

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 68

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

AN ACT

RELATING TO PUBLIC SAFETY; CREATING THE CRIME OF CRIMINAL  
THREAT; CLARIFYING EXCEPTIONS FOR UNLAWFUL POSSESSION OF A  
HANDGUN BY A PERSON; 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:

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

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underscored material = new  
[bracketed material] = delete

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

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

10                       (1) inflict unlawful physical injury against a  
11 person;

12                       (2) cause unlawful damage to property of  
13 another; or

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

15           B. Whoever commits a criminal threat is guilty of a  
16 fourth degree felony.

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

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

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

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

9                   (3) overhead costs incurred for any period of  
10 evacuation or lockdown.

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

14           **SECTION 2.** Section 30-7-2.2 NMSA 1978 (being Laws 1994,  
15 Chapter 22, Section 2) is amended to read:

16           "30-7-2.2. UNLAWFUL POSSESSION OF A HANDGUN BY A PERSON--  
17 EXCEPTIONS--PENALTY.--

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

22                   (1) in attendance at a hunter's safety course  
23 or [~~a~~] handgun safety course or participating in a lawful  
24 shooting activity;

25                   (2) engaging in the use of a handgun for

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1 target shooting at an established range authorized by the  
2 governing body of the jurisdiction in which the range is  
3 located or in an area where the discharge of a handgun without  
4 legal justification is not prohibited by law;

5 (3) engaging in an organized competition  
6 involving the use of a handgun;

7 (4) participating in or practicing for a  
8 performance by an organization that has been granted exemption  
9 from federal income tax by the United States commissioner of  
10 internal revenue as an organization described in Section  
11 501(c)(3) of the United States Internal Revenue Code of [~~1954~~]  
12 1986, as amended or renumbered;

13 (5) engaging in legal hunting or trapping  
14 activities;

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

18 (7) on real property under the control of the  
19 person's parent, grandparent or legal guardian and the person  
20 is being supervised by [~~his~~] a parent, grandparent or legal  
21 guardian.

22 B. A person who commits unlawful possession of a  
23 handgun by a person is guilty of a misdemeanor.

24 C. As used in this section:

25 (1) "person" means an individual who is less

1 than nineteen years old; and

2 (2) "handgun" means a loaded or unloaded  
3 pistol, revolver or firearm ~~[which]~~ that will or is designed to  
4 or may readily be converted to expel a projectile by the action  
5 of an explosion and the barrel length of which, not including a  
6 revolving, detachable or magazine breech, does not exceed  
7 twelve inches."

8 SECTION 3. Section 30-7-16 NMSA 1978 (being Laws 1981,  
9 Chapter 225, Section 1, as amended) is amended to read:

10 "30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,  
11 TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

12 A. It is unlawful for the following persons to  
13 receive, transport or possess a firearm or destructive device  
14 in this state:

15 (1) a felon;

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

18 (3) a person convicted of any of the following  
19 crimes:

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

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

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

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

2 B. A felon found in possession of a firearm shall  
3 be guilty of a third degree felony [~~and shall be sentenced in~~  
4 ~~accordance with the provisions of the Criminal Sentencing Act~~].

5 C. A serious violent felon that is found to be in  
6 possession of a firearm shall be guilty of a second degree  
7 felony.

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

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

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

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

21 (b) any type of weapon by whatever name  
22 known that will, or that may be readily converted to, expel a  
23 projectile by the action of an explosive or other propellant,  
24 the barrel or barrels of which have a bore of more than one-  
25 half inch in diameter, except a shotgun or shotgun shell that

1 is generally recognized as particularly suitable for sporting  
2 purposes; or

3 (c) any combination of parts either  
4 designed or intended for use in converting any device into a  
5 destructive device as defined in this paragraph and from which  
6 a destructive device may be readily assembled;

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

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

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

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

20 (c) the person has not received a  
21 deferred sentence; ~~and~~

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

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1                   (5) "serious violent felon" means a person  
2 convicted of an offense enumerated in Subparagraphs (a) through  
3 (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA  
4 1978 or an equivalent offense under the laws of the United  
5 States or of any state or an offense found to be a serious  
6 violent offense pursuant to the provisions of Subparagraph (o)  
7 of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978;  
8 provided that:

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

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

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

17           SECTION 4. Section 30-22-1.1 NMSA 1978 (being Laws 2003,  
18 Chapter 260, Section 5) is amended to read:

19           "30-22-1.1. AGGRAVATED FLEEING A LAW ENFORCEMENT  
20 OFFICER.--

21           A. Aggravated fleeing a law enforcement officer  
22 consists of a person willfully and carelessly driving [~~his~~] a  
23 vehicle in a manner that endangers the life of another person  
24 after being given a visual or audible signal to stop, whether  
25 by hand, voice, emergency light, flashing light, siren or other

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1 signal, by a uniformed law enforcement officer in an  
 2 [~~appropriately marked law enforcement vehicle~~] authorized  
 3 emergency vehicle pursuant to Section 66-7-6 NMSA 1978  
 4 in pursuit in accordance with the provisions of the Law  
 5 Enforcement Safe Pursuit Act.

