

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILLS 19 & 252

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LAW ENFORCEMENT; ALLOWING THE LAW ENFORCEMENT
CERTIFICATION BOARD TO SUMMARILY SUSPEND LAW ENFORCEMENT
OFFICERS WHO FAIL TO SUBMIT PROOF OF REQUIRED IN-SERVICE LAW
ENFORCEMENT TRAINING PRIOR TO BEGINNING A REVOCATION PROCESS;
PROVIDING MECHANISMS TO STRENGTHEN THE LAW ENFORCEMENT AND
PUBLIC SAFETY TELECOMMUNICATOR SFC→PROFESSIONS←SFC
SFC→PROFESSIONS←SFC ; CREATING A POLICE OFFICER DATABASE;
ENACTING THE USE OF FORCE PROCEDURES ACT; REGULATING THE USE OF

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SJC/SB 19 & 252

PHYSICAL FORCE BY LAW ENFORCEMENT OFFICERS; ESTABLISHING A DUTY FOR OFFICERS TO INTERVENE.

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

SECTION 1. That version of Section 9-19-8 NMSA 1978 (being Laws 1987, Chapter 254, Section 8, as amended) that is to become effective July 1, 2023 is amended to read:

"9-19-8. ADMINISTRATIVELY ATTACHED AGENCIES.--The governor's organized crime prevention commission [~~the New Mexico law enforcement standards and training council~~] and the law enforcement certification board are administratively attached to the department, and the New Mexico law enforcement standards and training council is administratively attached to the New Mexico law enforcement academy in accordance with the Executive Reorganization Act."

SECTION 2. That version of Section 29-7-3 NMSA 1978 (being Laws 1979, Chapter 202, Section 42, as amended) that is to become effective July 1, 2023 is amended to read:

"29-7-3. NEW MEXICO LAW ENFORCEMENT STANDARDS AND TRAINING COUNCIL.--

A. [~~There is created~~] The "New Mexico law enforcement standards and training council" is created and is administratively attached to the New Mexico law enforcement academy of the department of public safety, which shall provide staff support for the council.

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B. The council shall develop and ~~[adopt basic training and in-service training standards for police officers and telecommunicators in New Mexico]~~ promulgate training requirements, curricula and methods; professional development programs; and performance standards for law enforcement officers and public safety telecommunicators at all levels, including basic, field training officer programs, advanced, specialized and instructor training to be consistent throughout New Mexico.

C. The council ~~[shall consist]~~ consists of:

(1) the director of the ~~[New Mexico law enforcement]~~ academy and the directors of ~~[all]~~ the ~~[satellite]~~ accredited regional law enforcement [academies, who shall serve automatically by reason of their position. The remaining seven] training facilities, who serve ex officio; and

(2) eleven members ~~[of the council shall be]~~ appointed by the governor and confirmed by the senate, ~~[An appointed council member shall serve and have all of the duties, responsibilities and authority of that office during the period prior to the final action by the senate in confirming or rejecting the appointment. The members appointed by the governor shall consist]~~ consisting of:

(a) one attorney ~~[who is currently]~~ employed in a district attorney's office;

(b) one attorney ~~[who is currently]~~

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employed by the public defender department;

(c) one certified police chief of a New Mexico Indian nation, tribe or pueblo;

(d) two New Mexico state-certified public safety telecommunicators, one of whom shall be from an agency that offers fire and medical telecommunications services and one of whom shall be from a public safety agency serving a rural part of the state;

(e) two members who have experience and specialize in providing adult education; ~~and~~

(f) two citizen-at-large members, one of whom ~~[shall have experience as a]~~ has behavioral health ~~[provider]~~ expertise and neither of whom ~~[shall be a police officer or retired police officer]~~ is an active or retired law enforcement officer or public safety telecommunicator or ~~[have]~~ has a familial or financial ~~[connections]~~ connection to ~~[a police]~~ an active or retired law enforcement officer or public safety telecommunicator or any agency or department for which a ~~[police]~~ law enforcement officer or public safety telecommunicator works;

(g) a sheriff who is a New Mexico state-certified law enforcement officer; and

(h) a municipal law enforcement manager who is a New Mexico-state certified law enforcement officer in a command position.

