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SENATE BILL 161

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Michael Padilla and Harold Pope

AN ACT

RELATING TO MILITARY AFFAIRS; REQUIRING STATE AND NATIONAL
CRIMINAL BACKGROUND CHECKS OF DEPARTMENT OF MILITARY AFFAIRS
EMPLOYMENT OR VOLUNTEER APPLICANTS OR EMPLOYEES WHO HAVE
RESPONSIBILITY FOR MINORS ATTENDING THE YOUTH CHALLENGE, JOB
CHALLENGE ACADEMIES, THE GOVERNOR'S SUMMER PROGRAM OR OTHER
PROGRAMS OF THE DEPARTMENT THAT ARE OPEN TO MINORS; PROVIDING
THE PROCESS FOR STATE AND NATIONAL CRIMINAL BACKGROUND CHECKS;
RESTRICTING THE USE OF CRIMINAL BACKGROUND CHECK REPORTS;
ALLOWING THE ADJUTANT GENERAL TO USE APPROPRIATIONS AND OTHER
FUNDING FOR YOUTH PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 20, Article 3 NMSA
1978 is enacted to read:

"[NEW MATERIAL] YOUTH PROGRAMS--CRIMINAL BACKGROUND

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1 CHECKS.--

2 A. As used in this section, "applicant" means a
3 person applying for a job or volunteer position that involves
4 working with minors.

5 B. The department of military affairs and every
6 facility operated by the department shall conduct state and
7 national criminal background checks on applicants, employees or
8 volunteers who will be assigned to supervise or otherwise be in
9 control of minors attending the national guard youth challenge
10 and job challenge academies, the governor's summer program or
11 other youth programs of the department. Unless already
12 submitted to a criminal background check, employees or
13 volunteers who have been working with minors prior to the
14 effective date of this 2025 act shall undergo state and
15 national criminal background checks within six months of the
16 effective date of this 2025 act; provided that until the
17 criminal background check has been completed and reviewed, each
18 such employee or volunteer who has care or control of minors
19 shall be at all times within sight and under supervision of an
20 employee who has completed a criminal background check. The
21 department may hire an applicant provisionally prior to
22 completion of a criminal background check under the same
23 restrictions as provided for employees or volunteers who have
24 not completed criminal background checks.

25 C. An applicant, an employee or a volunteer

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1 described in Subsection B of this section shall have
2 fingerprints taken and submitted to the law enforcement records
3 bureau of the department of public safety as provided by rule.
4 The bureau shall conduct a state criminal background check and
5 submit the fingerprints to the federal bureau of investigation
6 for a national criminal background check. The applicant,
7 employee or volunteer shall pay the cost of the criminal
8 background check. The bureau shall provide a copy of the
9 criminal background check report to the department of military
10 affairs.

11 D. The department of military affairs shall use the
12 results of criminal background checks to determine the
13 suitability of applicants, employees or volunteers to work with
14 minors. The department shall share criminal background
15 information only with department employees involved in hiring
16 or assigning employees or volunteers to work with minors. None
17 of the information in a criminal background check shall be
18 shared with anyone outside the department other than the
19 applicant, staff person or volunteer as provided in Subsection
20 F of this section.

21 E. A conviction for a sex crime, an offense
22 involving a minor as victim or a drug felony may be grounds for
23 denial of or dismissal from employment or volunteering or
24 reassignment of the employee or volunteer. In the case of an
25 incident in which an applicant, an employee or a volunteer has

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1 been charged with one of these offenses and the charge has not
2 yet been disposed of, the department of military affairs shall
3 suspend the application process and may suspend an employee or
4 a volunteer from having any contact with minors while on the
5 job until the case is resolved. Conviction of a crime other
6 than a sex crime may be considered if it bears on a person's
7 suitability to have responsibility for the safety and well-
8 being of minors.

9 F. If an employment or volunteer position for which
10 the applicant is applying requires a criminal background check,
11 the application shall require the signature of the applicant
12 indicating that the applicant has been notified of the
13 department of military affairs' obligation to require a
14 criminal background check as a condition of employment or
15 volunteer service, the employee's or volunteer's right to
16 obtain a copy of the criminal background check report that is
17 provided to the department and the right to challenge the
18 accuracy and completeness of any information contained in the
19 report."

