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FISCAL IMPACT REPORT

SPONSOR <u>SJC</u>	LAST UPDATED <u>3/17/2023</u>
	ORIGINAL DATE <u>3/12/2023</u>
SHORT TITLE <u>Law Enforcement & Public Safety Telecomm</u>	BILL NUMBER <u>CS/Senate Bills 19 & 252/SJCS/aSFC</u>
	ANALYST <u>Rabin/Gray</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to DPS	No fiscal impact	\$1,971.7	\$296.7	\$2,268.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 141, Senate Bill 33, Senate Bill 192, and Senate Bill 491

Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Sentencing Commission (NMSC)
 State Treasurer’s Office (STO)
 Department of Public Safety (DPS)
 Municipal League

Responses to Introduced Bill Received From

New Mexico Counties

SUMMARY

Synopsis of SFC Amendment to SJC Substitute for Senate Bill 19 and 252

The Senate Finance Committee amendment to the Senate Judiciary Committee substitute for Senate Bills 19 and 252 corrects a typo in the title of the bill (replacing “PRO9FESSIONS” with “PROFESSIONS”) and adds an effective date of July 1, 2023, for Sections 1 through 3 and 7 of the bill. These changes resolve issues identified in a prior version of this analysis.

Synopsis of SJC Substitute for Senate Bills 19 and 252

The Senate Judiciary Committee substitute for Senate Bills 19 and 252 makes several changes to

statutes related to law enforcement officer and public safety telecommunicator (dispatcher) training, certification, and oversight, and enacts the Use of Force Procedures Act, relegating the use of physical force by law enforcement officers and establishing a duty for officers to intervene. Many of the changes to statute proposed by this bill are technical, clarifying, or align with current practice.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

Changes to Training, Oversight, and Certification

Many of the bill's changes to statutes governing law enforcement officer and dispatcher training, certification, and oversight are technical, serve to clarify changes implemented by Laws 2022, Chapter 56, (House Bill 68), or align with the implementation of current law. The most significant substantive changes proposed by SB19/252:

- Amend and expand the membership of the New Mexico Law Enforcement Standards and Training Council (hereafter, the Standards and Training Council) and the Law Enforcement Certification Board (hereafter, the Certification Board);
- Require the Certification Board to create a searchable, public database showing the outcomes of adjudicated misconduct investigations into officers and dispatchers; and
- Provide temporary provisions to allow the current system of law enforcement training, certification, and oversight to remain in effect during the formation of and rulemaking related to the Standards and Training Council and the Certification Board (as required by Laws 2022, Chapter 56).

Council Membership. SB19/252 increases the membership of the Standards and Training Council from seven appointed members to 11 appointed members. The director of the New Mexico Law Enforcement Academy serves due to their position, and is not counted as an appointed member here. SB19/252 adds the following members to the council:

- Two certified dispatchers, one from an agency that offers fire and medical telecommunications services and one from a public safety agency serving a rural part of the state;
- One sheriff who is a certified law enforcement officer; and
- One municipal law enforcement manager who is a certified law enforcement officer in a command position.

Additionally, SB19/252 amends the existing council membership from including (as regular members) the directors of all satellite law enforcement academies to include (as ex-officio members) the directors of the accredited regional law enforcement training facilities. The bill also clarifies provisions related to the citizen-at-large members to exclude individuals with connections to dispatchers as well as law enforcement officers.

Board Membership. SB19/252 increases the membership of the Certification Board from nine members to 11 members, removing two members who were not specified in current law (current law provides for nine members but only specifies the qualifications for seven) and adding four new members. SB19/252 adds the following members to the board:

- One current or retired state or local law enforcement officer who has law enforcement management command experience;
- One certified dispatcher;
- One professor of criminal justice at a public New Mexico post-secondary educational institution; and
- One citizen-at-large who has knowledge and interest in law enforcement training.

Additionally, SB19/252 amends the existing council membership as follows:

- Changes a retired judge member (who serves as chair of the board) to a retired district judge (who still serves as chair);
- Changes a municipal peace officer member to a current or retired municipal law enforcement manager in a command position;
- Changes a sheriff member to a retired sheriff who was certified or a current sheriff who is certified as a law enforcement officer; and
- Changes a tribal law peace officer to a current or retired tribal law law enforcement officer.