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D. An appointed council member shall serve and have all the duties, responsibilities and authority of that office during the period prior to the final action by the senate in confirming or rejecting the appointments. Vacancies on the council shall be filled by appointment by the governor with the consent of the senate for the remainder of the unexpired term.

~~[D.]~~ E. Appointments to the council shall be for staggered terms of four years or less made in such manner that the terms of not more than ~~two~~ four members expire on July 1 of each year.

~~[E.]~~ F. Members of the council ~~shall~~ are entitled to receive, for their service as members of the council, per diem and mileage as provided in the Per Diem and Mileage Act."

SECTION 3. Section 29-7-4.3 NMSA 1978 (being Laws 2022, Chapter 56, Section 13) is amended to read:

"29-7-4.3. LAW ENFORCEMENT CERTIFICATION BOARD--
APPOINTMENT--POWERS AND DUTIES--REFUSAL TO ISSUE OR DENIAL,
SUSPENSION OR REVOCATION OF CERTIFICATION--SUSPENSION OF
CERTIFICATION FOR FAILURE TO MEET REQUIRED IN-SERVICE
TRAINING--CONFIDENTIALITY OF INVESTIGATIONS--LAW ENFORCEMENT
CERTIFICATION OFFICE CREATED.--

A. The "law enforcement certification board" is established and administratively attached to the department of public safety, ~~[as an independent board in accordance with the Executive Reorganization Act]~~ and the department shall provide

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administrative services for the board and the law enforcement certification office.

B. The board consists of ~~[nine]~~ eleven members appointed by the governor with the advice and consent of the senate. No more than ~~[five]~~ six members ~~[of the board]~~ shall be members of the same political party. Members shall be appointed so as to represent different geographic areas of the state and the ethnic and cultural diversity of the state's population. The members ~~[of the board]~~ shall be appointed for staggered five-year terms, except that for the initial board, two ~~[of the initial board]~~ members shall be appointed for one-year terms, two ~~[of the initial board]~~ members shall be appointed for two-year terms, two ~~[of the initial board]~~ members shall be appointed for three-year terms, two ~~[of the initial board]~~ members shall be appointed for four-year terms and ~~[one of the initial board]~~ three members shall be appointed for ~~[a]~~ five-year ~~[term]~~ terms.

~~[B.]~~ C. The board shall include the following members:

- (1) a retired district judge, who ~~[shall serve]~~ serves as chair of the board;
- (2) a current or retired New Mexico state-certified municipal ~~[peace officer]~~ law enforcement manager in a command position;
- (3) a retired sheriff who was certified or a

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current sheriff who is certified as a law enforcement officer;

(4) a current or retired state or local New Mexico state-certified law enforcement officer who has law enforcement management command experience;

~~[(4)]~~ (5) a current or retired tribal law [peace] law enforcement officer;

(6) a certified public safety telecommunicator;

~~[(5)]~~ (7) an attorney in private practice who practices as a plaintiff's attorney in the area of civil rights or who represents criminal defendants;

~~[(6)]~~ (8) an attorney in private practice who represents public entities in civil rights claims; [and

~~(7)]~~ (9) an attorney who is employed by the public defender department;

(10) a professor of criminal justice at a public post-secondary educational institution in New Mexico; and

(11) a citizen-at-large who has knowledge and interest in law enforcement training.

D. An appointed member shall serve and have all of the duties, responsibilities and authority of that office during the period prior to the final action by the senate in confirming or rejecting the appointment. Vacancies shall be filled by appointment by the governor with the consent of the

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senate for the unexpired term of the member. Members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act.

[G.] E. The board shall:

(1) deny, suspend or revoke:

(a) a peace officer's certification for just cause as provided in the Law Enforcement Training Act; and

(b) a telecommunicator's certification for just cause as provided in the Public Safety Telecommunicator Training Act; and

(2) conduct investigations, administer oaths and subpoena persons as necessary to make determination regarding fitness of a law enforcement officer to execute a law enforcement officer's duties.

