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HOUSE BILL 68

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Meredith A. Dixon and Pamela Herndon and Marian Matthews

AN ACT

RELATING TO PUBLIC SAFETY; CREATING THE CRIME OF CRIMINAL
THREAT; INCREASING THE PENALTY FOR UNLAWFUL POSSESSION OF A
HANDGUN BY A PERSON; PROHIBITING AND PROVIDING PENALTIES FOR
UNLAWFUL CARRYING OF A DEADLY WEAPON IN A SCHOOL ZONE INSTEAD
OF ON SCHOOL PREMISES; CLARIFYING THE PENALTY FOR RECEIPT,
TRANSPORTATION OR POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE
BY A SERIOUS VIOLENT FELON; ADDING PENALTIES FOR AGGRAVATED
FLEEING A LAW ENFORCEMENT OFFICER; PROVIDING FOR A SENTENCING
ENHANCEMENT WHEN A FIREARM IS POSSESSED OR USED DURING THE
COMMISSION OF A DRUG TRANSACTION OR SERIOUS VIOLENT OFFENSE;
CLARIFYING THAT A FIREARM POSSESSED OR USED DURING THE
COMMISSION OF A DRUG TRANSACTION OR SERIOUS VIOLENT OFFENSE MAY
BE SEIZED.

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

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1 SECTION 1. A new section of the Criminal Code is enacted
2 to read:

3 "[NEW MATERIAL] CRIMINAL THREAT--PENALTY.--

4 A. A criminal threat consists of a statement or
5 other form of expression made for the purpose of causing or in
6 reckless disregard of the risk of causing the evacuation,
7 lockdown or disruption of regular, ongoing activities at a
8 public or non-public preschool, school or institution of higher
9 learning, an occupied dwelling, a place of business or public
10 building, a place of assembly or a facility or vehicle of
11 public transportation and communicating an intent to:

12 (1) inflict unlawful physical injury against a
13 person;

14 (2) cause unlawful damage to property of
15 another; or

16 (3) commit any other unlawful act of violence.

17 B. Whoever commits a criminal threat is guilty of a
18 fourth degree felony.

19 C. If a criminal threat results in the evacuation,
20 lockdown or disruption of regular, ongoing activities at a
21 public or non-public preschool, school or institution of higher
22 learning, an occupied dwelling, place of business or public
23 building, a place of assembly or a public transportation
24 facility or vehicle, the court, in its discretion, may order a
25 person convicted for the offense of criminal threat to

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1 reimburse any person, business, nonprofit organization or
2 public agency for economic harm caused by that offense.

3 D. As used in this section, "economic harm" means
4 any direct, incidental or consequential financial damage caused
5 by a criminal threat and includes:

6 (1) wages, salaries or other compensation that
7 was lost as a result of the commission of the offense;

8 (2) the cost of all wages, salaries or other
9 compensation for the time that employees were prevented from
10 working as a result of the commission of the crime; and

11 (3) overhead costs incurred for any period of
12 evacuation or lockdown.

13 E. Nothing in this section shall be construed to
14 limit a court's authority to order that restitution be paid to
15 a victim of the offense pursuant to other provisions of law."

16 SECTION 2. Section 30-7-2.1 NMSA 1978 (being Laws 1987,
17 Chapter 232, Section 1, as amended) is amended to read:

18 "30-7-2.1. UNLAWFUL CARRYING OF A DEADLY WEAPON [~~ON~~
19 ~~SCHOOL PREMISES~~] IN A SCHOOL ZONE.--

20 A. Unlawful carrying of a deadly weapon [~~on school~~
21 ~~premises~~] in a school zone consists of carrying a deadly weapon
22 [~~on school premises~~] in a school zone except by:

23 (1) a peace officer;

24 (2) school security personnel;

25 (3) a student, instructor or other school-

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1 authorized personnel engaged in army, navy, marine corps or air
2 force reserve officer training corps programs or state-
3 authorized hunter safety training instruction;

4 (4) a person conducting or participating in a
5 school-approved program, class or other activity involving the
6 carrying of a deadly weapon; ~~or~~

7 (5) a person older than nineteen years of age
8 on school premises in a private automobile or other private
9 means of conveyance, for lawful protection of the person's or
10 another's person or property;

11 (6) a person on private property inside a
12 school zone; or

13 (7) a person authorized to carry a concealed
14 handgun pursuant to the Concealed Handgun Carry Act who is
15 within one thousand feet of a school property line but is not
16 in the school or on school grounds or premises.