Database. SB19/252 requires the Certification Board to employ a “web-based technology solution” (hereafter, “database”) by July 1, 2024 that enables the public to search for misconduct investigations that resulted in dismissal, denial, suspension, or revocation of an officer or dispatcher’s certification. The bill does not provide for the database to include the status of ongoing misconduct investigations or require law enforcement agencies or other public safety agencies to consult the database when hiring officers or dispatchers who have previously served in such positions in the state.

Temporary Provisions. SB19/252 creates temporary provisions stating “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 the law enforcement certification board, as applicable.” It does not specify if the Law Enforcement Academy Board will continue to exist to carry out these rules, or if the Standards and Training Council and Certification Board will carry out the existing rules.

The Use of Force Procedures Act

SB19/252 enacts the Use of Force Procedures Act, which requires law enforcement agencies to develop and maintain use-of-force policies, prohibits certain uses of force by officers, provides for penalties regarding unlawful uses of force by officers, and creates a duty for officers to intervene to prevent the use of excessive force. Notably, however, the bill does not provide for penalties if agencies fail to comply with its requirements.

Use of Force Policies. SB19/252 requires law enforcement agencies to develop and maintain use-of-force policies for their officers. These policies are required to, at a minimum, incorporate a discussion of considerations officers must make prior to using force and ethical considerations law enforcement officers shall make during the application of force. However, the bill does not provide for any penalties should law enforcement agencies fail to comply with these provisions.

Unlawful Uses of Force. SB19/252 bans discharging firearms into fleeing motor vehicles and

the use of vascular neck restraints (chokeholds) except in certain circumstances. An officer may discharge a firearm to prevent an imminent threat of death or serious bodily injury to themselves or another if they have no reasonable alternative course of action; the bill requires an officer to, when possible, move out of the path of a vehicle instead of firing at the vehicle or its occupants. An officer may use a chokehold if a person’s attack poses a threat of imminent harm to the officer or another; the bill requires an officer to cease using a chokehold as soon as the person no longer poses a threat of imminent harm.

SB19/252 requires that law enforcement officers who are found to have used unlawful physical force shall be disciplined, which may include being decommissioned or terminated or having their certification revoked. However, the bill does not require law enforcement agencies to report unlawful uses of force to the Certification Board, which is the only entity empowered to revoke an officer’s certification. Like the other new use of force provisions enacted by the bill, the bill does not provide for any penalties should law enforcement agencies fail to discipline officers who used unlawful force.

Duty to Intervene. SB19/252 creates an obligation for a law enforcement officer who is observing unlawful use of physical force to intervene and prevent the unlawful use of physical force, unless intervening would result in harm to the officer or another person. The intervening officer has an obligation to report the unlawful use of force, and that officer may be disciplined or terminated if they failed to intervene.

FISCAL IMPLICATIONS

Costs to DPS. Many of the additional requirements imposed on the Department of Public Safety (DPS) under this bill already exist under current law or are considered in increased appropriations to the agency. However, DPS notes some specific costs the agency anticipates it would incur based on the changes imposed by SB19/252 which total \$925 thousand in nonrecurring costs and \$296.7 thousand in recurring costs, as outlined below.

Additional Operating Budget Impact to DPS
(dollars in thousands)

Description	Nonrecurring Cost	Recurring Cost
Job task analysis (increased costs due to expanded scope as a result of SB19/252)	\$750.0	\$0.0
Update and modernize NMLEA's dispatcher training programs	\$750.0	\$0.0
Update and modernize NMLEA's use of force training program	\$100.0	\$0.0
Update and modernize NMLEA's Certify Master Training (train the trainer) program	\$75.0	\$0.0
IT staff to support NMLEA, the Certification Board, and the Standards and Training Council	\$0.0	\$296.7
Total Additional Operating Budget Impact	\$1,675.0	\$296.7

Source: DPS analysis of SB19/252, submitted 3/12/2023

DPS reports its Administrative Services Division will experience an additional workload related to the transition of the Law Enforcement Academy Board into the Standards and Training Council and the Certification Board, and it requires two additional staff members at a cost of \$199.9 thousand annually to fulfill these duties, and the new Certification Board will also need office space and equipment. However, these specific duties are largely unchanged compared with the changes instituted by Laws 2022, Chapter 56, so these costs are not considered as additional operating budget impacts of SB19.