[D.] F. The board may require by subpoena the attendance of witnesses or the production of records and other evidence relevant to an investigation and shall have such other powers and duties and administer or enforce such other acts as further provided by law.

[E.] G. The board shall appoint a chief executive officer to assist the board in carrying out its functions. The chief executive officer shall employ persons as necessary to assist the board in carrying out its functions.

[F.] H. The board shall adopt, publish and file, in accordance with the provisions of the State Rules Act, all

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rules concerning the implementation and enforcement of the Law Enforcement Training Act and Public Safety Telecommunicator Training Act except those sections enumerated in Subsection E of Section 29-7-4 NMSA 1978 for which rules shall be adopted, published and filed by the council.

[G-] I. The board shall issue or renew a certification to:

(1) graduates from an approved basic law enforcement training program who satisfy the qualifications for certification as set forth in Section 29-7-6 NMSA 1978; or

(2) graduates from an approved basic telecommunicator training program who satisfy the qualifications for certification as set forth in the Public Safety Telecommunicator Training Act.

[H-] J. Members of the board shall receive, for their service as members of the board, per diem and mileage as provided in the Per Diem and Mileage Act.

K. Internal affairs and other investigation documents provided to or developed by the board for use in a certification case shall remain confidential. A decision of the board is a final agency decision and may be appealed as provided in Section 39-3-1.1 NMSA 1978."

SECTION 4. Section 29-7-6.1 NMSA 1978 (being Laws 1993, Chapter 255, Section 7, as amended) is amended to read:

"29-7-6.1. COUNTY SHERIFFS--TRAINING REQUIREMENT.--

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A. Sheriffs are eligible to attend the academy and are eligible to receive certification as provided in the Law Enforcement Training Act.

~~[A.]~~ B. Every county sheriff, except sheriffs who have previously been awarded a certificate attesting to completion of a basic law enforcement training program, shall participate in and complete an administrative law enforcement training program no later than twelve months after the date the sheriff assumes office as a county sheriff.

~~[B.]~~ C. The director shall establish the administrative law enforcement training program for county sheriffs, subject to review and approval by the executive committee of the sheriff's affiliate of the New Mexico association of counties.

~~[C.]~~ D. A county sheriff's per diem, mileage and tuition expenses attributed to attendance at the administrative law enforcement training shall be paid for by the governing body of the county served by that sheriff."

SECTION 5. Section 29-7-7.1 NMSA 1978 (being Laws 1981, Chapter 114, Section 7, as amended) is amended to read:

"29-7-7.1. IN-SERVICE LAW ENFORCEMENT TRAINING--
REQUIREMENTS--ELIGIBILITY--PENALTIES FOR FAILURE TO COMPLETE OR REPORT REQUIREMENTS.--

A. To maintain certification as a police officer,
in-service law enforcement training is required. In-service

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law enforcement training consists of [~~at least~~] a minimum of forty hours of academic instruction approved by the [~~board~~] council for each certified police officer during each twenty-four month period of employment or service with a [~~political subdivision~~] state or local law enforcement agency. The first required in-service law enforcement training [~~course~~] period shall commence no later than twelve months after graduation from an approved basic law enforcement training program.

B. [~~All certified police officers who are eligible for in-service training shall, during each twenty-four month period of employment, complete a minimum of forty hours of in-service law enforcement training in courses approved by the board.~~ All] Each certified police [~~officers~~] officer shall provide proof of completing in-service law enforcement training requirements to the officer's law enforcement agency and the executive director no later than March 1 of the year in which the requirements must be met. The executive director shall provide annual notice to all certified police officers regarding in-service law enforcement training requirements. Failure to complete in-service law enforcement training requirements or failure to report completion to the board may be grounds for suspension of a [~~certified~~] police officer's certification and may result in the state withholding the law enforcement agency's law enforcement protection fund distribution. A police officer's certification may be

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reinstated by the board when the police officer presents the board with evidence of satisfying in-service law enforcement training requirements.

