

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{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** January 18, 2024

**Bill No:** SB 66-280

**Sponsor:** Craig Brandt  
**Short Title:** Penalty for Shooting Threat

**Agency Name and Code**    LOPD-280  
**Number:** \_\_\_\_\_  
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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)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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Synopsis: SB 66 would amend NMSA 1978, § 30-20-16, originally enacted to prohibit “bomb scares.”

The bill proposes to increase the sentence for making a shooting threat --a crime added to Section 30-20-16 as a misdemeanor during the 2022 legislative session -- from a misdemeanor to a fourth-degree felony.

SB 66 also proposes to add the new crime of “Swatting,” which is defined as making a false report to a public safety agency (law enforcement or other emergency services) with the “intent to cause an immediate response from law enforcement and other first responders.” Finally, the bill adds the proposed crime of “swatting” to the restitution enforcement subsection of the already-existing statute, NMSA 1978, § 30-20-16.

**FISCAL IMPLICATIONS**

This bill would increase one crime from a misdemeanor to a felony and add a new felony crime. If higher-penalty trials result, LOPD may need to hire more trial attorneys with greater experience than misdemeanor-qualified attorneys. These felonies would be handled by mid-level felony capable attorneys (Associate Trial Attorneys), for which the mid-point salary including benefits is \$136,321.97, as well as \$12,780.00 in recurring operational costs. Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. Assessment of the impact on the LOPD with enactment of this bill would be necessary after the implementation of the proposed higher-penalty scheme.

The increase in penalty for making shooting threats, especially, has the potential to increase charges, in particular for juvenile offenders. Because school shootings have become common in our society, this statute would likely be used to prosecute false threats by minors despite the fact that no actual harm would be caused and no real harm was intended. The statute specifically punishes insincere threats (many of which would be made by children who may say things without appreciating their seriousness), as it specifically proposes to criminalize false statements without requiring any proof that the offender has the ability to act on the threat. Because this bill proposes to felonize language that, by its definition, could not actually result in any harm, defendants (and juvenile offenders) are likely to go to trial to defend against felony charges involving just words. This increase in prosecutions will increase LOPD’s overall workload.

## **SIGNIFICANT ISSUES**

The elements of making a shooting threat (30-20-16 (B)) do not require that any person actually be placed in fear. Nor does it require any actual harm, or even the *intent* to do any more harm than to disrupt the use of a public building or cause a law enforcement response. It also only requires the communication of the intent to bring a firearm. It does not require an actual firearm. It is little more than a thought crime, or the punishment of an idle threat. The inconvenience and disruption of responding to a *potential* threat under such a broad, sweeping statute was set to be punished as a misdemeanor. Notably, this is consistent with New Mexico's "False report" statute, which prohibits "intentionally mak[ing] a report to a law enforcement agency or official, which report he knows to be false at the time of making it, alleging a violation by another person of the provisions of the Criminal Code," which is also a misdemeanor. NMSA 1978, § 30-39-1.

This bill now proposes to turn this misdemeanor into a felony without adding any additional requirements. The creation of a new felony crime should require greater proof - more than just what is likely to be a child's statement made without full appreciation of the implications. As it stands, a child could walk into a school and say, "I'm so mad, I'm going to shoot people." This communicates the intent to bring a firearm and to use the firearm, whether or not the child meant what they said. The child might not have intended to act on the statement. The child might not have access to a firearm. At a minimum, the bill should require that the child intend to follow through on the threat. If a child simply intends to frighten people or get attention, and does no act in furtherance of the threat, the crime should remain a misdemeanor. Reviewer understands that the crime applies to adults as well as children, but the likelihood is that mostly juveniles or young adults will be charged with this offense.

The proposed new "swatting" subsection suffers from similar problems. It would create a new felony crime. The only proof required would be that someone made a false report with the intent to cause a response by first responders. This simple statute with minimal requirements risks punishing otherwise innocent behavior. One could envision a scenario where a person called law enforcement and falsified the reason for the call for a reason other than "swatting," such as a victim providing false information so as not to alert an abuser. The proposed language only requires an intent to cause a law enforcement response, which is also the intent for a *proper* 911 call. A felony-level crime should require more – an actual intent to harm someone or some other nefarious intent.

As noted above, New Mexico already punishes false reports as a misdemeanor. That misdemeanor requires that the person "knows [the report] to be false at the time of making it, alleging a violation by another person of the provisions of the Criminal Code." *See* § 30-39-1. False reporting requires some showing of actual harm because it falsely accuses another person of committing a crime, and yet is punished as a misdemeanor. Meanwhile, the "swatting" provision of SB 66 only requires an intent that police respond.

Becoming a felon comes with many collateral consequences. For example, a person loses the right to vote. Creating new felonies that punish behavior that causes less serious harm should not be done lightly. Swatting is clearly a nationwide issue. If it is to be punished, the language must be more narrowly tailored to punish the targeted behavior.

## **PERFORMANCE IMPLICATIONS**

See Fiscal Implications

## **ADMINISTRATIVE IMPLICATIONS**

None noted

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

NMSA 1978, § 30-39-1

## **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 that it has been drawn pursuant to a special message of the Governor.

## **OTHER SUBSTANTIVE ISSUES**

None noted

## **ALTERNATIVES**

One possible alternative with regard to shooting threats, is to create a graduated sentencing scheme. If an offender simply makes a disingenuous statement, that should remain punished as a misdemeanor. If an offender causes any of the theoretically intended harms or makes a threat *and* has a deadly weapon, that could be charged as a felony. But to increase the penalty without any further requirements, when the law has only been in effect for a year and a half, before any impact on behavior can be assessed, is problematic. It makes felons out of people who make threats they may never intend to act upon.

With regard to swatting, reviewer found a proposed bill from the 2021 Texas legislature that provides more comprehensive requirements. According to publicly accessible legislative analysis, that bill:

**amends the Penal Code to create the Class A misdemeanor offense of swatting for a person who reports a crime or an emergency or causes any report of a crime or an emergency to be made to a law enforcement officer, law enforcement agency, 9-1-1 service, official or volunteer agency, or any other governmental employee or contractor who is authorized to receive reports of a crime or emergency under the following circumstances:**

- **the person knows that the report is false;**
- **the report is reasonably likely to cause an emergency response from a law enforcement agency or other emergency responder; and**
- **the person makes the report or causes the report to be made with reckless disregard about whether the emergency response by a law enforcement agency or other emergency responder may directly result in bodily harm to any individual.**

**The bill enhances the penalty for the offense to a state jail felony if the defendant has previously been convicted on two or more occasions of the offense and to a third degree felony if the false report results in an emergency response to a reported crime and a person is killed or suffers serious bodily injury as a proximate result of lawful conduct arising out of that response. The bill increases the punishment for the offense to the next highest category of offense if, in the trial of the offense, an affirmative finding is made that the offense was committed because of bias or prejudice.**

See <https://capitol.texas.gov/tlodocs/87R/analysis/html/SB01056H.htm>

While the Texas bill was not perfect, it showed an attempt to punish behavior with a more appropriate graduated sentencing scheme and with more requirements than just causing a response. Reviewer does not know if the bill passed.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

### **AMENDMENTS**

None noted