GAA Appropriations. SB19/252 relates to several appropriations in the House Appropriations and Finance Committee substitute for House Bills 2 and 3, as amended by the Senate Finance Committee (General Appropriation Act). The General Appropriation Act (GAA) includes \$1.3 million in recurring general fund appropriation increases for the Law Enforcement Standards and Training Council (which oversees the New Mexico Law Enforcement Academy) and recurring general fund appropriations of \$2.1 million for the Certification Board, including a \$961.1 thousand increase compared with FY23.

The GAA further includes a \$500 thousand nonrecurring general fund appropriation to DPS for a police officer job task analysis for purposes of police officer training, which relates to curriculum development; DPS also received a \$250 thousand nonrecurring appropriation for this purpose last year. DPS originally estimated the total cost for this project would be \$1.5 million but, based on changes in SB19/252, the agency now estimates the project will need to be expanded by \$750 thousand, which is reflected in the table above.

The GAA includes funding for operating expenses other than staff for both the Certification Board and the Standards and Training Council that should cover these needs, and the GAA also includes a \$294.9 thousand increase for DPS's Administrative Services Division. This appropriation does not add FTE given the division's high vacancy rate but is intended to raise staff salaries in the division to improve recruitment and retention.

Other Appropriations. Senate Bill 192 includes \$150 thousand for NMLEA for advanced law enforcement officer training courses and \$325 for costs and equipment for basic or advanced training (which could be expended for officer or dispatcher training), a total of \$475 thousand in additional funding for NMLEA. These appropriations could likely offset some of the costs of updating and modernizing the curriculums.

SIGNIFICANT ISSUES

Database. SB19/252 does not provide for the database created in Section 6 to include the status of ongoing misconduct investigations. It also does not require law enforcement agencies or other public safety agencies to consult the database when hiring officers or dispatchers who have previously served in such positions in the state. Without such requirements, the utility of the database is somewhat limited.

Use of Force Procedures Act Reporting and Compliance. SB19/252 provides that officers may have their certifications suspended for unlawful uses of physical force, but does not require law enforcement agencies to report such uses of force to the Certification Board, which is the only entity empowered to revoke an officer's certification. It may be desirable to add such a requirement.

SB19/252 also does not provide for any penalties should law enforcement agencies fail comply with the provisions of the Use of Force Procedures Act. DPS has faced issues ensuring law enforcement agencies comply with statutory requirements in the past, such as reporting requirements. Changes enacted as part of Laws 2022, Chapter 56 (House Bill 68), provided that agencies' law enforcement protection fund distributions would be withheld for failure to comply with statutory reporting requirements. A similar provision is included in Section 9 of proposed SB19/252. However, this withholding only applies to reporting and does not apply if agencies fail to comply with new use of force provisions. Compliance may be improved if Section 9(D)

was amended to include the provisions of the Use of Force Procedures Act.

The office of the New Mexico Attorney General (NMAG) notes Section 13 may raise a constitutional issue by requiring discipline without explicit guarantees of notice and a hearing before such consequences are imposed. Additionally, the section “does not clarify who is making the finding of unlawful physical force or what standard of proof is being used. It fails to enumerate disciplinary measures and it lacks due process of law in that it does not provide for notice or opportunity to be heard.”

NMAG further writes:

Section 14 (A) mandates that a law enforcement officer present and observing another officer using excessive physical force, including deadly physical force, based on a probable cause standard, shall intervene to prevent the use of excessive force unless that intervention would result in imminent harm to the intervening officer or another identifiable individual. Section (B) mandates that the observing officer report the incident to the officer’s direct supervisor before the end of shift. Section (C) mandates that an officer who fails to intervene shall be disciplined. Based on lack of definitions of relevant terms, this Section is subjective and could be unenforceable. Section 14 requires officers to make probable cause decisions and physically intervene based on a totality of circumstances of which the reporting officer may not have full knowledge. In addition, the terms “imminent harm” and “excessive force” could be considered subjective and may need clearly stated definitions to avoid confusion.

Moreover, the phrase, “A law enforcement officer who observes another officer using physical force including deadly 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...” could [be] problematic where an officer observes an immediately superior officer engaged in “excessive force.” It is unclear whether the observing officer would be required to report the excessive force to his direct supervising officer, who happens to be the officer engaged in the excessive force.

