LFC Requester:	

AGENCY BILL ANALYSIS
2026 SECOND SESSION

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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** X
Correction ___ **Substitute** ___

Date Feb. 5, 2026
Bill No: SB 100-280

Sponsor: Cindy Nava and Linda M. Trujillo
Short Title: Burglary Definition of Dwelling

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)

SECTION III: NARRATIVE

BILL SUMMARY

Changes to the analysis for the *SJC-Substitute for SB 100* ~~strike~~ portions of the original analysis that are no longer at issue and underline new material.

The Senate Floor amendment is addressed in bold within the Synopsis, but does not otherwise alter the LOPD analysis in subsequent sections.

Synopsis:

Current law: The crime of burglary is defined as "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." NMSA 1978, § 30-16-3. Non-residential burglary is a fourth-degree felony; residential burglary (entry of a "dwelling house") is a third-degree felony, and Aggravated burglary is a second degree felony and consists of any burglary where the burglar is armed with a deadly weapon or commits a battery upon any person while inside or in entering or leaving. NMSA 1978, § 30-16-4 (aggravated burglary).

SB 100: The bill would ~~add definition of the word "dwelling" for purposes of burglary and aggravated burglary~~, striking the word "house" from the residential burglary provision's description of a "dwelling house," ~~and defining dwelling as "a personal space with some sort of enclosure that creates the expectation of privacy in such a manner that a reasonable person would expect protection from an unauthorized intrusion~~."

SJC Substitute: The substitute would replace the proposed definition of "dwelling" with a definition of "structure" instead, as follows:

> As used in this section, "structure" 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. The boundaries of a structure may extend to a partially enclosed construction attached to and constituting an extension of a dwelling, in a location that creates the expectation of privacy and in such a manner that a reasonable

person would expect protection from an unauthorized intrusion.

The Senate Floor amendment replaces the word "includes" with the word "means" in the definition. This change clarifies that the language therein constitutes a certain definition and does not invite an expansive interpretation. The second sentence then provides a narrow expansion, but the Senate Floor amendment appears designed to limit the scope of that expansion.

FISCAL IMPLICATIONS

To the extent this bill's intent is to reverse the course of judicial line-drawing over the past three decades, this bill is certainly designed to expand the reach of residential burglary beyond the ordinary meaning of the word "dwelling," ~~by no longer limiting it to a "house" or even anything *equivalent* to a house. Indeed, by doing so with the definition of "dwelling" as opposed to "structure," the bill expands *residential* burglary to pseudo-structures with far fewer limitations than for *non-residential* burglary, which would still require an enclosed structure~~ by extending to *unenclosed* construction *attached* to a dwelling but otherwise open to the outdoors. This expansion, at face value, would transform some cases currently charged as *misdemeanor trespass* into residential burglaries.

~~That being said, the approach is also extremely problematic and is sure to invite significant attorney time in litigating the legislative intent by creating ambiguities, unintended consequences, and absurd results~~. This approach expands the scope of burglary to include unenclosed spaces. *See infra*, Significant Issues.

The transformation of misdemeanor conduct into third-degree felonies will increase the rate such cases are taken to trial, require representation by more experienced public defenders, and will certainly prompt litigation around the meaning of the bill and appropriate instructions for a jury. The LOPD cost for experienced defense attorneys, including salary, benefits, operational costs, and support staff is $292,080.16 annually in the Albuquerque/Santa Fe areas, and $300,569.45 in outlying geographic areas. A 2022 workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, "A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment."
https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf. Barring some other way to reduce indigent defense workload, any increase in the number of serious, complex felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep the LOPD's workload crisis from spreading.

SIGNIFICANT ISSUES

Decades of New Mexico Precedent Defining "Structure"

In addition to burglary's intent requirement, the core distinction between burglary and trespass is whether the entry violates a particular ***degree*** of privacy interest. The burglary statutes have never defined common terms like "structure" or "dwelling," but over the years, case law has delineated what constitutes a structure or dwelling by evaluating the nature of the space and the relative interests in privacy and safety they invoke.

