

LFC Requester:

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 1/24/2024
Bill No: SB 97-280

Sponsor: Antonio Maestas
Short Title: Crimes of Shooting at or from Motor Vehicles

Agency Name and Code Number: Law Offices of the Public Defender - 280
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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

BILL SUMMARY

Synopsis:

SB 97 would amend five separate statutes, in order to separate the crimes of “shooting **at** a motor vehicle” and “shooting **from** a motor vehicle,” and to increase penalties. Under current law, shooting **at or from** a motor vehicle has three penalty levels based on resulting harm – 4th degree felony (no injury), 3rd degree felony (injury), and 2nd degree felony (great bodily harm). See NMSA 1978, Section 30-3-8, “Shooting at dwelling or occupied building; shooting at or from a motor vehicle.”

Section 1 of SB 97 would amend the existing Subsection B of Section 30-3-8, add a new Subsection C two separate shooting *at* and shooting *from*, and renumber and amend the existing Subsection C.

The proposed amendments to Subsection B would:

- (1) remove the crime of shooting **at** a motor vehicle from this subsection;
- (2) elevate the lowest level of the crime of shooting **from** a motor vehicle (in which no injury results) from a fourth degree felony (1.5 years) to a third degree felony (3 years);
- (3) incorporate the existing third degree felony for “results in injury,” into the highest level, a second degree felony (9 years); and
- (4) thus remove the existing requirement that “great bodily harm” must result to constitute a second degree felony.

The proposed new Subsection C would separately define the crime of “shooting **at** a motor vehicle” and provide that, regardless of whether there was evidence of any actual damage or injury, the crime would always be a second degree felony, thereby treating shooting *at* a motor vehicle more harshly than shooting *from* one.

The existing Subsection C would be renumbered as (D) and updated to use non-gendered terminology.

Sections 2 and 3 of SB 97 would clerically amend Subsection A of Section 30-3-8.1 NMSA 1978 (concerning seizure and forfeiture of motor vehicles) and Section 30-3-8.2 (concerning the revocation of driver’s licenses) to reflect the proposed amendments to Section 30-3-8.

Section 4 of SB 97 would amend Subsection A and Subsections E(2)(b) and (c) of Section 31-18-23, concerning the mandatory life imprisonment upon being convicted for a third violent felony conviction (the “three strikes” law).

The bill would insert the term “felony” into Subsection A to clarify that the statute only applies in the case of a “third violent felony conviction.”

The bill would amend Subsection E(2)(b), which currently lists shooting at or from a motor vehicle as a qualifying “violent felony” *if* it results in great bodily harm. The bill would make *any* conviction for shooting at or from a motor vehicle a “violent felony” even if there is *no* resulting damage or physical injury.

Unrelated to shooting at or from crimes, SB 97 would also amend Subsection E(2)(c), by removing the existing requirement that great bodily harm must result for *kidnapping* to qualify as a violent felony. Instead, it would make kidnapping a violent felony if any “physical injury or a sexual offense” occurs.

Section 5 of SB 97 would amend Subsection F of Section 66-5-29 of the Motor Vehicle Code, concerning mandatory revocation of driver’s licenses, to reflect the proposed amendments to Section 30-3-8.

FISCAL IMPLICATIONS

Since SB 97 does not appear to substantively alter the conduct that currently constitutes the crime of shooting at or from a motor vehicle, there may not be a significant increase in the number of *cases* that result. However, there would still be a notable impact from the proposed amendments that increase the level of punishment (including broader “three strikes” eligibility) while removing the requirement that great bodily harm must result to impose the highest level of penalty (including a possible life sentence if it constitutes a third violent felony conviction).

Generally, the enactment of any higher criminal penalty has a tendency to result in more trials, as more defendants are likely prefer risking a trial rather than take a plea to the greater penalty. If there is a significant increase in higher-penalty trials as a result of enacting SB 97, LOPD may need to hire additional trial attorneys with greater experience to address the increase in trials so as to ensure compliance with constitutional mandates, including the effective assistance of counsel. (Additionally, courts, DAs, AGs, and NMCD could anticipate increased costs.)