C. The board shall audit in-service law enforcement training compliance."

SECTION 6. A new section of the Law Enforcement Training Act, Section 29-7-16 NMSA 1978, is enacted to read:

"29-7-16. [NEW MATERIAL] POLICE OFFICER DATABASE.--By July 1, 2024, the board shall employ a web-based technology solution that will enable any member of the public to search for outcomes of misconduct investigations that result in dismissal, denial, suspension or revocation of a police officer's or public safety telecommunicator's certification. The database shall show the officer's or telecommunicator's name, the action taken by the board and the date of the action."

SECTION 7. That version of Section 29-7C-4 NMSA 1978 (being Laws 2003, Chapter 320, Section 6, as amended) that is to become effective July 1, 2023 is amended to read:

"29-7C-4. [~~BASIC~~] TELECOMMUNICATOR TRAINING PROGRAM.--

A. The council shall:

(1) after consultation with the board, adopt by rule professional standards that describe the skills, knowledge and behaviors that characterize exemplary practice and professional growth of telecommunicators in New Mexico and

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training standards that implement the professional standards;
and

(2) develop and adopt a ~~[basic]~~
telecommunicator training program for telecommunicator
certification. The program shall be ~~[constructed to]~~ evidence-
and performance-based and shall meet best practices and
evolving national standards and the ~~[minimum basic]~~ needs of
telecommunicators ~~[in New Mexico]~~ at each level of
certification.

B. Until new evidence- and standards-based training
programs are adopted and promulgated, the board shall certify
telecommunicators after successful completion of the training
programs then in effect. During the process of updating the
telecommunicator training system, the council and the New
Mexico law enforcement academy shall provide periodic reports
to the legislature and shall make a final report, including
recommendations for funding and statutory changes, to the
governor and the legislature."

SECTION 8. Section 29-7C-7 NMSA 1978 (being Laws 2003,
Chapter 320, Section 9, as amended) is amended to read:

"29-7C-7. IN-SERVICE TELECOMMUNICATOR TRAINING.--

A. In-service telecommunicator training consists of
at least twenty hours of board-approved advanced training,
including one hour of crisis management, including crisis
intervention, confrontation de-escalation practicum and proper

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interaction with persons with mental impairments training, for each certified telecommunicator during each two-year period. The first training course shall commence no later than twelve months after graduation from a board-approved basic telecommunicator training program.

B. A certified telecommunicator shall provide proof of completion of in-service training requirements to the director no later than March 1 of the year subsequent to the year in which the requirements are met. The director shall provide annual notice to all certified telecommunicators regarding in-service training requirements. Failure to complete in-service training requirements may be grounds for suspension of a telecommunicator's certification at the [director's] board's discretion as provided in Section 29-7-4.3 NMSA 1978. A telecommunicator may be reinstated ~~[at the discretion of the director]~~ by the board when the telecommunicator presents to the ~~[director]~~ board evidence the telecommunicator has satisfied the in-service training requirements.

C. As used in this section, "mental impairment" includes a mental illness, developmental disability, posttraumatic stress disorder, dual diagnosis, autism, youth in crisis and traumatic brain injury."

SECTION 9. Section 29-13-6 NMSA 1978 (being Laws 1983, Chapter 289, Section 6, as amended) is amended to read:

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"29-13-6. DISTRIBUTION OF LAW ENFORCEMENT PROTECTION

FUND.--

A. Based on a periodic allotment approved by the division for the current fiscal year, the state treasurer shall distribute from the fund the amounts certified by the division to be distributed to governmental entities and the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund as required in Section 29-13-4 NMSA 1978. Payments shall be made by the treasurer to the appropriate governmental entity or fund unless otherwise specified in Subsection C of this section.

B. The state treasurer is authorized to redirect a distribution to the New Mexico finance authority in an amount certified by the division, pursuant to an ordinance or a resolution passed by the municipality or county and a written agreement of the municipality or county and the New Mexico finance authority.