20 SECTION 2. Section 20-3-2 NMSA 1978 (being Laws 1987,
21 Chapter 318, Section 17, as amended) is amended to read:

22 "20-3-2. DEPARTMENT STRUCTURE--AUTHORITY OF ADJUTANT
23 GENERAL.--

24 A. The department of military affairs consists of:

25 (1) the office of the adjutant general;

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- 1 (2) three subordinate military divisions:
2 (a) the army national guard division;
3 (b) the air national guard division; and
4 (c) the state defense force division;

5 and

- 6 (3) five subordinate civil divisions:
7 (a) the selective service office;
8 (b) the state armory board;
9 (c) the civil air patrol division;
10 (d) the state programs division; and
11 (e) the United States property and
12 fiscal office and such other agencies, administrative staffs
13 and clerical staffs necessary for departmental operation that
14 the adjutant general may by regulation prescribe.

15 B. The adjutant general is the military chief of
16 staff to the governor and is the head of the department of
17 military affairs.

18 C. The adjutant general shall prescribe policies,
19 rules and procedures for the orderly functioning of the
20 department of military affairs, which may include subordinate
21 organizational structures and lines of authority.

22 D. The adjutant general may employ such
23 administrative, technical, clerical and other personnel as the
24 adjutant general deems necessary and may fix the compensation
25 of exempt personnel subject to the concurrence of the

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1 department of finance and administration.

2 E. The adjutant general may employ, within the
3 department of military affairs' appropriated budget or other
4 funds available to the adjutant general, members of the New
5 Mexico national guard on state active duty, on either a full-
6 time or seasonal basis, for the purpose of providing
7 preparedness for, mitigation of or response to any type of
8 disaster and to provide support for youth programs.

9 F. The adjutant general may make expenditures from
10 appropriations or from other funds available to the adjutant
11 general for all purposes within Chapter 20 NMSA 1978.

12 G. The adjutant general is authorized to accept
13 through the United States property and fiscal officer such
14 equipment, supplies, arms, facilities and personnel support
15 funding as may be authorized and appropriated by federal law.

16 H. The adjutant general shall be furnished suitable
17 buildings, facilities, supplies and equipment for conducting
18 the business of the department of military affairs to include
19 the proper storage, repair and issuance of military property.

20 I. The adjutant general may appoint as assistant
21 adjutants general one officer from each of the three military
22 divisions in the department of military affairs. The officers
23 appointed shall hold the rank of brigadier general during such
24 appointment. The qualifications of each person so appointed
25 shall meet the specific standards required for such appointment

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1 within Chapter 20 NMSA 1978 and any applicable federal
2 standards or requirements. Once appointed, the assistant
3 adjutants general shall serve at the pleasure of the adjutant
4 general; their performance ~~[will]~~ shall be reviewed annually,
5 in January, by the adjutant general; and, if relieved, an
6 assistant adjutant general shall revert to the rank previously
7 held or to such higher rank to which promoted and federally
8 recognized while serving as assistant adjutant general. The
9 adjutant general may designate one federally recognized
10 assistant adjutant general as deputy adjutant general. The
11 deputy adjutant general shall serve on full-time active status
12 for the state. In the incapacity or absence from the state of
13 the adjutant general, the deputy adjutant general shall act in
14 the adjutant general's stead. In the incapacity or absence
15 from the state of both the adjutant general and the deputy
16 adjutant general, the governor may call any assistant adjutant
17 general to active service for the state. The assistant
18 adjutants general shall perform all duties that may be required
19 of them by the adjutant general. The adjutant general may
20 delegate in writing to any of the assistant adjutants general
21 such authorities and responsibilities as the adjutant general
22 deems appropriate, consistent with the constitutions, laws and
23 rules and regulations of the state and of the United States.
24 Assistant adjutants general, when on active status for the
25 state, shall receive the same pay and allowances as are

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1 prescribed by federal law and regulations for members of the
2 active military in the grade of brigadier general, unless a
3 different rate of pay and allowances are specified in a general
4 appropriation act ~~[of]~~ enacted by the New Mexico legislature.

5 J. The adjutant general shall appoint individuals
6 to serve as directors of the five subordinate civil divisions,
7 except as stated in Section 20-9-1 NMSA 1978. The
8 qualifications of each person so appointed shall meet the
9 specific standards required for such appointment within Chapter
10 20 NMSA 1978 and any applicable federal standards or
11 requirements.

12 K. There shall be allowed to the adjutant general a
13 contingent and entertainment fund of two thousand five hundred
14 dollars (\$2,500) annually, plus such additional appropriations
15 for carrying out the functions of the office as the legislature
16 ~~[shall deem]~~ deems proper."