In 1995, the Court of Appeals held that a chain link fence around a mobile home business did not constitute a structure so that climbing over the fence into the yard to steal was a **trespass, not burglary**. *State v. Foulenfont*, 1995-NMCA-028, 119 N.M. 788. Because it was a non-residential space, the Court was interpreting the phrase word "structure," not the word "dwelling." The Court reasoned, "unlike a fence, all of the enumerated objects in the statute are capable of completely confining people and their property." *Id.* ¶ 11.

Over the years, the courts ruled certain spaces in or out of the burglary statute based on whether they were the ***type of space*** that burglary law is designed to protect, frequently noting that other criminal laws like trespass and criminal damage to property address the harms that fall outside the realm of burglary. The seminal case in clarifying the scope of burglary was decided in 2012, and held that piercing a vehicle's gas tank to siphon gas is not "entering the vehicle" in the burglarious sense because there was no entry into the parts of a car "protected" by burglary, such as the passenger compartment or a trunk used to store personal belongings. *See State v. Off. of Pub. Def. ex rel. Muqqddin* ("*Muqqddin*"), 2012-NMSC-029, 285 P.3d 622. *Muqqddin* again interpreted the phrase "or other structure," as a "dwelling house" was not at issue.

Muqqddin explained that, "in order for an area to be considered prohibited space under Section 30-16-3, it must have some sort of enclosure" because "[i]t is the nature of the enclosure that creates the expectation of privacy. Enclosure puts the public on notice." *Id.* ¶¶ 44-45. *See State v. Mestas*, 2016-NMCA-047, ¶ 27, 370 P.3d 805 ("The crucial question in determining whether an area is protected is whether or not its physical characteristics create an '[e]nclosure [that] puts the public on notice.'" (quoting *Muqqddin*, 2012-NMSC-029, ¶ 45 (alterations in original))).

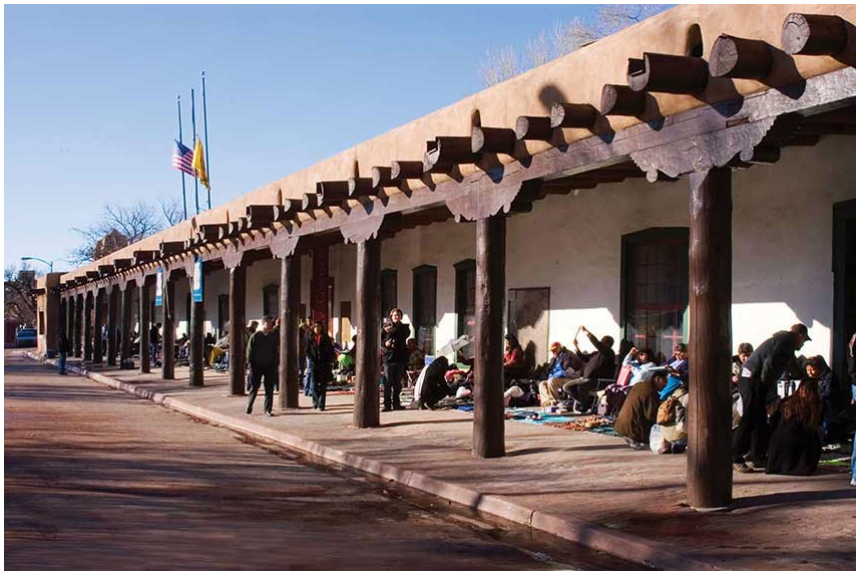
Accordingly, even a fully enclosed building does not carry the requisite expectation of privacy if being used as a commercial store that is "open to the public," such that even a person who has been ordered not to enter the store commits trespass, not burglary, so long as they enter during business hours and remain in the areas of the store that are open to the public. *See State v. Archuleta*, 2015-NMCA-037, 346 P.3d 390; *State v. Baca*, 2014-NMCA-087, 331 P.3d 971.

A dwelling is a particular type of structure with heightened protections due to the nature of its use for *habitation.* Accordingly, judicial interpretations of "dwelling" were necessarily construed to be *at least* as protected as "other structures," since dwellings are the structures with the greatest privacy and safety interests and, under Section 30-16-13, residential burglary is punished more harshly for that reason. Although the statute does not currently define "dwelling," the Uniform Jury Instructions used in criminal burglary trials provide a definition of "dwelling house" as "any structure, any part of which is customarily used as living quarters." *See* UJI 14-1631 NMRA.

