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FISCAL IMPACT REPORT

BILL NUMBER: CS/Senate Bill 100/SJCS/aSFI#1

SHORT TITLE: Burglary Definition of Dwelling

SPONSOR: Senate Judiciary Committee

LAST UPDATE: 02/06/2026 **ORIGINAL DATE:** 01/27/2026 **ANALYST:** Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund
Courts/DAs/LOPD	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

New Mexico Sentencing Commission
Administrative Office of the District Attorneys
Corrections Department
Office of the Attorney General
Administrative Office of the Courts
Law Offices of the Public Defender

SUMMARY

Synopsis of Senate Floor Amendment #1 to SJC Substitute for Senate Bill 100

The Senate Floor amendment #1 to the Senate Judiciary Committee substitute for Senate Bill 100 replaces the word “includes” with “means” when defining “structure” in both places in the bill where this word was used.

Synopsis of SJC Substitute for Senate Bill 100

The Senate Judiciary Committee Substitute for Senate Bill 100 (CS/SB100/SJCS) amends Sections 30-16-3 and 30-16-4 NMSA 1978, relating to burglary and aggravated burglary, by providing a statutory definition of the term “structure.” The bill defines “structure” as a protected space that is enclosed to the extent that it is capable of confining people or property and creates

an expectation of privacy against unauthorized intrusion. The definition further specifies that the boundaries of a structure may include a partially enclosed construction attached to and constituting an extension of a dwelling, if the location creates an expectation of privacy that a reasonable person would expect to be protected from unauthorized entry. The definitional language applies to both burglary and aggravated burglary statutes and is intended to clarify the types of spaces that may fall within the scope of those offenses. The bill also makes technical and stylistic adjustments to existing statutory language for consistency, such as replacing “arms himself” with “is armed” and standardizing grammatical construction.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served that might result from CS/SB100/SJCS could have moderate fiscal impacts. While CS/SB100/SJCS does not create a new criminal offense or change the degree of penalty associated with burglary or aggravated burglary, it modifies the statutory definition of “dwelling” in a way that may expand the number and type of structures covered under Sections 30-16-3 and 30-16-4 NMSA 1978. If this definitional change results in more individuals being charged with burglary or aggravated burglary or affects the classification of a burglary as a third-degree felony involving a dwelling, it may increase the number of convictions or the duration of sentences imposed, which in turn could increase the incarcerated population.

The Corrections Department (NMCD) reports no immediate fiscal impact; however, any increase in the number of individuals incarcerated under the broader definition may lead to higher long-term costs. LFC staff estimate the average cost to incarcerate a single inmate in FY25 was \$61.5 thousand annually, though the marginal cost—defined as the cost for each additional inmate—was approximately \$27.2 thousand per year across all state facilities. These marginal costs are driven by variable expenses such as food, healthcare, and supervision, and do not reflect the high fixed costs associated with correctional infrastructure.

While precise estimates are not currently available due to uncertainty about enforcement patterns and case outcomes under the new statutory language, the redefinition of “structure” may lead to additional litigation, expanded charging decisions, or longer incarceration periods for cases previously interpreted under narrower judicial standards. As such, CS/SB100/SJCS may contribute to moderate cost growth in the corrections system over time if it results in increased admissions or reduced release rates. Fiscal impacts on the judiciary, public defenders, and prosecutors may also arise from increased case complexity, but these impacts are not included in this estimate because they cannot be quantified using available data.

SIGNIFICANT ISSUES

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison or jail, or in the length of time served, that might result from the passage of CS/SB100/SJCS could have a moderate fiscal impact. While the bill does not create a new offense or change the statutory penalty levels for burglary or aggravated burglary, it provides a new statutory definition of “structure” that may affect how certain spaces are classified under

Sections 30-16-3 and 30-16-4 NMSA 1978. The definition includes partially enclosed constructions attached to dwellings if they create an expectation of privacy, which may expand the types of spaces qualifying for prosecution under existing burglary statutes.

According to analysis from the New Mexico Sentencing Commission, this definitional change could broaden the factual circumstances in which burglary or aggravated burglary charges are pursued, particularly in cases involving porches, carports, or similar structures that may not have previously qualified under the statute. While it remains uncertain how frequently the new language will be applied in practice, any increase in charging or conviction rates, or in the classification of incidents as qualifying for higher felony degrees, could lead to longer periods of incarceration and increased population levels in state correctional facilities.

TECHNICAL ISSUES

Agency review identified several drafting and consistency issues within CS/SB100/SJCS that may merit consideration. The Office of the Attorney General (NMAG) noted that the bill uses varying articles and phrasing across subsections of the burglary and aggravated burglary statutes, including alternating references to “a vehicle” and “any vehicle,” “a felony” and “any felony,” and the use of both “with intent” and “with the intent.” While these variations do not change the structure of the offenses, they introduce stylistic inconsistencies within and between Sections 30-16-3 and 30-16-4 of NMSA 1978. The analysis also noted that the bill removes the term “therein” from some provisions while leaving it in others, resulting in mixed usage of that term within the same statutory section.

In addition, NMAG observed that the amendment to the aggravated burglary statute replaces the phrase “arms himself” with “is armed” with a deadly weapon. Although this change appears stylistic, the agency noted it may alter the temporal framing of when the weapon is possessed during the offense, which could affect interpretation in certain cases. The agency also identified the insertion of the word “other” before “structure” in the burglary statute as potentially redundant given the surrounding language. These issues were characterized as technical and related to the internal consistency and clarity of the statutory language, rather than to the substance of the offenses or penalties.

OTHER SUBSTANTIVE ISSUES

CS/SB100/SJCS provides a statutory definition of “structure” for purposes of the burglary and aggravated burglary statutes. The definition includes a “protected space enclosed to the degree that it is capable of confining people or property and creates the expectation of privacy against an unauthorized intrusion.” It further states that the boundaries of a structure may extend to a “partially enclosed construction attached to and constituting an extension of a dwelling,” provided the location and manner create an expectation of privacy.

Although the bill offers statutory guidance where none previously existed, some of the terminology—such as “capable of confining,” “expectation of privacy,” and “reasonable person”—may require fact-specific interpretation by the courts. This could be particularly relevant in cases involving porches, carports, portals, or other structures that are not fully enclosed but may still function as extensions of a dwelling. As a result, application of the new language may depend on how courts assess physical characteristics and privacy expectations in

individual cases. These interpretive considerations may affect charging decisions and judicial outcomes but are not expected to have fiscal impacts distinct from those noted elsewhere in this report.

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