Because of their penalties, these felonies would be handled by, at a minimum, mid-level felony capable attorneys (Associate Trial Attorneys), but more likely higher-level attorneys (Trial Attorneys). A mid-level felony capable Associate Trial Attorney’s mid-point salary *including benefits* is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas. A senior-level Trial attorney’s mid-point salary *including benefits* is \$149,063.13 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12,780.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126,722.33.

An assessment would be necessary after implementing the proposed penalty scheme, to more accurately determine the actual impact and performance implications on limited resources.

SIGNIFICANT ISSUES

The presumed purpose of Section 31-18-23 is to target individuals who themselves have shown a propensity to act violently, especially in the context of committing certain types of criminal acts, which justifies a life sentence for a crime that would otherwise not carry a life sentence to safeguard the community. SB 97 proposes to remove the physical harm component in defining shooting at or from a motor vehicle as a “violent felony,” which greatly expands the number of individual potentially exposed to a mandatory life sentence, even if their “violent felony” convictions did not result in any actual damage, injury, or specific, identifiable harm.

For example, the manner in which “violent felony” would be redefined by SB 97, Section 4, and shooting at or from a motor vehicle is redefined by SB 97, Section 1, could result in circumstances where an individual is prosecuted three times over the course of a few years with shooting at or from a motor vehicle (none of which results in any damage or injury), and the individual would receive a mandatory life sentence upon the third conviction.

Currently, a conviction for shooting at or from a motor vehicle would not result in a violent felony conviction, *unless* great bodily harm resulted from the shooting. Such a requirement appears to accept and maintain the proposition that imposing a mandatory life sentence based on a propensity to act violently in order to protect the community, should be based on demonstrable evidence that there has been at least some actual damage or injury that resulted from the conduct forming the basis of the violent felony convictions. The proposed amendments jettison that approach, potentially undermining the legitimacy of the justification for imposing such types of mandatory life sentences. This could result in constitutional challenges based on the prohibition against cruel and unusual punishment.

The proposed amendment, in SB 97, Section 4, to reduce the requirement that a kidnapping must result in great bodily harm, so that only minimal “physical injury or a sexual offense” was the result, likewise undercuts or weakens the apparent purpose of Section 31-8-23. This is particularly concerning considering that kidnapping is defined broadly to include even brief instances of restraint and when injury results, already receives a mandatory 18-year sentence. *E.g.*, *State v. Enriquez*, A-1-CA-30252, mem. opinion, (N.M. Ct. App. Mar. 8, 2012) (non-precedential) (affirming kidnapping where defendant “restrained Victim by pointing a gun at his face with the intent to hold Victim against his will” even though the victim immediately ran away and was not injured).

PERFORMANCE IMPLICATIONS

LOPD would also note that, although increased punishment seems to be one of the preferred methods to attempt to deter damaging and unwanted behavior, in general, decades of empirical study on the effects of increased punishment as a method of deterrence have not resulted in conclusive evidence that increased punishment actually produces the desired result of deterring such conduct. Thus, the increased drain on limited resources and performance capabilities could result in a negative impact while not successfully producing the desired effect envisioned by SB 97.

Also, as noted above, the proposed legislation would certainly affect LOPD attorneys’ representation by increasing the number of these cases that go to trial.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, and analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

Analyst notes that the bill title (“RELATING TO CRIME; PROVIDING THAT SHOOTING AT A MOTOR VEHICLE AND SHOOTING FROM A MOTOR VEHICLE ARE SEPARATE CRIMES; PROVIDING PENALTIES”) does not include any reference to amending the three strikes law, and to amending the *kidnapping* provision of that law in particular. This appears to violate the constitutional requirement that “[t]he subject of every bill shall be clearly expressed in its title.” See N.M. Const. art. IV, § 16.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS