

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 230

51st Legislature, 1st Session, 2013

Tracking Number: .191112.1

Short Title: School Employee Concealed Handguns

Sponsor(s): Senator Sue Wilson Beffort

Analyst: Kevin Force

Date: February 26, 2013

Bill Summary:

SB 230 would amend the *Concealed Handgun Carry Act* to allow schools to designate one employee to carry a concealed handgun on school premises.

Specifically, SB 230:

- allows a school to designate an employee to use the employee's concealed handgun license to carry a concealed handgun on school premises;
- creates a new exception from the prohibition against carrying concealed handguns onto the premises of a preschool; and
- adds a new category of exception to those who are allowed to carry a concealed handgun on school premises without violation.

Fiscal Impact:

SB 230 does not contain an appropriation.

Fiscal Issues:

According to the Administrative Office of the Courts (AOC):

- there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes;
- any additional fiscal impact would be proportional to the enforcement of this law, and commenced prosecutions;
- while new laws may increase caseloads in the courts, thus requiring additional resources, the change proposed by SB 230 is less restrictive than current law and may result in fewer enforcement actions; but
- if more firearms-related incidents arise as a result of this legislation, those incidents may have to be adjudicated in the courts.

According to the Administrative Office of the District Attorney (AODA), since there is already a program in place for the issuance of concealed handgun licenses, any fiscal impact should be minimal.

Substantive Issues:

Always a concern, national attention on violence in schools has intensified interest in the issue of school safety and security. One of the suggested approaches to increasing safety in schools is to allow certain individuals to carry concealed handguns on school premises. SB 230 proposes this sort of solution.

According to PED, SB 230:

- appears to contradict existing statute regarding weapons-free schools;¹
- is contrary to of the *Gun-Free Schools Act*²;
- may be contrary to other sections of the US Code regarding firearms in crime and criminal procedure³;
- allowing a school employee to use a private concealed carry permit to bring a firearm to school may open that employee, and the school district or charter school, to liability by granting police powers to a private citizen whose primary job may not be security; and
- properly trained law enforcement personnel are better suited to this sort of duty, as they would be commissioned to carry such a firearm in the normal course of duty.

According to the Department of Health (DOH):

- firearms are a significant cause of injuries and death in New Mexico;
- the Centers for Disease Control and Prevention (CDC) statistics indicate that New Mexico had the seventh-highest rate of firearm deaths in the nation among the 50 states and Washington, D.C.⁴;
- in 2011, there were 303 firearm deaths in New Mexico, an overall age-adjusted death rate of 14.6 per 100,000⁵;
- from 2007 to 2011:
 - intentional, self-inflicted injuries accounted for 66.7 percent of firearm deaths, followed by assaults/homicides (27.7 percent) and legal intervention deaths (2.4 percent)⁶;
 - there were 584 hospital discharges for firearm injuries⁷;

¹ See 22-5-4.7 NMSA 1978. Although the statute makes reference, in its title, to weapons-free schools, the body of the statute addresses only weapons carried by students.

² See 20 USC Section 7151. This provision requires states to adopt the sort of policy and statute embodied in § 2-5-4.7 NMSA, regarding students who carry weapons to school. Nothing in this US Code section addresses the issue of persons other than students carrying guns, and in fact creates an exception to the general prohibition for guns lawfully stored in a locked vehicle on school property, and for activities “authorized by the local educational agency and [where] the local educational agency adopts appropriate safeguards to ensure student safety.”

³ See 18 USC 922(q), which makes it illegal for anyone to knowingly bring a firearm into a school zone, but which also creates exceptions, including exceptions for:

- by an individual for use in a program approved by a school in the school zone; and
- an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual.

⁴ http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html

⁵ New Mexico Death Certificate Database, Bureau of Vital Records and Health Statistics, New Mexico Department of Health, at <http://ibis.health.state.nm.us/>.

⁶ Id.

⁷ New Mexico Hospital Inpatient Discharge Data, New Mexico Department of Health, New Mexico Department of Health, Indicator-Based Information System for Public Health, at <http://ibis.health.state.nm.us/>.

- 43 percent of all firearm hospitalizations were secondary to assault injuries, followed by unintentional or accidental firearm injuries (34.6 percent); and
- the male firearm injury hospital discharge rate was 10 times higher than the female rate.

According to the AODA:

- while SB 230 would permit a school to designate an employee who has a concealed handgun license to bring his or her concealed handgun onto the premises of the school, there is no other guidance regarding who should be designated, and no guidance on what authority the person may have to use a handgun on school premises;
- selecting just one person to have a concealed handgun may not be appropriate in all schools, especially large campuses with multiple buildings and large populations;
- there may be some liability questions for schools that designate an employee to carry a concealed handgun if this law is adopted because, while instruction on “techniques for avoiding a criminal attack and how to control a violent confrontation, [as well as] techniques for nonviolent dispute resolution” are required to obtain a concealed carry license, the total training required can be as little as 15 hours, including classroom and range instruction on law and safety; and
- regarding carrying a concealed handgun at a preschool is in current law:
 - “preschool” is an undefined term for purposes of the *Concealed Handgun Carry Act*, and does not appear to be included in the definition of “school premises” in SB 230; and
 - preschool is generally considered to be for kindergarten-age children who are not in attendance at school premises as defined.

Regarding potential liability issues, according to a report by the Hamilton Fish Institute on School and Community Violence & Northwest Regional Educational Laboratory⁸:

- while comprehensive school safety plans are an integral part of school management, the decision to adopt and implement a plan may not protect a school from potential liability;
- a school may be held to a greater standard to ensure supervision and safety where it adopts a school safety plan;
- courts have held schools liable in such circumstances under the belief that when a school increases efforts to curb violence, it assumes a greater duty to supervise students and persons on school grounds in part because people rely on the provisions of the plan to protect them; however,
- in light of current violence levels in schools, liability will be asserted more often where a school fails to adopt a school safety plan.

Background:

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, including⁹:

⁸ *Effective Strategies for Creating Safer Schools and Communities: School Policies and Legal Issues Supporting Safe Schools*, Hutton and Bailey, The Hamilton Fish Institute on School and Community Violence & Northwest Regional Educational Laboratory, (with support from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, September 2007.

- 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 programs¹⁰;
- 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.

Committee Referrals:

SEC/SJC

Related Bills:

SB 306 *School District Police Force*

CS/HB 77 *Firearms Transfer Act*

HB 114 *Prohibit Enforcement of Federal Gun Laws*

CS/HB 137 *Concealed Guns in Liquor Establishments*

*HB 197 *School Security & Parent Identification*

HB 297 *Firearm Penalties for Sentencing*

HB 402 *Restrict Assault Weapons & Large Magazines*

⁹ See The School Safety Law Blog, at: <http://schoolsafetylawblog.com>.

¹⁰ See, <http://www.cops.usdoj.gov/Default.asp?Item=2623>