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

10 C. Whoever commits aggravated fleeing a law  
 11 enforcement officer that results in injury to another person is  
 12 guilty of a third degree felony.

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

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

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

21 A. When a separate finding of fact by the court or  
 22 jury shows that a firearm was possessed or used in relation to  
 23 a drug transaction or during the commission of aggravated  
 24 burglary pursuant to Section 30-16-4 NMSA 1978 or a serious  
 25 violent offense, the basic sentence of imprisonment prescribed

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1 for the offense in Section 31-18-15 NMSA 1978 shall be  
2 increased by one year, except that when the offender is a  
3 serious youthful offender or a youthful offender who received  
4 an adult sentence, the sentence imposed by this subsection may  
5 be increased by one year.

6 [A.] B. When a separate finding of fact by the  
7 court or jury shows that a firearm was brandished in the  
8 commission of a noncapital felony, the basic sentence of  
9 imprisonment prescribed for the offense in Section 31-18-15  
10 NMSA 1978 shall be increased by three years, except that when  
11 the offender is a serious youthful offender or a youthful  
12 offender that received an adult sentence, the sentence imposed  
13 by this subsection may be increased by one year.

14 C. When a separate finding of fact by the court or  
15 jury shows that a firearm was discharged in the commission of a  
16 noncapital felony, the basic sentence of imprisonment  
17 prescribed for the offense in Section 31-18-15 NMSA 1978 shall  
18 be increased by five years, except that when the offender is a  
19 serious youthful offender or a youthful offender who received  
20 an adult sentence, the sentence imposed by this subsection may  
21 be increased by three years.

22 [B.] D. For a [~~second or subsequent noncapital~~  
23 ~~felony in which a firearm is brandished~~] separate offense  
24 resulting in a second or subsequent finding of fact by the  
25 court or jury of possession, use, brandishing or discharge of a

1 firearm in relation to a drug transaction or during the  
2 commission of aggravated burglary pursuant to Section 30-16-4  
3 NMSA 1978 or a serious violent offense, the [basic] sentence  
4 [of imprisonment prescribed in Section 31-18-15 NMSA 1978]  
5 shall be increased by [five] three years, except that when the  
6 offender is a serious youthful offender or a youthful offender,  
7 the sentence imposed by this subsection may be increased by  
8 three years.

9           ~~[G.]~~ E. If the case is tried before a jury and if a  
10 prima facie case has been established showing that a firearm  
11 was possessed, used, brandished ~~[in the commission of the~~  
12 ~~offense]~~ or discharged in relation to a drug transaction or  
13 during the commission of aggravated burglary pursuant to  
14 Section 30-16-4 NMSA 1978 or a serious violent offense, the  
15 court shall submit the issue to the jury by special  
16 interrogatory. If the case is tried by the court ~~[and if a~~  
17 ~~prima facie case has been established showing that a firearm~~  
18 ~~was brandished in the commission of the offense]~~, the court  
19 shall decide the issue and shall make a separate finding of  
20 fact thereon.

21           F. When a separate finding of fact by the court or  
22 jury shows that a firearm was possessed, used, brandished or  
23 discharged in relation to a drug transaction or during the  
24 commission of aggravated burglary pursuant to Section 30-16-4  
25 NMSA 1978 or a serious violent offense, the firearm is subject

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1 to seizure and forfeiture as an instrumentality pursuant to the  
2 provisions of the Forfeiture Act.

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

4 (1) "brandished" means displaying or making a  
5 firearm known to another person while the firearm is present on  
6 the person of the offending party with intent to intimidate or  
7 injure a person;

8 (2) "in relation to a drug transaction" means  
9 participating or attempting to participate in the trafficking  
10 of a controlled substance pursuant to Section 30-31-20 NMSA  
11 1978, distribution of a controlled substance to a minor  
12 pursuant to Section 30-31-21 NMSA 1978 or distribution of a  
13 controlled or counterfeit substance pursuant to Section  
14 30-31-22 NMSA 1978 as a seller, purported seller, buyer,  
15 purported buyer or as an accomplice; and

16 (3) "serious violent offense" means an offense  
17 enumerated in Paragraph (4) of Subsection L of Section 33-2-34  
18 NMSA 1978."