

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov*(Analysis must be uploaded as a PDF)***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*Date Prepared: 1/26/26

Check all that apply:

Bill Number: SB100Original X Correction Amendment Substitute

	Agency Name and Code	
Sponsor: <u>Cindy Nava, Linda M. Trujillo</u>	Number:	<u>770- NMCD</u>
Short Title: <u>Burglary Definition of Dwelling</u>	Person Writing	<u>A. Griego Quintana</u>
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SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

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	0	0	0	0	N/A	N/A

(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: Senate Bill 100 clarifies the definition of “dwelling” in New Mexico’s burglary and aggravated burglary statutes following a recent ruling by the New Mexico Supreme Court giving a narrow construction to the term. Specifically, SB 100 defines “dwelling” to include 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.”

FISCAL IMPLICATIONS

The amendment is not expected to have a fiscal impact on the Department.

SIGNIFICANT ISSUES

Shortly after midnight on July 30, 2018, a man climbed over a fence into the backyard of Robert Romero’s residence in Santa Fe and made his way onto the home’s portal—a covered porch in the backyard of the house with furniture that was open to the elements on two sides. Romero was asleep on his couch at around 3:30 in the morning and woke up to see the intruder next to the entrance to the rear of his home. Romero went outside and confronted the intruder, a struggle ensued that ultimately culminated in the intruder shooting and killing Romero.

The offender was subsequently charged and convicted of aggravated burglary and felony murder based on his entry onto the portal. The theory of the case was that an aggravated burglary charge was appropriate because the portal was attached to the house and therefore a protected space as contemplated by the burglary law. On appeal, in *State v. Jones*, a divided New Mexico Supreme Court vacated the convictions because it determined that an unenclosed portal does not qualify as a “dwelling or other structure” under our burglary and aggravated burglary statutes because it is not “capable of completely confining people and their property.” The Court reached this conclusion because the Legislature failed to provide a definition for the term “dwelling,” and therefore, it had to rely on its own interpretation of the term. In so holding, the Court noted that the statute did not suggest that the Legislature intended to protect “every space where an occupant has an expectation of privacy.”

Chief Justice Thompson vehemently dissented, arguing that a portal qualified as a space the Legislature intended to protect with the burglary statute. He did not believe the Legislature intended to only protect those spaces that are capable of being fully enclosed. Instead, he thought a portal should be protected because its two walls and roof created a reasonable expectation of protection from an unauthorized intrusion.

Senate Bill 100 adopts Chief Justice Thompson’s view and makes clear that even partially enclosed structures like portals qualify as part of a “dwelling” that is protected by our burglary statutes because a reasonable person would expect protection from an unauthorized instruction there.

PERFORMANCE IMPLICATIONS

Senate Bill 100 adds a clear legal definition of “dwelling” to New Mexico’s burglary and aggravated burglary statutes, thereby enhancing current law and clarifying criminal liability for unauthorized entry into structures where people reasonably expect privacy and safety. The bill also enhances deterrence and improves the prosecution of serious offenses, particularly those involving violence during unlawful entry. By adopting the reasoning set out in Chief Justice David Thomson’s dissent, Senate Bill 100 promotes public safety by providing communities with

stronger protections and clearer expectations.

ADMINISTRATIVE IMPLICATIONS

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None

AMENDMENTS

None