17 B. As used in this section, [~~"school premises"~~]
18 "school zone" means

19 [~~(1) the buildings and grounds, including~~
20 ~~playgrounds, playing fields and parking areas and any school~~
21 ~~bus of any public elementary, secondary, junior high or high~~
22 ~~school in or on which school or school-related activities are~~
23 ~~being operated under the supervision of a local school board;~~
24 ~~or~~

25 ~~(2) any other public buildings or grounds,~~

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1 ~~including playing fields and parking areas that are not public~~
2 ~~school property, in or on which public school related and~~
3 ~~sanctioned activities are being performed]~~ a public school,
4 parochial school or private school or property that is used for
5 a public, parochial or private school purpose and the area
6 within one thousand feet of the school property line, but does
7 not mean a post-secondary school.

8 C. Whoever commits unlawful carrying of a deadly
9 weapon [~~on school premises~~] in a school zone is guilty of a
10 fourth degree felony."

11 SECTION 3. Section 30-7-2.2 NMSA 1978 (being Laws 1994,
12 Chapter 22, Section 2) is amended to read:

13 "30-7-2.2. UNLAWFUL POSSESSION OF A HANDGUN BY A PERSON--
14 EXCEPTIONS--PENALTY.--

15 A. Unlawful possession of a handgun by a person
16 consists of a person knowingly having a handgun in [~~his~~] the
17 person's possession or knowingly transporting a handgun, except
18 when the person is:

19 (1) in attendance at a hunter's safety course
20 or a handgun safety course;

21 (2) engaging in the use of a handgun for
22 target shooting at an established range authorized by the
23 governing body of the jurisdiction in which the range is
24 located or in an area where the discharge of a handgun without
25 legal justification is not prohibited by law;

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1 (3) engaging in an organized competition
2 involving the use of a handgun;

3 (4) participating in or practicing for a
4 performance by an organization that has been granted exemption
5 from federal income tax by the United States commissioner of
6 internal revenue as an organization described in Section
7 501(c)(3) of the United States Internal Revenue Code of [~~1954~~]
8 1986, as amended or renumbered;

9 (5) engaging in legal hunting or trapping
10 activities;

11 (6) traveling, with an unloaded handgun in
12 [~~his~~] the person's possession, to or from an activity described
13 in Paragraph (1), (2), (3), (4) or (5) of this subsection; or

14 (7) on real property under the control of the
15 person's parent, grandparent or legal guardian and the person
16 is being supervised by [~~his~~] a parent, grandparent or legal
17 guardian.

18 B. A person who commits unlawful possession of a
19 handgun by a person is guilty of a [~~misdemeanor~~] fourth degree
20 felony.

21 C. As used in this section:

22 (1) "person" means an individual who is less
23 than nineteen years old; and

24 (2) "handgun" means a loaded or unloaded
25 pistol, revolver or firearm [~~which~~] that will or is designed to

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1 or may readily be converted to expel a projectile by the action
2 of an explosion and the barrel length of which, not including a
3 revolving, detachable or magazine breech, does not exceed
4 twelve inches."

5 SECTION 4. Section 30-7-16 NMSA 1978 (being Laws 1981,
6 Chapter 225, Section 1, as amended) is amended to read:

7 "30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,
8 TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

9 A. It is unlawful for the following persons to
10 receive, transport or possess a firearm or destructive device
11 in this state:

12 (1) a felon;

13 (2) a person subject to an order of protection
14 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or

15 (3) a person convicted of any of the following
16 crimes:

17 (a) battery against a household member
18 pursuant to Section 30-3-15 NMSA 1978;

19 (b) criminal damage to property of a
20 household member pursuant to Section 30-3-18 NMSA 1978;

21 (c) a first offense of stalking pursuant
22 to Section 30-3A-3 NMSA 1978; or

23 (d) a crime listed in 18 U.S.C. 921.

24 B. A felon found in possession of a firearm shall
25 be guilty of a third degree felony [~~and shall be sentenced in~~

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1 ~~accordance with the provisions of the Criminal Sentencing Act].~~

2 C. A serious violent felon that is found to be in
3 possession of a firearm shall be guilty of a second degree
4 felony.

