

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number	<u>SB146/SPACS/SJCS</u>	Sponsor	<u>SJC</u>
Tracking Number	<u>.214213.6</u>	Committee Referrals	<u>SPAC/SJC/SFC</u>
Short Title	<u>Create Crime of School Threat</u>		
Analyst	<u>Force</u>	Original Date	<u>3/7/19</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute for the Senate Public Affairs Committee substitute for Senate Bill 146 (SB146/SPACS/SJCS) would amend the Criminal Code to create the crime of threatening a school shooting as a fourth degree felony. "Threat of a school shooting" is defined as "a threat to bring a firearm to school and use with intent to place one or more people in fear of great bodily harm, prevent or interrupt the use of a school building, or cause a response to the threat by an official or volunteer emergency agency." For purposes of the proposed new section of law, "school" means the buildings, grounds, and buses of any school, whether it be elementary, middle, junior high, or high school, and includes postsecondary institutions, as well as areas where school-related activities occur that may not be on school property.

FISCAL IMPACT

SB146/SPACS/SJCS does not contain an appropriation.

The Administrative Office of the Courts (AOC) notes fiscal impact on the judiciary would be proportional to enforcement actions and prosecutions. Generally, AOC indicates changes to law have the potential to increase court caseloads, which may require additional resources to address.

SUBSTANTIVE ISSUES

The bill would make threatening a school shooting a felony commensurate with making a bomb threat. Fourth degree felonies carry a basic penalty of 18 months imprisonment and a fine of no more than \$5,000. Currently, the only state crime that would apply to making a threat of a school shooting is the crime of interference with state agencies, staff, public officials, or the general public, and is a petty misdemeanor, punishable by no more than six months in county jail, a fine of \$500, or both. According to federal law, issuing a threat, regardless of medium, is a crime punishable by up to five years in federal prison, with the possibility of additional charges at the state or local level.

It should be noted that many incidents of school threats are made by minors who are connected to the school in question. The Educator’s School Safety Network indicated 81 percent of all school threats were made by students between the ages of 13 and 18 years old. Non-student minors accounted for 7.3 percent of the threats in the 2017-2018 school year, followed by adults, at 6.8 percent. Adult school employees and parents were the source of threats less than 1 percent of the time.

The respective ages of perpetrators relate closely to the impact of the bill. Adjudication of felonies generally lie only against adults. Criminal acts committed by minors are handled pursuant to the Delinquency Act of the Children’s Code, the purpose of which is to deter juvenile delinquency while emphasizing community-based alternatives to detention, strengthening families, and rehabilitating children and reintegrating them into their homes and communities. The act removes adult consequences of most criminal behavior committed by children to the extent of the child’s age, mental and physical condition, and other relevant factors. The focus on rehabilitation over adult criminal penalties inherent in the Delinquency Act suggests that the 81 percent of school threats committed by minors would not be treated as fourth degree felonies. It is more likely that only the 6.8 percent of school threats committed by adults would be prosecuted under the provisions of SB146/SPACS/SJCS.

Some adjudicated delinquent children between 14 and 18 years of age may be considered “youthful offenders,” who may be subject to adult penalties. There are 14 delinquent acts that may specifically designate a child as a “youthful offender,” and includes anyone between 14 and 18 years of age who have three prior felony convictions within three years, though it is up to the court’s discretion to determine whether an adult or juvenile sanction is appropriate to a particular case. A “serious youthful offender” is a person between 15 and 18 years who is charged and indicted for first degree murder, and is subject to adult penalties.

A potential benefit of designating the crime of making a school threat a fourth degree felony, even with regard to delinquent children and youthful offenders, is the creation of a specific crime would allow for the tracking of criminal trends. This information would be valuable to law enforcement, district attorney offices, the Attorney General’s Office, and the AOC.

In recent years, school threats, along with actual incidents of school violence, have been on the rise. According to the Educator’s School Safety Network, nearly 3,400 threats of school violence occurred in the 2017-2018 school year, an increase of 62 percent over the 2016-2017 school year, which saw 2,085 such school threats. The increase in actual incidents of school violence was even starker: from the 2016-2017 school year to the 2017-2018 school year, incidents of school violence increased 113 percent, from 131 incidents to 279. In 2017-2018, there were 61 gun or bomb threats, 745 bomb threats, 1,323 shooting threats, and 1,215 unspecified threats. Social media was the most common method of disseminating threats, at nearly 40 percent. Written threats comprised 20 percent, and verbal comments 12.7 percent.

Threats of school violence, even when not executed, can significantly impact school time and resources, as well as distract law enforcement and other first responders from other emergencies. A 2007 report from the Center for Policy-Oriented Policing indicated that the annual cost, generally, of false alarms is as much as \$2 billion. A higher level of crime, with proportionate penalties, may deter many less serious threats, and require less time and resources from school and other public officials, and law enforcement and other first responders.

The Public Education Department (PED) notes many states have recently designated threatening school violence a crime of varying degrees of criminality with commensurate penalties. Oklahoma, Virginia, and Florida have all added new criminal laws addressing school threats in the past several years.

AOC notes other existing criminal statutes overlap with the proposed crime of making a school threat, including assault of school personnel, false reports, use of the telephone to intimidate or harass, and public nuisance. However, most of these infractions are petty misdemeanors or misdemeanors, and none of these criminal statutes actually conflict with the proposed crime of making a school threat.

ADMINISTRATIVE IMPLICATIONS

PED indicates the department may have to update its *Safe Schools Guide*, and review the rubric for Safe Schools Planning as part of Discipline Policy Assurance, although it can be done with existing staff and resources. Further, the infraction and discipline codes in the Student Teacher Accountability Reporting System may need to be updated.

TECHNICAL ISSUES

DPS notes the bill does not define “firearm,” and suggests incorporating by reference the definition contained in Section 30-7-16 NMSA 1978 of the Criminal Code, which defines firearms as any weapon that “will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. ‘Firearm’ includes any handgun, rifle or shotgun.”

RELATED BILLS

SB147, School Safety Drill Requirements, which reduces the number of school emergency drills from 13 to four per year, at least two of which must be shelter-in-place drills that include preparation for response to active shooters.

SB148, Former Officers as School Safety Personnel, which permits retired law enforcement officers to work as school security personnel without having their cost of living adjustment for retirement benefits suspended during the period of their employment with the public schools.

SOURCES OF INFORMATION

- LESC Files
- Legislative Finance Committee (LFC)
- Public Education Department (PED)
- Administrative Office Courts (AOC)
- Department of Public Safety (DPS)

RKF/mc