

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/1/2026

Check all that apply:

Bill Number: SB 100cs

Original Correction
Amendment Substitute

Sponsor: Sen. Cindy Nava, Sen. Linda M. Trujillo

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

Short Title: BURGLARY DEFINITION OF DWELLING

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	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

Synopsis:

Analysis of Senate Judiciary Committee Substitute for SB100 (SB100cs)

This committee substitute (SB100cs) introduces a definition of “structure” instead of “dwelling,” which was introduced in SB100. Like our analysis of SB100 noted, SB100cs is apparently in reaction to the New Mexico Supreme Court’s July 15, 2025 opinion in *State v. Jones*, 2025-NMSC-049, in which the Court held that a home’s portal does not qualify as a prohibited space for purposes of the crime of aggravated burglary.

The definition of a “structure” provides additional detail which should reduce ambiguity in its application and better protect New Mexicans. Specifically, by including that “[t]he 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 definition of “structure” makes it clear that it would apply to a portal, which was the situation in *Jones*.

Analysis of Original SB100

This bill would amend the burglary and aggravated burglary statutes by changing some of the text and adding to each a definition of “dwelling.” That proposed addition is apparently in reaction to the New Mexico Supreme Court’s July 15, 2025 opinion in *State v. Jones*, 2025-NMSC-049, in which the Court held that a home’s portal does not qualify as a prohibited space for purposes of the crime of aggravated burglary (and, by implicit extension, simple burglary).

Section 1 would change the definition of burglary in technical ways by: (1) striking “any” and replacing it with the indefinite articles “a” or “an” before the list of things or places that can be burglarized; (2) striking “therein” and replacing it with the names of those things or places; and (3) striking “house” after “dwelling” where the word superfluously appears. More substantively, it would add the following definition of “dwelling”:

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.

Defining “dwelling” in this way would entail having the jury decide the subjective question of

whether it is reasonable for one to expect uninvited persons to refrain from entering the space at issue.

Section 2 would make the same changes, along with others. They include: (1) changing “any felony” to “a felony” in the definition of aggravated burglary; (2) providing that the second alternative condition for being found guilty of the crime is that, after entering, the intruder “[be] armed” with a deadly weapon—not that the intruder “arm[] himself”; and (3) changing “any” to “a” before “person” and replacing “such” with “the” before “place.”

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.

None for this office.

SIGNIFICANT ISSUES

Analysis of Senate Judiciary Committee Substitute for SB100 (SB100cs)

This committee substitute (SB100cs) appears to address the issues noted in our original analysis of SB100 by replacing the definition of “dwelling” with a broader definition of “structure,” that includes partially enclosed constructions attached to dwellings.

Analysis of Original SB100

Depending on the intent behind this measure, adding this particular definition of “dwelling” might not achieve the aim. If the intent is to redress *Jones*’s interpretation of the statutory term “dwelling or other structure,” then the use of “with some sort of enclosure” (to describe a personal space) in the proposed definition might not have changed the result in that case given that a portal was held to not have been enclosed and thus not be a prohibited space. *See Jones*, 2025-NMSC-049, ¶ 28 (“As the district court itself stated, the portal ‘does not have a set physical barrier,’ and it is ‘not completely confined.’”). Under *Jones*: “the focus is whether the physical nature of the structure is sufficiently enclosed such that a reasonable person would expect protection from unauthorized entry.” *Id.* ¶ 28. So, SB 100’s proposed definition of dwelling might not change the result from *Jones*.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

Analysis of Senate Judiciary Committee Substitute for SB100 (SB100cs)

In what would be Subsection A of both statutes, the proposed insertion of “other” before “structure” at the end of the sentence appears unnecessary. The notion of “other” is implied through the use of the *definite* article “the.”

The other notes remain offered for consideration.

Analysis of Original SB100

In what would be Subsection A of both statutes, the proposed insertion of “other” before “structure” at the end of the sentence appears unnecessary. The notion of “other” is implied through the use of the *indefinite* article “the.”

To improve consistency within and between the two sections, either “any vehicle . . .” or “a vehicle . . .” could be considered and used throughout. What would be Subsection A of both statutes proposes that “a vehicle” be used, while what would be Subsection C of the burglary statute uses “any vehicle.”

The same goes for “any felony” and “a felony.” In what would be Subsections A, B, and C of the burglary statute, “any felony” is used, while the bill proposes to change that term to “a felony” in what would be Subsection A of the aggravated burglary statute.

Also to improve consistency throughout the two sections, either “with intent” or “with the intent” should be selected and used throughout. In Subsection A of the burglary statute, “with the intent” is used, whereas in every other instance, “with intent” is used.

The same goes for “therein.” The bill proposes to strike its use in what would be Subsection A of both statutes, but the word would remain in what would be Subsections B and C of the burglary statute.

OTHER SUBSTANTIVE ISSUES

Analysis of Senate Judiciary Committee Substitute for SB100 (SB100cs)

This note remains offered for consideration.

Analysis of Original SB100

The proposed change from “arms himself” in what would be Paragraph (2) of Subsection A of the aggravated burglary statute appears to be intended merely to make the text gender neutral, but the change might carry with it a slight change in meaning. To remain truer to the original text, “becomes armed” could be used instead of “is armed,” or “themselves” could replace “himself.”

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.