5 [~~G.~~] D. Any person subject to an order of
6 protection pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or
7 convicted of a crime listed in Paragraph (3) of Subsection A of
8 this section who receives, transports or possesses a firearm or
9 destructive device is guilty of a misdemeanor.

10 [~~D.~~] E. As used in this section:

11 (1) except as provided in Paragraph (2) of
12 this subsection, "destructive device" means:

13 (a) any explosive, incendiary or poison
14 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge
15 of more than four ounces; 4) missile having an explosive or
16 incendiary charge of more than one-fourth ounce; 5) mine; or 6)
17 similar device;

18 (b) any type of weapon by whatever name
19 known that will, or that may be readily converted to, expel a
20 projectile by the action of an explosive or other propellant,
21 the barrel or barrels of which have a bore of more than one-
22 half inch in diameter, except a shotgun or shotgun shell that
23 is generally recognized as particularly suitable for sporting
24 purposes; or

25 (c) any combination of parts either

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1 designed or intended for use in converting any device into a
2 destructive device as defined in this paragraph and from which
3 a destructive device may be readily assembled;

4 (2) the term "destructive device" does not
5 include any device that is neither designed nor redesigned for
6 use as a weapon or any device, although originally designed for
7 use as a weapon, that is redesigned for use as a signaling,
8 pyrotechnic, line throwing, safety or similar device;

9 (3) "felon" means a person convicted of a
10 felony offense by a court of the United States or of any state
11 or political subdivision thereof and:

12 (a) less than ten years have passed
13 since the person completed serving a sentence or period of
14 probation for the felony conviction, whichever is later;

15 (b) the person has not been pardoned for
16 the felony conviction by the proper authority; and

17 (c) the person has not received a
18 deferred sentence; [~~and~~]

19 (4) "firearm" means any weapon that will or is
20 designed to or may readily be converted to expel a projectile
21 by the action of an explosion or the frame or receiver of any
22 such weapon; and

23 (5) "serious violent felon" means a person
24 convicted of an offense enumerated in Subparagraphs (a) through
25 (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA

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1 1978 or an equivalent offense under the laws of the United
2 States or of any state or an offense found to be a serious
3 violent offense pursuant to the provisions of Subparagraph (o)
4 of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978;
5 provided that:

6 (a) less than ten years have passed
7 since the person completed serving a sentence or a period of
8 probation for the felony conviction, whichever is later;

9 (b) the person has not been pardoned for
10 the felony conviction by the proper authority; and

11 (c) the person has not received a
12 deferred sentence and completed the total term of deferment as
13 provided in Section 31-20-9 NMSA 1978."

14 SECTION 5. Section 30-22-1.1 NMSA 1978 (being Laws 2003,
15 Chapter 260, Section 5) is amended to read:

16 "30-22-1.1. AGGRAVATED FLEEING A LAW ENFORCEMENT
17 OFFICER.--

18 A. Aggravated fleeing a law enforcement officer
19 consists of a person willfully and carelessly driving [~~his~~] a
20 vehicle in a manner that endangers the life of another person
21 after being given a visual or audible signal to stop, whether
22 by hand, voice, emergency light, flashing light, siren or other
23 signal, by a uniformed law enforcement officer in an
24 [~~appropriately marked law enforcement vehicle~~] authorized
25 emergency vehicle pursuant to Section 66-7-6 NMSA 1978

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1 in pursuit in accordance with the provisions of the Law
2 Enforcement Safe Pursuit Act.

3 B. Whoever commits aggravated fleeing a law
4 enforcement officer that does not result in injury or great
5 bodily harm to another person is guilty of a fourth degree
6 felony.

7 C. Whoever commits aggravated fleeing a law
8 enforcement officer that results in injury to another person is
9 guilty of a third degree felony.

10 D. Whoever commits aggravated fleeing a law
11 enforcement officer that results in great bodily harm to
12 another person is guilty of a second degree felony."

13 SECTION 6. Section 31-18-16 NMSA 1978 (being Laws 1977,
14 Chapter 216, Section 5, as amended) is amended to read:

15 "31-18-16. POSSESSION, USE, BRANDISHING OR DISCHARGE OF
16 FIREARM--ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL
17 LIMITED.--

18 A. When a separate finding of fact by the court or
19 jury shows that a firearm was possessed or used in relation to
20 a drug transaction or during the commission of aggravated
21 burglary pursuant to Section 30-16-4 NMSA 1978 or a serious
22 violent offense, the basic sentence of imprisonment prescribed
23 for the offense in Section 31-18-15 NMSA 1978 shall be
24 increased by one year, and the sentence imposed by this
25 subsection shall be the first year served and shall not be

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1 suspended or deferred, except that when the offender is a
2 serious youthful offender or a youthful offender who received
3 an adult sentence, the sentence imposed by this subsection may
4 be increased by one year.

