

HOUSE REGULATORY AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 336

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

This document incorporates committee amendments adopted during standing committee(s) consideration of this measure. In addition, it shows changes proposed by Gentry floor amendment .203941.1. It is a tool to show the amendments in context and is not to be used for introduction, amendment or substitution.

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
ALLOWING THE SECRETARY OF PUBLIC SAFETY TO ~~CREATE AND MAINTAIN~~  
**MANAGE** A COMPREHENSIVE CRIMINAL RECORDS DATABASE; **REQUIRING THE**  
**ADMINISTRATIVE OFFICE OF THE COURTS AND OTHERS TO REPORT COURT**  
**PROCEEDINGS, ADJUDICATIONS AND REDETERMINATIONS RELATING TO THE**  
**ELIGIBILITY OF A PERSON TO RECEIVE OR POSSESS A FIREARM OR**  
**AMMUNITION OR TO OBTAIN A CONCEALED HANDGUN LICENSE TO THE**  
**FEDERAL BUREAU OF INVESTIGATION'S NATIONAL INSTANT CRIMINAL**  
**BACKGROUND CHECK SYSTEM; PROVIDING FOR A RIGHT TO INSPECT AND**  
**CORRECT RECORDS; REQUIRING RULEMAKING.**

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

**SECTION 1.** A new section of the Department of Public  
Safety Act is enacted to read:

"[NEW MATERIAL] SECRETARY--POWER TO ~~CREATE AND MAINTAIN~~  
**MANAGE** A CRIMINAL RECORDS DATABASE.--The secretary may create,

.203697.1 Amendments in Context

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access, ~~and~~ maintain and otherwise manage a criminal records database that merges criminal records data from multiple databases and gives courts and law enforcement agencies access to comprehensive criminal background records of criminal suspects and defendants."

"SECTION 2. A new section of Chapter 34, Article 9 NMSA 1978 is enacted to read:

"[NEW MATERIAL] REPORTING TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.--

A. In any circumstance other than that described in Subsection B of this section, the administrative office of the courts shall obtain and electronically transmit information from court proceedings relating to a person's eligibility to receive or possess a firearm or ammunition pursuant to state or federal law to the federal bureau of investigation's national instant criminal background check system. The administrative office of the courts shall also be responsible for notifying, as soon as practicable within ten days of receipt of the information, the federal bureau of investigation to update, correct, modify or remove information affecting a person's eligibility to receive or possess a firearm or ammunition pursuant to state or federal law in the national instant criminal background check system.

B. The administrative office of the courts shall electronically transmit information about a court order, judgment or verdict to the federal bureau of investigation for entry into the national instant criminal background check

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system regarding each person who has been adjudicated as a mental defective or committed to a mental institution and is therefore, pursuant to federal law, disabled from receiving or possessing a firearm or ammunition.

C. Upon entry of a court order, judgment or verdict referred to in Subsection B of this section, the administrative office of the courts shall transmit to the federal bureau of investigation only that information necessary to identify the person for the sole purpose of inclusion in the national instant criminal background check system. The administrative office of the courts, consistent with rules promulgated pursuant to Subsection L of this section, shall also notify the person that, as an adjudicated mental defective or as a person committed to a mental institution, the person is disabled pursuant to federal law from receiving or possessing a firearm or ammunition.

D. A person who has been adjudicated as a mental defective or committed to a mental institution and is therefore, pursuant to federal law, disabled from receiving or possessing a firearm or ammunition or, pursuant to state law, is ineligible for a concealed handgun license may petition the court that originated the order, judgment or verdict or another court of competent jurisdiction to remove that person's firearm-related disabilities and restore the person's right to receive and possess a firearm and ammunition and the right to

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be eligible for a concealed handgun license. A copy of the petition seeking relief from disabilities shall be served upon the office of the attorney general and upon all parties to the proceeding resulting in a court order, judgment or verdict described in Subsection B of this section.

E. The court shall conduct a hearing and receive and consider evidence on a petition for relief described in Subsection D of this section, including evidence offered by the petitioner, concerning:

(1) the circumstances regarding the firearm disabilities from which relief is sought;

(2) the petitioner's mental health and criminal history records, if any;

(3) the petitioner's reputation, developed, at a minimum, through character witness statements, testimony or other character evidence; and

(4) changes in the petitioner's condition or circumstances since the original court order, judgment or verdict that are relevant to the relief sought.

F. After conducting a hearing on the petition, the court shall grant the petition for relief from the disability reported pursuant to Subsection B of this section if the court finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that granting the relief will not be contrary to the public interest.

G. A record shall be kept of the proceedings held

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pursuant to Subsection E of this section. The decision of the court may be appealed.

H. Regardless of whether an earlier decision has been appealed, a person may petition for relief pursuant to Subsection D of this section not more than once every two years and, in the case of a person who was committed to a mental institution, not before the person has been discharged from that commitment.

I. Upon the entry of a court order granting relief from disabilities pursuant to Subsection F of this section, and as soon as practicable within ten days of receipt of the court order granting relief, the administrative office of the courts and any other state agency as applicable shall each be separately responsible for updating, correcting, modifying or removing the petitioner's record from their own databases that they make available to the national instant criminal background check system and each shall promptly notify the United States attorney general for the purpose of reporting to the national instant criminal background check system that the basis for the petitioner being disabled pursuant to federal law from receiving or possessing a firearm or ammunition no longer applies.

J. The administrative office of the courts is prohibited from disclosing information regarding a court order, judgment or verdict referred to in Subsection B of this section

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or regarding a petitioner or proceedings under this section, except as otherwise provided by law. Information compiled and transmitted under this section is not a public record and is not subject to disclosure pursuant to the Inspection of Public Records Act.

K. A person who is the subject of information compiled or transmitted by the administrative office of the courts pursuant to this section, or the person's authorized representative, has a right to obtain, inspect and correct information compiled or transmitted.

L. The administrative office of the courts shall promulgate rules relating to the inspection and correction of information contained in its records and relating to the transmission of corrected information by the office for inclusion in the national instant criminal background check system database and other rules as necessary to implement the provisions of this section.

M. As used in this section, the terms "adjudicated as a mental defective" and "committed to a mental institution" have the same meaning as those terms are defined in federal regulations at 27 C.F.R. Section 478.11, as amended or renumbered."