

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** SB 548

**51st Legislature, 1st Session, 2013**

**Tracking Number:** .192600.1

**Short Title:** Threatening School Violence Act

**Sponsor(s):** Senator Steven P. Neville

**Analyst:** Kevin Force

**Date:** March 2, 2013

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**Bill Summary:**

SB 548 proposes to enact the *Threatening School Violence Act* (TSVA). A section-by-section synopsis follows. The act applies not only to public and private schools, but also to any institution of higher learning which the bill defines as a private or public postsecondary educational institution, a trade school or a professional school.

Among its other provisions, SB 548 outlines the elements of the crime of “threatening school violence,” a misdemeanor:

- knowingly communicating, by any means, a threat to commit any unlawful act involving a deadly weapon while on the property of a school or institution of higher learning; and
- having either:
  - the intent to commit the unlawful act;
  - the intent to place any student or employee of the school or institution of higher learning in fear of being a victim of the threatened act; or
  - committed an act or pursued a pattern of conduct that, taken together with the threat, would place a reasonable person in fear of being a victim of the threatened act.

SB 548 also outlines the components of the crime of “aggravated threatening school violence,” a fourth degree felony:

- a second or subsequent offense of threatening school violence;
- threatening school violence with the intention of committing the threatened act, has the means to commit the act, and takes a substantial step in doing so; or
- threatening school violence when intentionally causing substantial disruption of the educational process.

Finally, SB 548 outlines procedures for reporting and investigating instances of threatening school violence by children, as well as detaining children suspected of having done so:

- If a public school employee has reasonable cause to believe a child has threatened school violence, he or she must report the child’s actions to law enforcement and the Children, Youth and Families Department (CYFD).

- Upon receipt of a report that a child has threatened school violence, law enforcement may investigate to determine whether there is probable cause to believe the child has committed the offense of threatening school violence.
- If law enforcement determines that there is probable cause to believe the child has threatened school violence, officers may take the child into custody and deliver the child to a detention facility licensed by CYFD.
- After a child is detained, CYFD shall notify, in writing, the child’s parent or guardian as soon as possible, but in all cases within 24 hours, together with a statement of the reason the child was detained.<sup>1</sup>
- A judge, special master, or magistrate must determine probable cause within 48 hours; if no probable cause is found, the child shall be released.
- A petition must be filed within 24 hours of the time the child was taken into custody to determine if continued detention is warranted; if this is not done, the child will be released.
- Within 24 hours of the petition being filed, a hearing shall be held to determine whether detention is appropriate.<sup>2</sup>

**Fiscal Impact:**

SB 548 does not contain an appropriation.

**Fiscal Issues:**

According to the analysis from the Public Defender Department (PDD), while it may be able to absorb the cost of new cases arising out of the TSVA, any increase in prosecutions will bring a corresponding need for increased indigent funding.

According to the New Mexico Corrections Department (NMCD);

- NMCD does not normally incarcerate misdemeanor offenders or supervise misdemeanor offenders on probation, and misdemeanor offenders do not serve a parole term.
- The new fourth degree felony, aggravated threatening school violence, is likely to result in only a minimal number of new criminal convictions, and thus in only a minimal increase in the prison population, or probation and parole caseloads.
- The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility.

**Substantive Issues:**

According to the analysis from the Public Education Department:

- Many issues touched upon by SB 548 are dealt with in other statutory law or department rule, including:
  - “Safe School Plans,” required of every public school, that address wellness, health and safe environments, but are not limited to those areas;<sup>3</sup>

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<sup>1</sup> 32A-2-10 NMSA 1978

<sup>2</sup> 32A-2-13 NMSA 1978

<sup>3</sup> 6.12.6.8 NMAC

- provisions regarding bullying prevention programs,<sup>4</sup> which require districts, schools and state-supported educational institutions to address bullying by adopting and implementing policies, and which define bullying:

“as any repeated and pervasive written, verbal or electronic expression, physical or gesture, or a pattern thereof, which is intended to cause stress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events.”

- comprehensive educational frameworks, featuring rules of conduct and disciplinary procedures, within which local school boards and local school districts can carry out their educational mission and exercise their authority and responsibility to provide a safe environment for student learning;<sup>5</sup> and
- the federal *Gun Free Schools Act of 1994*, which prohibits weapons on campus and sets expulsion requirements of at least one year for a student in violation of the act.<sup>6</sup>

The PDD and Attorney General’s Office also make note of similar behavior already criminalized in other sections of New Mexico law, including:

- unlawful carrying of a deadly weapon on school grounds;<sup>7</sup>
- assault and battery on school personnel;<sup>8</sup>
- assault and aggravated assault;<sup>9</sup>
- harassment, defined as the “knowing pursuit of a pattern of conduct that is intended to annoy, seriously alarm, or terrorize another person and that serves no lawful purpose”;<sup>10</sup> and
- making a bomb scare, which applies whenever the threat is made that persons or property are likely to be injured or destroyed, by a bomb or explosive, and is not limited to educational institutions, and does not require a substantial disruption.<sup>11</sup>

The PDD, together with Administrative Office of the Courts (AOC), in its analysis of HB 574, a bill identical to SB 548, notes a potential federal constitutional issue related to infringement of First Amendment rights. Only “true threats” do not enjoy constitutional protection, or “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”<sup>12</sup>

According to the analysis of HB 574 by Administrative Office of the District Attorney (AODA), proving intent is always difficult and usually is done by the circumstances surrounding an event:

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<sup>4</sup> 6.12.7 NMAC

<sup>5</sup> 6.11.2 NMAC

<sup>6</sup> 18 U.S.C. Section 922

<sup>7</sup> Section 30-7-2.1 NMSA 1978

<sup>8</sup> Section 30-3-9 NMSA 1978

<sup>9</sup> Sections 30-3-1 and 30-3-2 NMSA 1978

<sup>10</sup> Section 30-3A-2 NMSA 1978

<sup>11</sup> Section 30-20-16 NMSA 1978

<sup>12</sup> See, e.g.: *Virginia v. Black*, 538 U.S. 343 (2003) (holding that, “Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm”); see also: *Watts v. United States*, 394 U.S. 705 (1969).

- Someone charged with one of the alternatives that require proof of intent might claim that he or she never intended to commit the threatened act or did not intend for anyone at a school to be in fear.
- If charged with intentionally causing a substantial disruption of the educational process a person could claim that was not the intent, or that the disruption was not “substantial.”

### **Technical Issues:**

The analyses by the PDD and the AODA raise a number of technical issues regarding definitions of terms and potential conflicts with existing law. For example:

- Section 4(A)(3) of SB 548, which includes as part of the crime of “aggravated school violence,” “threatening school violence when the defendant intentionally causes substantial disruption of the educational process” is vague; it is unclear what “substantial disruption of the educational process” would include.
- The final section of the bill states that a “child shall be detained in the detention facility, pending a detention hearing pursuant to Section 32A-2-13,” which may conflict with other sections of law.<sup>13</sup>
- Unless the child has been arrested, these provisions might also conflict with sections of the *Children’s Code* controlling when a child may be taken into custody.<sup>14</sup> This section of the bill permits an officer to take a child into custody if there is probable cause, but is not clear on whether this is a formal arrest, as required by the code.
- The phrase, “unlawful act involving a deadly weapon,” encompasses a wide variety of offenses, including some that don’t involve anyone besides the offender:
  - Numerous examples are now in state law:
    - It is unlawful to just possess a deadly weapon on school premises unless one of the specific statutory exceptions applies.<sup>15</sup>
    - There is a similar prohibition against possessing a firearm on university premises.<sup>16</sup>
    - It is unlawful to carry a firearm while under the influence of an intoxicant or narcotic.<sup>17</sup>
  - As drafted, someone could be in violation of the TSVA if all they did was tell someone they were going to take a firearm, or even a pocket knife, onto the premises of a school, and they genuinely intended to do so.
- The language in the bill involving a “threat” is different from current statute regarding assault and aggravated assault:

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<sup>13</sup> Section 32A-2-11(A) NMSA 1978 (Unless ordered by the court pursuant to the provisions of the *Delinquency Act*, a child taken into custody for an alleged delinquent act shall not be placed in detention unless a detention risk assessment instrument is completed and a determination is made that the child poses a substantial risk of harm to himself or herself or others, or has demonstrated that he or she may flee the jurisdiction.)

<sup>14</sup> Section 32A-2-9 NMSA 1978

<sup>15</sup> Section 30-7-2.1 NMSA 1978

<sup>16</sup> Section 30-7-2.4 NMSA 1978

<sup>17</sup> Section 30-7-4 NMSA 1978

- Current provisions require a threat to be received by the victim and the victim's response to the threat to be reasonable.
  - The bill as drafted only requires that the threat be communicated "by any means, to any person," and does not require any intended victim to even be aware that a threat was made or that they were the target of the threat.
- Finally, the AODA notes that the TSVA as drafted would require a *public* school employee or administrator who has "reasonable cause" to believe that a *child* has committed the offense of threatening school violence to immediately report it to law enforcement and CYFD, yet:
    - there is no mandate for persons at a private school or any institution of higher education to report such offenses, though their institutions also fall under the provisions of the bill; and
    - there is also no reporting requirement if the suspected offender is an adult, rather than a child.

### **Background:**

CYFD reports that, according to the National Center for Education Statistics:

- the cases of students threatened or actually injured with a weapon on school property has remained stable since 1993 at approximately 7.5 percent, nationally, peaking briefly in 2003 at 9.3 percent;
- in New Mexico, in 2005 and 2007, the percentages were 10.4 percent and 10.1 percent, respectively; and
- by comparison, the incidence of teachers who reported being threatened by a student has been declining since 1993:
  - as of 2009, the rate was 7.5 percent, nationally; and
  - in New Mexico, the percentage for 2009 was the same as for 1993, at 12.8 percent.

Although school safety is always a major concern for policymakers, recently, many jurisdictions have begun examining the efficacy of a variety of school safety related procedures and interventions, including:<sup>18</sup>

- the impact of school design on health and safety;
- hiring full-time school resource officers at charter schools, despite expense;
- installing gun safes in high schools and middle schools;
- using state funding to pay for school security personnel;
- using retired police officers to provide schools with security;
- consideration of federal legislation to strengthen and expand the existing COPS Secure Our Schools grants programs;<sup>19</sup>
- allowing teachers and other school staff to carry firearms;
- establishment of school safety task forces to examine safety issues and make policy recommendations; and
- reporting school safety data to parents.

<sup>18</sup> See The School Safety Law Blog, at: <http://schoolsafetylawblog.com>.

<sup>19</sup> See <http://www.cops.usdoj.gov/Default.asp?Item=2623>

**Committee Referrals:**

SEC/SJC

**Related Bills:**

SB 306 *School District Police Force*

HB 54 *School Board Cyberbullying Prevention*

\*HB 197 *School Security & Parent Identification*

HB 234 *Create Crime of Bullying*

HB 574 *Threatening School Violence Act (Identical)*