5 ~~[A.]~~ B. When a separate finding of fact by the
6 court or jury shows that a firearm was brandished in [~~the~~
7 ~~commission of a noncapital felony~~] relation to a drug
8 transaction or during the commission of aggravated burglary
9 pursuant to Section 30-16-4 NMSA 1978 or a serious violent
10 offense, the basic sentence of imprisonment prescribed for the
11 offense in Section 31-18-15 NMSA 1978 shall be increased by
12 three years, and the sentence imposed by this subsection shall
13 be the first three years served and shall not be suspended or
14 deferred, except that when the offender is a serious youthful
15 offender or a youthful offender that received an adult
16 sentence, the sentence imposed by this subsection may be
17 increased by one year.

18 C. When a separate finding of fact by the court or
19 jury shows that a firearm was discharged in relation to a drug
20 transaction or during the commission of aggravated burglary
21 pursuant to Section 30-16-4 NMSA 1978 or a serious violent
22 offense, the basic sentence of imprisonment prescribed for the
23 offense in Section 31-18-15 NMSA 1978 shall be increased by
24 five years, and the sentence imposed by this subsection shall
25 be the first five years served and shall not be suspended or

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1 deferred, except that when the offender is a serious youthful
2 offender or a youthful offender who received an adult sentence,
3 the sentence imposed by this subsection may be increased by
4 three years.

5 ~~[B.]~~ D. For a ~~[second or subsequent noncapital~~
6 ~~felony in which a firearm is brandished]~~ separate transaction
7 resulting in a second or subsequent finding of fact by the
8 court or jury of possession, use, brandishing or discharge of a
9 firearm in relation to a drug transaction or during the
10 commission of aggravated burglary pursuant to Section 30-16-4
11 NMSA 1978 or a serious violent offense, the [basic] sentence
12 ~~[of imprisonment prescribed in Section 31-18-15 NMSA 1978]~~
13 shall be increased by ~~[five]~~ three years, except that when the
14 offender is a serious youthful offender or a youthful offender,
15 the sentence imposed by this subsection may be increased by
16 three years.

17 ~~[G.]~~ E. If the case is tried before a jury and if a
18 prima facie case has been established showing that a firearm
19 was possessed, used, brandished ~~[in the commission of the~~
20 ~~offense]~~ or discharged in relation to a drug transaction or
21 during the commission of aggravated burglary pursuant to
22 Section 30-16-4 NMSA 1978 or a serious violent offense, the
23 court shall submit the issue to the jury by special
24 interrogatory. If the case is tried by the court ~~[and if a~~
25 ~~prima facie case has been established showing that a firearm~~

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1 ~~was brandished in the commission of the offense~~], the court
2 shall decide the issue and shall make a separate finding of
3 fact thereon.

4 F. When a separate finding of fact by the court or
5 jury shows that a firearm was possessed, used, brandished or
6 discharged in relation to a drug transaction or during the
7 commission of aggravated burglary pursuant to Section 30-16-4
8 NMSA 1978 or a serious violent offense, the firearm is subject
9 to seizure and forfeiture as an instrumentality pursuant to the
10 provisions of the Forfeiture Act.

11 [~~D.~~] G. As used in this section:

12 (1) "brandished" means displaying or making a
13 firearm known to another person while the firearm is present on
14 the person of the offending party with intent to intimidate or
15 injure a person;

16 (2) "in relation to a drug transaction" means
17 participating or attempting to participate in the trafficking
18 of a controlled substance pursuant to Section 30-31-20 NMSA
19 1978, distribution of a controlled substance to a minor
20 pursuant to Section 30-31-21 NMSA 1978 or distribution of a
21 controlled or counterfeit substance pursuant to Section
22 30-31-22 NMSA 1978 as a seller, purported seller, buyer,
23 purported buyer or as an accomplice; and

24 (3) "serious violent offense" means an offense
25 enumerated in Paragraph (4) of Subsection L of Section 33-2-34

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NMSA 1978."

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