In 2021, the Court of Appeals upheld a residential burglary conviction for entering a home under construction, reaffirming that "[a]mong the privacy interests protected by the burglary statute is the security of habitation and personal space, which require an enclosure. *Id.* ¶¶ 42-44. *State v. Shelby*, 2021-NMCA-064, 499 P.3d 671. Although the house was not fully constructed, it was fully enclosed, and although the owner had not moved in yet, it was clearly built as a *home*, i.e., a structure "customarily used as living quarters."

On July 15, 2025, applying thirty years of precedent, the Supreme Court decided *State v. Jones*, 2025-NMSC-049, 580 P.3d 216, which held that a "portal" (or covered but unenclosed porch) is *not* a "structure" protected by burglary, because it is not enclosed. *Id.* ¶ 23 ("Indeed, the common thread apparent in *Muqqddin* and subsequent precedent is not how the space was being used but the requirement that the space be enclosed." (citing *Enclose*, *Merriam-Webster's Collegiate Dictionary* (11th ed. 2020) ("to close in: surround (enclose a porch with glass)").

Unlike the screened in porches common to other parts of the country, New Mexico prefers an open air approach. *E.g.*:



Accordingly, the *Jones* Court held that a portal *extending from* a house that is undoubtedly a dwelling, was not *itself* a dwelling, so that an intruder who "crossed the plain" of the portal, stepping underneath its roof, had not in fact "entered a structure" for burglary purposes, much less a *dwelling*. *Id.* ¶ 25.

~~**Upending the meaning of "dwelling"; erasing the distinction between residential and non-residential burglary; creating an unworkable conflict within the statute, precluding notice of potential penalties, leading to constitutional claims of overbreadth and vagueness.**~~

Creating a carve-out for the facts of *Jones* begins a slippery slope toward eroding the line between trespass and burglary law even further.

This bill appears to be responsive to *Jones* and is attempting to apply burglary to a

"portal" or similar object. [~~However, by adding a definition of "dwelling" (and striking "house" from the phrase "dwelling house") and not instead defining "structure," the bill has the unintended consequence of completely negating any requirement that a dwelling be "customarily used as living quarters."~~] The SJC Substitute does appear to create a narrow carve-out for a porch or portal attached to a home, rather than the expansive definition as filed.

[~~By doing so, the statute would no longer have any discernible distinction between entering a "dwelling" as opposed to any "other structure," and the penalty distinctions in Section 30-16-3 can no longer be applied predictably. *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982) ("A law ... may ... be challenged on its face as unduly vague[ ] in violation of due process. ... [I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them." (internal quotation marks and citation omitted)); *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) ("It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.").~~

~~While the bill may wish to extend burglary protections to a portal attached to a dwelling, the proposed definition goes miles beyond the facts presented in *Jones* by defining "dwelling" as any "personal space with **some sort of enclosure** that creates the expectation of privacy in such a manner that a reasonable person would expect protection from an unauthorized intrusion."~~]

However, this is still a problematic expansion of burglary, which has been predictably required a "fully enclosed" space for thirty years. A "somewhat enclosed" space with an "expectation of privacy" could apply to spaces, such as a fenced back yard, that have not traditionally been considered as *part* of a dwelling, but curtilage thereto. While a yard is a protected space, it is protected by *trespass laws* not *burglary laws.* There is no outer limit to the types of minimally erected barriers this definition would include. While the second sentence of the substitute definition appears to limit it to portal/porch attachments only if they themselves are located within a private area, the definition does not explicitly require a yard fully enclosed by fencing or a wall, and certainly the wide variations in residential yards and variations in population density affecting privacy from neighbors leaves even this definition open to sweeping interpretations beyond the well-established bounds of burglary law. To the extent it inspires application (or future legislative expansion) beyond the exact facts of the *Jones* case, it risks erasing ~~It erases~~ the distinction between *burglary of a structure* and *trespass on open lands* if surrounded by a fence or merely signage posting "keep out."

