

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	Nonrecurring	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None as of 2/11/2019

Duplicates/Relates to Appropriation in the General Appropriation Act: None as of 02/11/19

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 146 Senate Public Affairs Committee Substitute (SB146/SPAC Sub) makes it unlawful for a person to communicate an intention to bring a firearm to a school or use a firearm at a school, unless specifically authorized by the school. Violation of this provision of New Mexico Criminal Code would become a fourth-degree felony.

FISCAL IMPLICATIONS

The Public Education Department (PED) will have to notify school districts and charter schools about this change to state law, which may have to be reflected in the PED’s [Safe Schools Guide](#) and review rubric for Safe Schools Planning as part of the Discipline Policy Assurance. This can be accomplished with existing PED resources and current staff.

SIGNIFICANT ISSUES

There has been an increase in threats of school violence and threats of school shootings, including those made via social media, to schools and other public places. It is the responsibility of law enforcement agencies—the FBI and/or state and local law enforcement—to investigate and respond to reported threats, including threat of a school shooting. Threats and hoax threats, disrupt the educational process, waste law enforcement resources, and may put students, school staff and first responders in harm’s way. Threats can also cause emotional distress to students, school personnel, and parents.

Issuing a threat—including over social media, via text message, or through e-mail—is a federal crime (18 U.S. Code § 875–Threatening Interstate Communications). Those who post or send these threats can receive up to five years in federal prison, and/or may face state or local charges. In New Mexico, NM § 30-20-13(D) reads that “No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school (<https://law.justia.com/codes/new-mexico/2011/chapter30/article20/section30-20-13/>). ” Anyone found guilty of violating this law is guilty of a petty misdemeanor. This is the current state statute under which most school threats are prosecuted in New Mexico. However, juveniles violating this act may be charged with the delinquent act of Interference with the Education

Process, depending upon prosecutorial discretion. SB146/SPAC Sub may increase the number of minors who are convicted felons as it elevates the act of threat of a school shooting to a felony offense; however, prosecutorial discretion would still allow for the reduction of this offense to a delinquent act for juveniles.

SB146/SPAC Sub defines threat of a school shooting as “Communicating one’s intention to bring to a school or use at a school a firearm, unless specifically authorized by the school.” However, communicating one’s intention to bring a firearm to a school or use a firearm at a school does not necessarily indicate a threat to shoot someone.

It is unclear from reading SB146/SPAC Sub if authorization from the school is to communicate one’s intention or to actually bring to a school or use at a school, a firearm. Neither does SB146/SPAC define what it means to be specifically authorized by the school to communicate that one has an intention to bring a firearm to a school, or to use a firearm at a school. SB146/SPAC Sub does not provide for who at a school may grant authorization.

Over the past several years, many states have enacted laws making it a felony offense for a person to make a school threat. For example: (1) In Oklahoma, it is unlawful for a person to make a threat of violence, which is a misdemeanor punishable by six months in jail. Any actual plan, attempt, or development of a scheme to commit an act of violence is a felony punishable by a maximum of 10 years in prison; (2) In Florida, it is a second-degree felony if a person is convicted of making a false report about planting a bomb or explosive; (3) In Virginia, any person who communicates a threat, in a writing, including an electronically transmitted communication producing a visual or electronic message, to kill or do bodily harm, (i) on the grounds or premises of any elementary, middle or secondary school property, (ii) at any elementary, middle or secondary school-sponsored event or (iii) on a school bus to any person or persons, regardless of whether the person who is the object of the threat actually receives the threat, and the threat would place the person who is the object of the threat in reasonable apprehension of death or bodily harm, is guilty of a Class 6 felony.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

A short term impact of SB146/SPAC Sub is that the PED will have to notify school districts and charter schools about this change to state law, which may have to be reflected in the PED’s [Safe Schools Guide](#) and review rubric for Safe Schools Planning as part of the Discipline Policy Assurance (found in Appendix A of the PED *Guide*). This can be accomplished with existing PED resources and current staff. Additionally, the discipline and infraction codes located in the PED’s Student Teacher Accountability Reporting System (STARS) may need to be modified to reflect the specific offense of threat of a school shooting, as defined by SB146/SPAC Sub.

SB146/SPAC Sub may also require the PED to create a rule describing how authorization may be granted by a school to communicate one’s intention to bring to a school, or use at a school, a firearm.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The threat of a school shooting will continue to be prosecuted under current New Mexico statute as a misdemeanor offense and/or current federal law.

AMENDMENTS

None