

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{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 2/13/2025

Bill No: SB 359-280

Sponsor: Craig W. Brandt
Short Title: Removal of Unlawful Occupants of Real Property

Agency Name and Code Number: LOPD-280
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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 Expenditure 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: **HB 332** “Unlawful Squatting” (creating a felony crime functionally identical to misdemeanor trespass)

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The Bill seeks to provide owners of residential property with an accelerated procedure to evict squatters.

The Bill would add a new section of law to (1) define “Unlawful occupying” is equated with trespass; (2) define an “unlawful occupant” as someone who entered property that includes a residential dwelling without permission and continuously resides thereon (comparable language to existing trespass law) after being directed to leave, and (3) creating a mechanism for seeking assistance from the county sheriff.

Section 2 requires the sheriff to serve the unlawful occupant with notice of immediate removal of all unlawful occupants. Service may be by hand or by posting at the entrance. The owner or agent may request the sheriff to be present while the owner or agent removes the personal property of the occupants. The owner or agent is not liable for damage or loss to property if the removal is lawful. The sheriff may also arrest unlawful occupants for trespass or other crimes.

The Bill would also amend NMSA 1978 Section 30-15-1 (Criminal Damage to Property) to increase the penalty from a fourth degree to a second degree felony for damage in excess of \$1,999. This increases the basic sentence six-fold from 18 months to 9 years.

The Bill would amend NMSA 1978 Section 30-16-6 (Fraud) to increase the penalty from a second to a first degree felony when the value of the property taken exceeds \$20,000. This doubles the basic sentence and makes the time mandatory (judges may not suspend a first-degree felony sentence in favor of probation).

Lastly, the Bill would amend NMSA 1978 Chapter 42, Article 4, to create a new civil cause of action for wrongful ejection under the foregoing provisions.

FISCAL IMPLICATIONS

Significantly increasing the penalties for existing crimes would result in more accused persons opting to take their cases to trial, and requires that cases be handled by higher-level felony Public Defender attorneys (Trial Attorneys). Depending on the volume of charges initiated by a given district attorney in a locale, there may be a recurring increase in needed

LOPD FTEs for the office as well as a need for funds for contract counsel compensation. A Trial attorney's mid-point salary including benefits is \$149,063.16 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas (due to salary differential required to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51.

SIGNIFICANT ISSUES

This bill appears directed at scenarios where the trespasser is not a holdover tenant, relative of the owner, or otherwise asserting lawful right to presence. The bill thus seeks to create a process enabling immediate removal of trespassers with very limited notice requirements. Current law, however, enables police to immediately remove a person who is unlawfully trespassing on private property.

Under the proposed removal process, the owner or agent need only "direct" the occupants to leave and affirm the same in the complaint form to the sheriff. No proof of notice is required beyond the averment in the complaint form. Similarly, after "verifying" the complaint comes from the owner or their agent, the sheriff can simply hand the notice of immediate removal to the occupants or post it on the site. The owner or agent may then immediately remove the occupants and their personal property without liability for damage. The reliability of the complaint and verification is not addressed by the bill, and the new cause of action for wrongful ejection provides little redress for improperly ejected occupants who are likely to lack the means to seek civil damages.

On the whole, this targeted scenario is adequately handled by existing trespass laws and civil landlord-tenant law and the proper remedy is eviction after due notice and civil damages, if applicable.

Additionally, unlawful occupancy is already a crime. Indeed, Section 1(A) of SB 359 incorporates the existing crime of trespass. If a person enters on private land without permission, it is misdemeanor trespass, which specifically includes entering "or remaining" on land without permission, and already specifically addresses when a person damages that property. *See* NMSA 1978, § 30-14-1. Additionally, Section 30-14-1.1 already expressly provides for "double damages" if a trespasser "damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features," similar to the language specified in SB 359.

LOPD questions the policy wisdom and constitutionality of criminalizing conduct stemming from status like poverty or housing insecurity. The most likely factual scenario targeted by the bill, however, is an unhoused individual sleeping on private property for a *short* period of time or even weeks or months, but who otherwise has no criminal intent. If this law is used to target the unhoused, those cases could see significant litigation under the New Mexico Constitution. *See City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 563-64, 144 S. Ct. 2202, 2228 (2024) ("For people with no access to shelter, that punishes them for being homeless. That is unconscionable and unconstitutional. Punishing people for their status is 'cruel and unusual' under the Eighth Amendment.") (Sotomayor, J., Kagan, J., and Jackson, J., dissenting) (citing *Robinson v. California*, 370 U.S. 660 (1962)).

Lastly, the increased first degree penalty for fraud in an amount over \$20,000 seems grossly disproportionate when compared to the penalties for similar property crimes. There has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

PERFORMANCE IMPLICATIONS

Enactment of any higher criminal penalty is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea to the greater penalty. If more, higher-penalty trials result from enactment, LOPD may need to hire more trial attorneys with greater experience to address these additional trials and ensure compliance with constitutional mandates of effective assistance of counsel.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 332 “Unlawful Squatting” (creating a felony crime functionally identical to misdemeanor trespass)

TECHNICAL ISSUES

None known.

OTHER SUBSTANTIVE ISSUES

None known.

ALTERNATIVES

The status quo.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo.

AMENDMENTS

None known.