But trespass is a misdemeanor and – as a general rule – carries none (or certainly less) of the risk of bodily harm that true burglaries implicate (and are thus punished more harshly to address). Even for someone who spends significant time relaxing in their back yard, it is not difficult to quickly recognize the difference between spotting a stranger in your back yard and suddenly finding a stranger *in your living room or bedroom*. Both are intrusive, but the latter is dramatically more frightening and dangerous than the former. [~~And as noted above, it guarantees that *any and all burglaries* are now *residential burglaries*, rendering fourth degree burglary a legal nullity.~~]

It is worth noting that a person's presence in such a space can also be charged as

attempted burglary if there is evidence that they were present with the intent to enter the actual dwelling itself. The text of the bill thus creates a great deal of uncertainty as to whether conduct that is presently charged as misdemeanor trespass would incur the more serious charge of felony burglary. ~~[If the bill is enacted, it would also be subject to constitutional challenge as void for vagueness. The Due Process clause of the Fourteenth Amendment is violated if a statute is too unclear to give notice to the public of specifically what conduct is penalized, or sets no boundaries to arbitrary law enforcement. *State v. Chavez*, 2019-NMCA068, ¶ 9, 451 P. 3d 115. The bill invites – indeed guarantees – constitutional challenge at the trial and appellate levels.]~~

The change is completely unnecessary as current law is perfectly capable of addressing the issue and the prosecutors in *Jones* simply charged the wrong theory.

The *Jones* case was considering whether stepping into a portal was burglary because the State had charged felony murder predicated on the felony of aggravated burglary, instructed to the jury as entry of the portal. Felony murder is a form of first degree murder applicable when a person commits the non-deliberate crime of *second*-degree murder during the commission of some other dangerous felony, such as robbery or burglary. *See* NMSA 1978, § 30-2-1(A)(2); UJI 14-202 NMRA (felony murder elements instruction); *State v. Groves*, 2021-NMSC-003, ¶ 13, 478 P.3d 915 ("Charging felony murder lowers the traditionally high threshold for proving a criminal defendant's culpable state of mind when the crime was committed. This relieves the state of the burden to prove premeditation or malice.") (citation omitted). The murder charge depended on a valid conviction for the predicate felony: aggravated burglary.

In *Jones*, the defendant was trespassing in the back yard, including under the portal, when the homeowner confronted him and in the resulting struggle, the homeowner was shot and killed. The State pursued felony murder charges based on the felony of burglary, predicated on entering "the portal." 2025-NMSC-049, ¶ 2. The Supreme Court held that being under the portal was not burglary and thus reversed the murder conviction, but remanded for a new trial, authorizing retrial on felony murder based on *a valid predicate felony.*

As noted above, the curtilage of a home is protected by trespass law. *See State v. Merhege*, 2017-NMSC-016, 394 P.3d 955 (affirming trespass conviction for defendant who "ran through the front yard of a private residence that was enclosed by a three foot high wall."). That misdemeanor is the crime protecting a "personal space with some sort of enclosure that creates the expectation of privacy in such a manner that a reasonable person would expect protection from an unauthorized intrusion." Burglary is something else entirely. Nevertheless, the State is not precluded from pursuing ***attempted*** burglary of the dwelling itself if a person is in a portal area or covered porch *with a purpose of entering the home itself.* While entering a porch is not burglary, it may well constitute "attempted burglary of the house" in most cases, and there is no question that the *house* is a dwelling. Attempted residential burglary would be a fourth-degree felony; attempted aggravated burglary (if armed) would be a third-degree felony. There is not a gap in the law but a very conscious distinction between crimes.

PERFORMANCE IMPLICATIONS

In addition to the constitutional challenges outlined above, this bill would create extreme

challenges for defense counsel in mounting a defense and ensuring due process via accurate instructions to the jury on the requisite elements, and the right to pursue lesser-included offenses with which there would no longer be any discernible distinction. (This concern is reduced, but still present, under the SJC Substitute.)

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

~~[To narrowly address *Jones*, the bill could instead define "structure" to include partial structures attached to dwellings that are themselves protected by trespass by separate manifestations of privacy in the curtilage, as exhibited by fencing, walls, or posted signs. This would narrowly address *Jones* without wholly upending decades of judicial line-drawing.]~~ The SJC Substitute effectuates this alternative, yet continues to present issues as discussed aboe.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. New Mexico laws pertaining to burglary, aggravated burglary, attempted burglary, and trespass would continue to protect New Mexicans in their private spaces to a degree concomitant to the degree of enclosure and the degree of entry.

AMENDMENTS

None.