C. Based on a periodic allotment approved by the division for the current fiscal year, the state treasurer shall distribute from the money in the fund money certified by the division to be distributed to tribes. Payment shall be made to the chief financial officer of the tribe. If necessary, the fund may be decreased below the level of one hundred thousand dollars (\$100,000) to enable payment to the tribes. If insufficient money remains in the fund to fully compensate the

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tribes, a report shall be made to the Indian affairs department and to an appropriate interim committee of the legislature that reviews issues having impact on tribes by September 1 of the year of the shortfall.

D. The New Mexico law enforcement standards and training council may notify the division and the state treasurer to withhold the distribution to any governmental entity that has failed to submit required reports to the council as provided in Section 29-7-7.2 NMSA 1978 or that employs law enforcement officers who have failed to submit proof of completion of required in-service law enforcement training as required in Section 29-7-7.1 NMSA 1978."

SECTION 10. [NEW MATERIAL] SHORT TITLE.--Sections 10 through 14 of this act may be cited as the "Use of Force Procedures Act".

SECTION 11. [NEW MATERIAL] USE OF FORCE STATEWIDE POLICY.--Each law enforcement agency shall develop and maintain policies regarding use of force by law enforcement officers in its employ. At a minimum, such use-of-force policies shall incorporate:

A. a discussion of considerations that law enforcement officers must make prior to the application of physical force, including an explanation of reasonable force necessary to accomplish a lawful objective; and

B. ethical considerations law enforcement officers

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shall make during the application of physical force, including provisions pursuant to Section 14 of this 2023 act.

SECTION 12. [NEW MATERIAL] UNLAWFUL USE OF FORCE.--A law enforcement officer shall not:

A. discharge a firearm into a fleeing motor vehicle unless such discharge is necessary to prevent an imminent threat of death or serious bodily injury to an officer or another person and the officer has no reasonable alternative course of action to prevent death or serious bodily injury; provided that when possible, an officer threatened by an oncoming motor vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants; or

B. use a vascular neck restraint, unless a person's attack poses a threat of imminent harm to the officer or another person; provided that an officer shall cease the use of a vascular neck restraint as soon as the person no longer poses a threat of imminent harm to the officer or another person.

SECTION 13. [NEW MATERIAL] UNLAWFUL USE OF FORCE--
PRESCRIBING PENALTIES.--If a law enforcement officer is found to have used unlawful physical force, the officer shall be disciplined and, depending on the seriousness of the unlawful physical force, may be decommissioned and terminated from the officer's position or have any officer certification revoked or suspended.

SECTION 14. [NEW MATERIAL] INTERVENTION.--

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A. A law enforcement officer present and observing another officer using physical force, including deadly physical force, that the law enforcement officer has probable cause to believe is excessive based on the totality of the circumstances shall intervene to prevent the use of excessive force, unless intervening would result in imminent harm to the officer or another identifiable individual.

B. A law enforcement officer who observes another officer using physical force, including deadly physical force, that the law enforcement officer has probable cause to believe is excessive based on the totality of the circumstances shall report the incident to the officer's direct supervisor as soon as reasonably possible but no later than the end of the officer's shift.

C. A law enforcement officer who had a duty to intervene and failed to do so shall be disciplined and, depending on the seriousness of the violation, may be suspended, decertified, decommissioned or terminated from the officer's position.

SECTION 15. TEMPORARY PROVISION--RULES OF NEW MEXICO LAW ENFORCEMENT ACADEMY BOARD--RULES OF NEW MEXICO LAW ENFORCEMENT STANDARDS AND TRAINING COUNCIL OR LAW ENFORCEMENT CERTIFICATION BOARD.--The rules of the New Mexico law enforcement academy board shall continue in effect until amended or repealed by the New Mexico law enforcement standards and training council or

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the law enforcement certification board, as applicable.

SFC→SECTION 16. EFFECTIVE DATE.--The effective date of
the provisions of Sections 1 through 3 and 7 of this act is
July 1, 2023.←SFC

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