

LFC Requester:

Austin Davidson

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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 x **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 1/17/23

Bill No: HB69

Sponsor: Mark Duncan, Harlan
 Vincent

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

Person Writing
Analysis: John Duran

Short Crime of Organized
Title: Residential Theft

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	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

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

House Bill (“HB”) 69 would create a new criminal offense of “organized residential theft”, which would be defined as individual acts in concert with one or more persons for the purpose of stealing personal property from more than one residence or from a single residence on two or more occasions. Penalties are commensurate with the total dollar amount stolen during a a one-year period.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

This proposed crime is already addressed in 30-16-3, NMSA (Burglary), 30-1-13, NMSA (Accessory Liability), 30-28-2, NMSA (Conspiracy), and 30-28-3 (Criminal Solicitation). As the currently stand, these crimes generally carry equal or harsher penalties than the proposed crime.

The proposed penalty under Section 1, (B), (1), for actual theft of up to \$2500 within a one-year period is a fourth degree penalty which carries a sentence of up to 18 months incarceration.

The proposed penalty under Section 1, (B), (2), for actual theft between \$2500 and \$20,000 within a one-year period is a third degree felony which carries a penalty of up to three years incarceration.

The proposed penalty under Section 1, (B), (3), for actual theft of more than \$20,000 within a one-year period is a second degree felony which carries a penalty of up to nine years incarceration.

By way of comparison, pursuant to 30-16-3, NMSA, burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling, or other structure, movable or

immovable, with the intent to commit any felony or theft therein. Residential Burglary under 30-16-3(A) NMSA is a second degree felony, with a basic sentence of nine years, regardless of the dollar amount and regardless of whether anything was actually stolen. Under 30-16-3(B) NMSA, non-residential burglary is a fourth degree felony, regardless of dollar amount and regardless of whether anything was actually stolen. One main difference between this proposed legislation and the burglary statute regarding the penalty is that under 30-16-3, NMSA, actual theft need not be proved but rather only *intent* to commit a theft or felony therein. These penalties are the same for a person who acts as an accessory under 30-1-13, NMSA, and are lowered by one degree as a co-conspirator. Therefore, if the highest crime is a second degree felony, the person committing the conspiracy would be guilty of a third degree felony and if the highest crime is a third or fourth degree felony, the person committing the conspiracy would be guilty of a fourth degree felony.

Moreover, if an individual or individuals are charged with multiple instances of residential burglary, even on the same residence or structure, under 30-16-3(A) each charge would carry a penalty of up to nine years incarceration. Double Jeopardy would not attach as these would be separate units of prosecution.

If enacted, HB 69 would invite a potential conflict of law with the burglary, accessory, conspiracy and solicitation statutes, and could reduce the potential penalties for multiple criminal acts. For example, assume a primary and secondary actor acted together to burglarize a single house every three months, three times over the course of a year. At each burglary they stole \$100 for a total of \$300 by the time they were arrested. Under the proposed legislation, they could be charged with a single fourth degree felony based on the small dollar amount. If they were to be charged with three counts of residential burglary and up to three counts of conspiracy to commit residential burglary under the current law, they would face three second degree felonies for each residential burglary, and up to three third degree felonies for each time they conspired to commit a burglary.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This proposed crime is already addressed in 30-16-3, NMSA (Burglary), 30-1-13, NMSA (Accessory Liability), 30-28-2, NMSA (Conspiracy), and 30-28-3 (Criminal Solicitation). These existing laws generally carry equal or harsher penalties.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.