

LFC Requester:

Scott Sanchez

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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 X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 1/23/24

Bill No: SB0097

Sponsor: Antonio Maestas

Short Title: Crimes of Shooting At And
From Motor Vehicles

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

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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

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: HB0097 proposes to separate Shooting At or From a Motor Vehicle into two separate crimes. This would amend NMSA 1978 Section 30-3-8 (B) to the singular offense Shooting From a Motor Vehicle and add subsection (C) to encompass Shooting At a Motor Vehicle.

This also proposes to amend the following related subsections to reflect these are separate offenses: NMSA 1978 § 30-3-8.1 Seizure and Forfeiture of Motor Vehicle; § 31-18-23 Three Violent Felony Convictions – Mandatory Life Imprisonment – Exception; § 66-5-29 Mandatory Revocation of License By Division.

§ 31-18-23 (A) Three Violent Felony Convictions – Mandatory Life Imprisonment – Exception the proposed bill is a significant change as to what offenses are considered a “violent felony.”

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.

SIGNIFICANT ISSUES

SB97 seeks to change the crimes eligible for consideration as a “violent felony” under § 31-18-23 (E)(2). NMSA 1978 § 31-18-23 (E)(2)(b) reflects that there are two distinct crimes of shooting from a motor vehicle and shooting at a motor vehicle. This subsection also does away with the required element of “great bodily harm.” So that means any conviction of this offense, regardless of the injury to the other person, would qualify as a “violent felony.” This would be consistent with the holding in *State v. Hice*, S-1-SC-39211, dec. ¶ 39 (N.M. Dec. 4, 2023) (nonprecedential) provides that “the Legislature intended to punish the act of shooting at or from a motor vehicle rather than the resulting harm.” However, the statute as it currently stands requires great bodily harm, a 2nd degree felony for Shooting At or From a Motor Vehicle to qualify as a “violent felony” for the mandatory life imprisonment. This change would mean any conviction for either of the offenses of Shooting From a Motor Vehicle or Shooting At a Motor

Vehicle is a “violent felony” even as 4th degree felony.

NMSA 1978 § 31-18-23 (E)(2)(c) does away with the requirement of great bodily harm for a kidnapping to be a “violent felony.” The language is changed to “physical injury or a sexual offense.” This appears to be a significant change. The kidnapping statute NMSA 1978 § 30-4-1(B) provides that kidnapping is a first degree felony, except when the offender voluntarily frees the victim in a safe place *and* does not inflict physical injury or a sexual offense. The statute as written requires both. This may create criminal liability for an offender where there is physical injury or a sexual offense, but not the element of voluntarily freeing the victim in a safe place. This is a significant change by creating a broader category for kidnapping to be considered a “violent felony.”

Additionally, NMSA 1978, Section 31-18-16 is a mandatory sentence enhancement for any noncapital felony offense involving a firearm. This is important to note because SB97 is proposing to increase the degree of the offenses, which also increases the potential sentence of an offense that is already subject to a sentencing enhancement. If this is the legislator’s intent, it can be helpful to specifically note that the enhancement is still intended to apply. *See Missouri v. Hunter*, 459 U.S. 359, 368-69 (1983) (“Where a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the ‘same’ conduct under Blockburger, a court[] . . . may impose cumulative punishment under such statutes in a single trial.”).

There has been significant case law regarding double jeopardy implications of the firearm enhancement and there is a pending case before the New Mexico Supreme Court on the question of whether an offense that requires the use of the firearm (e.g., shooting at or from a motor vehicle) can qualify under the firearm enhancement without violating double jeopardy. *See State v. Baroz*, 2017-NMSC-030, ¶ 24 (“The legislative policy behind the firearm sentence enhancement is that a noncapital felony, committed with a firearm, should be subject to greater punishment than a noncapital felony committed without a firearm because it is more reprehensible.”); *see also State v. Young*, S-1-SC-39956. Absent articulated legislative intent, this bill could implicate double jeopardy concerns.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

§ 31-18-23 (A) Three Violent Felony Convictions – Mandatory Life Imprisonment – Exception the added language of “violent” is consistent with the entirety of the paragraph.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS