

HOUSE BILL 39

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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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 CHILDREN; PROVIDING ACCESS TO JUVENILE DELINQUENCY RECORDS FOR FIREARM BACKGROUND CHECKS; PROHIBITING AN ADULT SUBJECT TO A JUVENILE DISPOSITION INVOLVING USE OF A FIREARM FROM RECEIVING, TRANSPORTING OR POSSESSING A FIREARM OR DESTRUCTIVE DEVICE.

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

SECTION 1. Section 30-7-16 NMSA 1978 (being Laws 1981,

.229266.2AIC January 31, 2025 (5:47pm)

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Chapter 225, Section 1, as amended) is amended to read:

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

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

- (1) a felon;
- (2) a person subject to an order of protection
pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; [✗]
- (3) a person convicted of any of the following
crimes:

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

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

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

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

(4) an adult subject to a juvenile disposition
for a delinquent act involving use of a firearm under the
Delinquency Act that would be a felony if committed by an
adult, regardless of whether the judgment resulted in an adult
sentence.

B. A felon or an adult subject to a juvenile
disposition for a delinquent act involving use of a firearm

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under the Delinquency Act that would be a felony if committed by an adult, regardless of whether the judgment resulted in an adult sentence, found in possession of a firearm shall be guilty of a third degree felony.

C. A serious violent felon that is found to be in possession of a firearm shall be guilty of a third degree felony, and notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a basic term of six years imprisonment.

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

E. As used in this section:

(1) "adult subject to a juvenile disposition for a delinquent act involving use of a firearm" means a person eighteen years of age or older subject to a juvenile disposition for a delinquent act involving use of a firearm under the Delinquency Act; provided that:

(a) less than ten years have passed since the juvenile disposition involving use of a firearm; and

(b) the person has not been pardoned for the juvenile disposition involving use of a firearm by the proper authority;

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[~~(1)~~] (2) except as provided in Paragraph
[~~(2)~~] (3) of this subsection, "destructive device" means:

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

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

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

[~~(2)~~] (3) the term "destructive device" does not include any device that is neither designed nor redesigned for use as a weapon or any device, although originally designed for use as a weapon, that is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device;

[~~(3)~~] (4) "felon" means a person convicted of a felony offense by a court of the United States or of any

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state or political subdivision thereof and:

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

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

(c) the person has not received a deferred sentence;

[~~(4)~~] (5) "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon; and

[~~(5)~~] (6) "serious violent felon" means a person convicted of an offense enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978; provided that:

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

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

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

SECTION 2. Section 32A-2-26 NMSA 1978 (being Laws 1993,

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Chapter 77, Section 55, as amended) is amended to read:

"32A-2-26. SEALING OF RECORDS.--

A. On motion by or on behalf of a person who has been the subject of a delinquency petition or on the court's own motion, the court shall vacate its findings, orders and judgments on the petition and order the legal and social files and records of the court, probation services and any other agency in the case sealed. If requested in the motion, the court shall also order law enforcement files and records sealed. An order sealing records and files shall be entered if the court finds that:

(1) two years have elapsed since the final release of the person from legal custody and supervision or two years have elapsed since the entry of any other judgment not involving legal custody or supervision;

(2) the person has not, within the two years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor involving moral turpitude or been found delinquent by a court and no proceeding is pending seeking such a conviction or finding; and

(3) the person is eighteen years of age or older or the court finds that good cause exists to seal the records prior to the child's eighteenth birthday.

B. Reasonable notice of the motion shall be given to:

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- (1) the children's court attorney;
- (2) the authority granting the release;
- (3) the law enforcement officer, department and central depository having custody of the law enforcement files and records; and
- (4) any other agency having custody of records or files subject to the sealing order.

C. Upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted. The court, law enforcement officers and departments and agencies shall reply, and the person may reply, to an inquiry that no record exists with respect to the person. Copies of the sealing order shall be sent to each agency or official named in the order.

D. Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the court only:

- (1) upon motion by the person who is the subject of the records and only to those persons named in the motion; and
- (2) in its discretion, in an individual case, to any clinic, hospital or agency that has the person under care or treatment or to other persons engaged in fact finding or research.

E. Any finding of delinquency or need of services

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or conviction of a crime subsequent to the sealing order may at the court's discretion be used by the court as a basis to set aside the sealing order.

F. A court may set aside a sealing order for the juvenile disposition of a youthful offender and any evidence given in a hearing in court for a youthful offender for the purpose of considering the setting of bail or other conditions of release of a person charged with a felony whether charged as an adult or a juvenile.

G. A child who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act shall be notified in writing by the department when the child reaches the age of eighteen or at the expiration of legal custody and supervision, whichever occurs later, that the department's records have been sealed and that the court, the children's court attorney, the child's attorney and the referring law enforcement agency have been notified that the child's records are subject to sealing.

H. The department shall seal the child's files and records when the child reaches the age of eighteen or at the expiration of the disposition, whichever occurs later. The department shall notify the children's court attorney, the child's attorney and the referring law enforcement agency that the child's records are subject to sealing.

I. Youthful offender records sealed pursuant to

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Subsection H of this section may be unsealed by the court along with any evidence given in a hearing in court for a youthful offender for the purpose of considering the setting of bail or other conditions of release of a person charged with a felony, whether charged as an adult or juvenile.

J. A child who is determined by the court not to be a delinquent offender shall have the child's files and records in the instant proceeding automatically sealed by the court upon motion by the children's court attorney at the conclusion of the proceedings.

K. After sealing, the department may store and use a person's records for research and reporting purposes, subject to the confidentiality provisions of Section 32A-2-32 NMSA 1978 and other applicable federal and state laws.

L. ~~HCPAC~~→Records←~~HCPAC~~ ~~HCPAC~~→Notwithstanding any other provision to the contrary, records←~~HCPAC~~ of a juvenile disposition involving use of a firearm for a delinquent act that would be a felony if committed by an adult shall be made available to federal authorities for purposes of conducting a federal instant background check pursuant to 18 U.S.C. Section 922(t) and state and local law enforcement for purposes of determining whether a person may receive, transport or possess a firearm or destructive device in New Mexico pursuant to Subsection A of Section 30-7-16 NMSA 1978."

~~HCPAC~~→SECTION 3. Section 32A-2-18 NMSA 1978 (being Laws

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1993, Chapter 77, Section 47, as amended) is amended to read:

"32A-2-18. JUDGMENT--NONCRIMINAL NATURE--

NONADMISSIBILITY--CONVICTION OF A CRIME.--

A. The court shall enter a judgment setting forth the court's findings and disposition in the proceeding. Except as provided in Subsection D of this section, a judgment in proceedings on a petition under the Delinquency Act resulting in a juvenile disposition shall not be deemed a conviction of crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime nor shall it operate to disqualify the child in any civil service application or appointment. The juvenile disposition of a child and any evidence given in a hearing in court shall not be admissible as evidence against the child in any case or proceeding in any other tribunal whether before or after reaching the age of majority, except in sentencing proceedings after conviction of a felony and then only for the purpose of a presentence study and report.

B. If a judgment resulting from a youthful offender or serious youthful offender proceeding under the Delinquency Act results in an adult sentence, a record of the judgment shall be admissible in any other case or proceeding in any other court involving the youthful offender or serious youthful offender.

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C. If a judgment on a proceeding under the Delinquency Act results in an adult sentence, the determination of guilt at trial becomes a conviction for purposes of the Criminal Code.

D. A judgment in proceedings on a petition under the Delinquency Act resulting in a juvenile disposition for a delinquent act involving use of a firearm that would constitute a felony if committed by an adult shall be considered a conviction of a crime punishable by imprisonment for a term exceeding one year for the purpose of the federal Gun Control Act of 1968 for a period of ten years following the disposition, regardless of whether the judgment results in an adult sentence." ←HCPAC