Regarding differences between the substitute and the introduced version of SB252, the Sentencing Commission writes:

...the substitute bill does not require that law enforcement agencies publish their use of force policies, nor does it provide any penalties for law enforcement agencies who do not develop and maintain use of force policies. It does not contain any procedures for investigating use-of-force incidents. The substitute bill also provides a much narrower scope of conduct that shall be considered “unlawful use of force”, and it does not contain any provisions prohibiting retaliatory action against an officer who reports or intervenes to prevent unlawful use of force.

Council Membership. Under current law, the appointed members of the Standards and Training Council consist of the New Mexico Law Enforcement Academy (NMLEA) director, one law enforcement officer, and six other members, along with the directors of all the satellite law

enforcement academies. SB19/252 would amend this membership to consist of the NMLEA director, three law enforcement officers, two dispatchers, and six other members, but other academy directors would only serve ex-officio.

Notably, all three law enforcement officers who would serve on the council under SB19 are required to be or have been in leadership or management positions; the bill does not provide other law enforcement officers to be represented. However, the dispatchers added to the council are not required to be or have been in leadership or management positions.

Board Membership. Under current law, the members of the Certification Board include one judge, three law enforcement officers, and five other members. SB19/252 would amend this membership to consist of one judge, four law enforcement officers, one dispatcher, and five other members.

Notably, three of the four law enforcement officers who would serve on the board under SB19 are required to be or have been in leadership or management positions; under current law, only one of the three law enforcement officer members is required to be in a leadership position (a sheriff). However, the dispatcher added to the board is not required to be or have been in a leadership or management position.

Temporary Provisions. SB19/252 does not specify if the Law Enforcement Academy Board will continue to exist to carry out its existing rules until they are amended or repealed, or if the Standards and Training Council and Certification Board will carry out the existing rules. NMAG points out

Although Section 15 of the bill provides for greater regulatory continuity by providing that the current administrative rules of the Law Enforcement Academy Board remain in effect until subsequently amended or repealed, the process of repealing or amending these rules may be more complex in practice. The Board's current rules, see 10.29 NMAC, are not likely organized in a manner conducive to the division between the new Law Enforcement Certification Board and the Law Enforcement Standards and Training Council.

STO Concerns. The State Treasurer's Office writes:

In Section 9, a new subsection D has been added that requires the state treasurer to withhold distributions from the Law Enforcement Protection Fund (LEPF) to any governmental entity that has failed to submit required reports to the LEA 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.

At present, to make a distribution, the Treasurer requires an initiation of payment from the LEA or DPS. As written, SB 19 may create confusion insofar as it requires STO to withhold distribution after an initiation of payment. For the sake of clarity, the bill should state that the LEA or DPS shouldn't initiate payment when the listed criteria is not satisfied. This is because the basis for withholding a distribution is upon information received from the LEA or DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Provisions of SB19/252 related to distributions from the law enforcement protection fund (LEPF) relate to House Bill 141 and Senate Bill 491, both of which expand revenue sources for the LEPF.

SB19/252 relates to Senate Bill 33, which authorizes commissioned tribal, pueblo, and BIA police or law enforcement officers who are certified by NMLEA or an academy-approved training program to enforce state laws within the exterior boundaries of the tribal or pueblo officer's reservation without the necessity of also being commissioned as a peace officer by the New Mexico State Police, as required under current law.

As detailed under Fiscal Implications, above, the GAA's recurring and nonrecurring appropriations provide significant increases to the Certification Board and the Standards and Training Council. Further, SB19/252 relates to Senate Bill 192, which includes \$150 thousand for NMLEA for advanced law enforcement officer training courses and \$325 for costs and equipment for basic or advanced training.

TECHNICAL ISSUES

Page 3, lines 5 through 7, refer to "accredited regional law enforcement training facilities." The applicable definitions section (Section 29-7-7 NMSA 1978, as amended effective July 1, 2023) defines "certified regional law enforcement training facility," but does not define "accredited regional law enforcement training facility."

Page 6, lines 22 through 23, provide for "a current or retired tribal law law enforcement officer" to serve on the Certification Board. It is not clear both occurrences of the word "law" are necessary.

NMAG suggests adding definitions for the following terms as used in Sections 12 through 14:

- Excessive physical force
- Imminent harm
- Identifiable person
- Vascular neck restraint
- Serious bodily injury

NMAG further notes it is unclear if the term "officer's direct supervisor" in Subsection C of Section 14 refers to the supervisor of the reporting officer or the supervisor of the officer observed engaging in physical force.

OTHER SUBSTANTIVE ISSUES

Police Use of Force. Between 2017 and 2021, New Mexico had the second highest per capita rate of people killed by police, with 114 individuals killed, a rate almost triple the national average. New Mexico law enforcement agencies reported 59 officer-involved shootings to DPS in FY22, a 9 percent increase compared with the 54 reported FY21, but 48 percent more than the 40 reported in FY20. At least 25 individuals were killed during interactions with law

enforcement officers, but the share of shootings that resulted in fatalities decreased slightly, from 46 percent in FY21 to 42 percent in FY22.

From 2016 to 2020, between 97 and 108 individuals were killed by police in New Mexico, an average rate of 9.3 to 10.3 per million residents per year, while the average national rate of individuals killed by police ranged from 3 to 3.3 per million residents per year. Comparatively, New York, with over nine times New Mexico’s population, saw roughly the same number of people killed by police during this period (between 90 and 109 individuals, an average rate of 0.9 to 1.1 per million residents per year).¹ While increased research has clarified some of the causes of police use of deadly force, effective solutions remain elusive.

NMSP investigates all of its officers’ uses of force and reports 248 uses of force in FY22, a 5.7 percent decrease compared to FY21 but 27.2 percent higher than FY20. New Mexico law enforcement agencies reported 58 officer-involved shootings in FY22, a 9 percent increase compared to FY21 and a 48 percent increase compared to FY20.

Although best practices for policing include increasing proactive interactions, focusing attention on serious offenders, and deploying more officers, these same practices may be more likely to lead to violent altercations between police and citizens. A 2015 analysis in the *American Journal of Criminal Justice* reviewed several studies of predictors of law enforcement officers’ use-of-force decisions and found more serious offenses, suspect resistance, arrests, citizen conflicts, additional officers, and police-initiated encounters are more likely to result in the use of force. Notably, whether an offender was armed did not have a significant effect on officers’ use-of-force decisions.

Minorities, males, and low-income suspects are also more likely to have force used against them. Officer race, education, and experience were not found to predict use of force, although male officers are more likely to use force than their female colleagues.

Research suggests training policies regarding encounters with suspects are more likely to reduce rates of excessive force than policies regarding hiring practices of law enforcement officers. Common trainings aimed at addressing officer behavior include implicit bias training, de-escalation training, and crisis intervention training; evaluation of these programs’ impact is limited, and initial research indicates they may not effectively alter long-term behavior without strong use-of-force policies and accountability. A new state law requires all law enforcement officers in New Mexico to wear body cameras and record much of their engagement with the public; however, research on the efficacy of body-worn cameras shows limited impacts on officer and citizen behavior or citizens’ views of police.

Analysis from the Municipal League. The Municipal League writes SB19/252 “includes several provisions that support the modernization of policing in New Mexico,” and elaborates:

Specifically, adopting minimum standards for use of force policies ensures that

¹ Data on police killings sourced from the *Washington Post’s* Fatal Force project, which only includes fatal police shootings (<https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>), and Mapping Police Violence (mappingpoliceviolence.org), which includes all police killings regardless of the cause of death. Population data to calculate rates of police killings sourced from the U.S. Census Bureau.

officers operate under consistent standards, regardless of department. Because officers often move between departments, having a more consistent set of standards will ensure that all officers are operating under up-to-date policies that take into account modern policing policies.

Requiring peer intervention in potentially unlawful use of force situations is also an important step towards law enforcement modernization. Law enforcement officers should have the training and knowledge to effectively intervene in these situations. A peer intervention policy could reduce incidences of unlawful use of force.

The Municipal League is also supportive of bill provisions supporting the use of a public database to track outcomes of DPS misconduct investigations, which will support transparency and accountability in law enforcement, and also aid departments in ensuring they are able to hire the best officers.

Requiring that departments complete and report training requirements, with the potential for withholding of LEPF distributions for failure to do so, will help ensure that all officers are up-to-date on training, a key component of modernization.

ER/BG/ne/mg