester:	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: 14 Feb 25 *Check all that apply:*
Bill Number: SB 359 Original Correction
 Amendment Substitute

Sponsor: Brandt **Agency Name and Code** 218 AOC
Short Title: REMOVING UNLAWFUL OCCUPANTS **Number:** _____
Person Writing Aaron Holloman
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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
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: SB 359 creates a procedure for a home owner or agent to submit a “verified” complaint to a sheriff to have an “unlawful occupant,” someone who is trespassing, immediately removed from property with a residence. Upon receipt of the complaint, the sheriff serves notice to vacate upon the unlawful occupant and then can remain to ensure the person and property is removed. Further, the bill provides a private right of action to a person removed to sue to recover possession of the property.

In addition to the above, the bill increases the penalty for criminal damage to property over \$1,000 to a second degree felony and fraud over \$20,000 to a first degree felony..

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, appeals from convictions, and an increase in court and parole hearings. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1) **Potential Redundancy.** While the bill may be attempting to provide for process for reclaiming property, there are already mechanisms under the law to accomplish this. Unlawfully occupying is defined as trespassing, which makes this largely redundant since trespassing is already an arrestable misdemeanor. Arrest for trespass or other crime under the bill is redundant because by definition an unlawful occupier is a trespasser.
- 2) **Potential Lack of Due Process.** The individuals alleged to be “unlawful occupants” of real property may not be afforded full due process—notice and an opportunity to be heard by a judge—where they are expected to vacate the property immediately upon receiving the notice from the law enforcement officer. Further, it allows for service by posting which may not result in actual notice being provided to the “unlawful occupant.”
- 3) **Police Process.** The bill may create a tension between usual judicial review of police action and immediate removal
 - a. **No judicial review.** SB 359 would require a sheriff to put the complainant in possession of the property and would further authorize the peace officer to arrest the “unauthorized occupants” of real property based on the allegations of a citizen in a complaint. This is less than the usual process which requires a judge to review a sworn affidavit and criminal complaint from a law enforcement officer of a crime or the judge finding probable cause for either an arrest warrant or a search warrant to be issued to enter and search the property.
 - b. **Fees.** The bill would also authorize police agencies to collect a fee from purported property owners for the act of removing an occupant from a property. This

mimics somewhat the process by which law enforcement are paid to effectuate service of process, but does so outside of the realm of the Courts because the process would simply be the removal of an occupant of a property that occurs outside of an authorized court proceeding. This “fee for service” aspect of the bill seems to be contrary to established norms that typically prevent citizens from paying police for specialized services.

- 4) **Increased Penalty for Criminal Damage.** The bill, by increasing the degree of the charge, increases the penalty for criminal damage to property over \$1,000 from 18 months to 9 years, with no connection to the rest of the bill. Most crimes with monetary damages have graduated penalties that increase with the higher value of the damage. *See e.g.* NMSA 1978, § 30-16-1(F) on larceny. Generally, the damages are over \$20,000 before the degree of crime is as high as a 2nd degree felony; whereas financial crimes of \$1,000 or more are typically only 4th degree felonies. It would seem inequitable for the crime of criminal damage to property of a \$1,000 or more to be a 2nd degree felony when larceny of over \$500 to \$2,500 is only a 4th degree felony.
- 5) **Civil Cause of Action.** The bill creates a civil cause of action that provides for statutory damages without including any damage calculations in the statute. Additionally, the bill requires courts to “advance the cause on the calendar”, without any guidance and burdening court dockets. As a statute attempting to direct court process, specifically the court docketing, this appears to be contrary to Ammerman v. Hubbard Broadcasting, Inc., 1976-NMSC-031, ¶ 15 *quoting and affirming*, State ex rel. Anaya v. McBride, 88 N.M. 244, 246, 539 P.2d 1006, 1008 (1975), “Under the Constitution, the legislature lacks the power to prescribe by statute rules of practice and procedure, although it has in the past attempted to do so. Certainly statutes purporting to regulate practice and procedure in the courts cannot be made binding, for the constitutional power is vested exclusively in this court.”

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type
- This bill may have an impact on the Judiciary’s performance measures without the additional resources to comply with the bill.

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases. There will also likely be a drop in plea agreements for criminal damage to property given the increased consequences.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

- 1) **Scope .** The scope of the bill may be unnecessarily broad because it contemplates real property that *includes* a residential dwelling extending the reach of the procedure to sheds, garages, yards, or commercial property that also has a residence in the same lot.

- 2) **Investigation Difficulties.** The process contemplated by the bill provides little room for investigation.
- a. There is little or no verification of the facts claimed in the complaint, with an immediate response required by law enforcement. The complainant does not have to present any actual proof of ownership or any other fact claimed in the complaint.
 - b. Then sheriff deputies are required to make a legal determination and apparently to check property records while also immediately responding to eject the person occupying the property.
 - c. While the bill purports to require a “verified” complaint, which usually indicates that the document is notarized, the process does not meet the criteria for a “verification on oath or affirmation” in the Revised Uniform Law on Notarial Acts, NMSA 1978, § 14-14A-15.
- 3) **Additional Police Process.** The bill may be in conflict with established limits of police authority, creating tension in the requirements of the statute and the requirements of police procedure.
- a. **Mandates law enforcement action.** SB 359 would require a sheriff to remove the “unauthorized occupants” of real property based on the allegations of a citizen in a complaint and without a Judge having received and reviewed a Civil Petition for Forcible Entry and Unlawful Detainer and a Writ having been issued by the Court. By requiring mandatory removal, SB 359 appears to supplant the discretion normally given to law enforcement to determine how to deploy personnel and resources, and whether to effectuate an arrest for minor violations of the law. The provision providing for the collection of fees adds the additional concern that SB 359 would provide a financial incentive for police to over prioritize property-occupant removal actions over other law enforcement activities.
 - b. **May not meet standards of reasonable suspicion or probable cause.** A sworn statement of a citizen does not meet the legal standards or probable cause that a law enforcement officer must satisfy before a Judge will issue an arrest or search warrant. Also a “verified” complaint by a citizen also does not satisfy the evidentiary requirement of general intent to trespass. Additionally, attempt to verify the identities of the occupiers may not be legally permitted if there is not some independent legal basis to request identification.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS