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FISCAL IMPACT REPORT

ORIGINAL DATE 2/14/16

SPONSOR HRPAC **LAST UPDATED** _____ **HB** 336/HRPACS/HF1#1

SHORT TITLE PPHSW - Comprehensive Criminal Records Database **SB** _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$597.7	\$597.7	\$1,195.4	Recurring	General Fund
Total	\$0.0	\$175.4	\$0.0	\$175.4	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 153, HB 91.
Conflicts with HAFC substitute for HB 2.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
Administrative Office of the District Attorney (AODA)
Department of Public Safety (DPS)
Administrative Office of the Courts (AOC)

Responses not Received From

Attorney General's Office (AGO)
Law Office of the Public Defender (LOPD)

SUMMARY

Synopsis of House Floor Amendment #1

The House Floor amendment to the House Regulatory and Public Affairs Committee substitute for HB 336 clarifies that the Secretary of DPS is permitted to create, access, maintain and otherwise manage a criminal records database that merges criminal records data from multiple databases.

Additionally, the amendment enacts a new statutory section within Chapter 34, Article 9 NMSA

1978, to require reporting of the following information by the AOC to the Federal Bureau of Investigation (FBI):

- information from court proceedings relating to a person's eligibility to receive or possess a firearm or ammunition pursuant to state or federal law (Subsection A);
- notifications 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 (NICS), as soon as practicable within 10 days of receipt of the information (Subsection A);
- information about a court order, judgment or verdict 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 (Subsection B), transmitting only that information necessary to ID the person for the sole purpose of inclusion in the NICS (Subsection C), after promulgating rules relating to the inspection and correction of information contained in its records and relating to the transmission of corrected information by the AOC for inclusion in the NICS (Subsection L).

The AOC is also required, consistent with rules promulgated pursuant to Subsection L, to notify a 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.

The amendment permits a person adjudicated as a mental defective or committed to a mental institution to 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 be eligible for a concealed handgun license (Subsection D). The court is required to conduct a hearing and receive evidence on a petition for relief, including specified evidence, such as the petitioner's mental health and criminal history records, if any, and changes in the petitioner's condition or circumstances since the original court order, judgment or verdict that are relevant to the relief sought (Subsection E). The court is required to grant the petition for relief from the reported disability if, after conducting the hearing on the petition, 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 (Subsection F). A record is required to be kept of the proceedings, and the decision of the court may be appealed (Subsection G). A person may petition for relief not more than once every 2 years, regardless of whether an earlier decision has been appealed and, in the case of a person who was committed to a mental institution, not before the person has been discharged from that commitment (Subsection H).

The amendment requires, upon entry of a court order granting relief from disabilities following a Subsection F hearing, that the AOC and any other applicable state agency update, correct, modify or remove the petitioner's record from their own databases that they make available to the NICS, as soon as practicable within 10 days of receipt of the court order granting relief. The amendment also requires the AOC and any other applicable state agency to promptly notify the U.S. Attorney General for the purpose of reporting to the NICS that the basis for the petitioner being disabled pursuant to federal law from receiving or possessing a firearm or ammunition no longer applies (Subsection I).

The amendment to HB 336 prohibits the AOC from disclosing information regarding a court order, judgment or verdict referred to in Subsection B or regarding a petitioner or proceedings under this section, except as otherwise provided by law. The amendment provides that 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 (IPRA) (Subsection J).

The amendment provides a person who is the subject of information compiled or transmitted by the AOC pursuant to this section, or the person's authorized representative, with the right to obtain, inspect and correct information compiled or transmitted (Subsection K).

The amendment provides that, 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 27 C.F.R. Section 478.11 (Subsection M).

Synopsis of Bill

The House Regulatory and Public Affairs Committee (HRPAC) substitute for House Bill 336 proposes a criminal records database, hereafter referred to as a clearinghouse, 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. DPS would be responsible for maintaining the database. The bill grants DPS the authority to create the clearinghouse.

FISCAL IMPLICATIONS

There are minimal additional fiscal implications due to the amendment.

DPS reports that there is grant money that is offered to the states that are compliant with the NICS reporting and mental defective appeal process. This money will assist in the information sharing and criminal justice records improvement. This further enhances information that relates to the disqualifiers for gun purchases.

AOC reports that its Judicial Information Division (JID) would require the following should HB 91 become law.

- Another statistician to maintain the submission and removal of required mental health records from NICS;
- Legal business processes developed to deal with persons who are no longer disabled and need to be removed from NICS. Courts would need to docket a "non-docketable" event code that tells the NICS query to ignore that case;
- Rewrite the current NICS report extract and submittal routine;
- Replace the current legacy report server that runs the NICS report to manage the larger report data submittal capacity;
- Create a nightly cycle to extract the Mental Health cases from Odyssey to submit to NICS daily or at least weekly; and,
- Expand JID's network infrastructure to allow for the larger amounts of data to be passed over the network for the reporting period.

It however does not assign a dollar value to the added resources.

There would be administrative costs for statewide update, distribution and documentation of statutory changes. Additionally, fiscal impact on the judiciary would be proportional to the enforcement of this law and required hearings and permitted appeals. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

In the original analysis of the bill, HB 336s itself carries no fiscal impact or appropriation, though there is a cost to DPS to have the clearinghouse located within the department, detailed on the attachment and the table below.

DPS Estimate of Costs to Implement Database				
	Non-			
	Recurring	recurring	FTE	Total
Personnel	\$556,485		10	\$556,485
Equipment	\$2,688	\$10,400		\$13,088
Supplies	\$2,500			\$2,500
Office				
Space	\$36,000	\$15,000		\$51,000
Systems		\$150,000		\$150,000
Total	\$597,673	\$175,400	10	\$773,073

There are currently multiple sources proposing to fund the criminal justice clearinghouse.

HB 153 proposes to appropriate \$700 thousand from the General Fund to DPS to create a criminal justice clearinghouse.

The House Appropriations and Finance Committee (HAFC) substitute for HB2 also provides \$450 thousand in funding in Section 4 for both personnel and other costs. There is also a Section 7 Data Processing appropriation for \$150 thousand for the enhancement of the consolidated offender query database (COQ) for the criminal history clearinghouse.

SIGNIFICANT ISSUES

The AOC provided the following analysis of the amendment:

1) 27 C.F.R. 478.11 defines terms as follows:

- *Adjudicated as a mental defective.* (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease:
 - Is a danger to himself or to others; or
 - Lacks the mental capacity to contract or manage his own affairs. (b) The term shall include –
 - A finding of insanity by a court in a criminal case; and
 - Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of

the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

- *Committed to a mental institution.* A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

2) Currently, and since 2010, JID submits reports on felony convictions, domestic violence protective orders, involuntary commitments and misdemeanor violence convictions to the NICS on a monthly basis. Included in each monthly report is the following information: New Mexico's Unique Identifier; criminal's last name, first name, middle initial, gender, date of birth, height, weight, eye color, hair color, social security number; record type; case number; charge number; court of case origin; and statute specific to charge.

The AOC sent, in 2015, 10,050 names to the NICS database. Each "name" may not be a distinct person as a person can be added as many times as they qualify for reporting to the FBI. (NICS records are both person and case specific.) For 2015, 3,400 names were sent over for removal from the NICS database. (Getting your name removed from one case does not necessarily mean that the individual is out of NICS completely, if their name has been entered in relation to more than one case.)

JID does not currently report to the FBI information regarding "each person who has been adjudicated as a mental defective", as the definition includes those found incompetent, although JID does have access to this information through the compilation of data related to the entry of appropriate codes indicating whether there has been a finding of incompetency.

3) HB 336s as amended requires the AOC to report information to the FBI regarding those committed to a mental institution. (Subsection B) The applicable definition of "committed to a mental institution", found in 27 C.F.R. 478.11 (See "Significant Issues" #1, above), includes those committed for drug use. Currently, JID reports data for felony drug use convictions.

4) HB 336s as amended provides a 10-day time limit from receipt of information for notification to the FBI to update, correct, modify or remove information affecting a person's eligibility to receive or possess a firearm or ammunition in the NICS, as well as a 10-day time limit for reporting the entry of a court order granting relief from disabilities. The amended substitute bill does not provide any time limits for the reporting of court information that supports a person's ineligibility to receive or possess a firearm or ammunition.

5) Statutory requirements exist for the performance of federal or national criminal history records checks. For example, Section 31A-3A-11 NMSA 1978, specifically requires the Children, Youth and Families Department (CYFD) or a criminal justice agency to perform "a federal name-based criminal history record check of each adult residing in a home", when there is an emergency placement situation requiring a child to be placed in a home due to the absence of parents or custodians. It is unclear whether it is thought that a search of the proposed database will take the place of required federal or national criminal history records checks. (If so, amendments to multiple statutes calling for criminal records checks will need to be proposed and made.) It is also not specified and therefore unclear as to which databases will be merged and monitored to permit the DPS to create and maintain a criminal records database.

6) It is unclear if or how much the courts will need to participate in the creation and maintenance of the proposed database, other than providing the information required to be reported by the AOC, pursuant to the House Floor amendment. It is unclear whether JID would be additionally required to report as-yet-unspecified data directly to the DPS in either the creation or maintenance phase of the criminal records database permitted in the amended HB 336 substitute. If this new reporting is required, JID may need to create new procedures that will permit such reporting, and may need to acquire additional personnel to handle required reporting.

Currently, and since 2010, AOC submits reports on felony convictions, domestic violence protective orders, involuntary commitments and misdemeanor violence convictions to the NICS on a monthly basis. Included in each monthly report is the following information: New Mexico's Unique Identifier; criminal's last name, first name, middle initial, gender, date of birth, height, weight, eye color, hair color, social security number; record type; case number; charge number; court of case origin; and statute specific to charge.

The AOC, in 2015, sent an average of 10,050 names to the NICS database. Each "name" may not be a distinct person as a person can be added as many times as they qualify for reporting to the FBI. (NICS records are both person and case specific.) On average for 2015, 3,400 names were sent over for removal from the NICS database. (Getting your name removed from one case does not necessarily mean that the individual is out of NICS completely, if their name has been entered in relation to more than one case.)

AOC does not currently report to the FBI information regarding "each person who has been adjudicated as a mental defective", as the definition includes those found incompetent, although it does have access to this information through the compilation of data related to the entry of appropriate codes indicating whether there has been a finding of incompetency.

HB91 requires the AOC to report information to the FBI regarding those committed to a mental institution. (Subsection B) The applicable definition of "committed to a mental institution", found in 27 C.F.R. 478.11, includes those committed for drug use. Currently, AOC reports data for felony drug use convictions.

According to the Law Center to Prevent Gun Violence there are currently 43 states that have laws which require or authorize the reporting of some mentally ill people to the federal NICS database or a state database for use in firearm purchaser background checks. There are 5 states that authorize or require the collection of mental health records in an in-state database only (AR, CA, MI, OH, UT).

The following 5 states do not have any statute that authorizes or requires the collection of mental health records in an in-state database or reporting the information to the federal NICS database: MT, NH, NM, VT, WY. Currently, all 50 states have laws that require the reporting of disqualifying criminal history data to the federal NICS database for a potential firearm purchaser.

DOH reports that in 2015, there were a total of 147,912 NICS firearm background checks conducted for firearm transfers in New Mexico. (https://www.fbi.gov/about-us/cjis/nics/reports/nics_firearm_checks_-_month_year_by_state.pdf). In a table of federal denials listing reasons why the NICS Section system denied gun transfers between November 30, 1998 and December 31, 2015, 54.9% were because of a transferee's criminal history; 11.6%

were because the transferee was a fugitive from justice; 9.5% were because the transferee had a misdemeanor domestic violence conviction; 8.4% were because the transferee was an unlawful user of or addicted to a controlled substance, 4.0% were because the transferee was under a restraining order for domestic violence, and 1.7% were because the applicant had been adjudicated for a mental health diagnosis (NICS Federal Denials, FBI at <https://www.fbi.gov/about-us/cjis/nics>). Reporting of information from court proceedings about a person's eligibility to receive or possess a firearm to NICS could potentially reduce and prevent firearm injuries and deaths in New Mexico.

In its original analysis of the bill, DPS explained that in August, 2015, the New Mexico Supreme Court's Ad Hoc Pre-trial Release Committee recommended that the state develop a centralized clearinghouse that would be responsible for providing prompt criminal histories for risk assessments to detention facilities and courts, including municipal courts. The database would allow jurisdictions statewide to immediately compile the criminal history of a defendant and conduct an empirical risk assessment to determine flight risk and danger to the community. The committee believes the approach would be consistent with *State v. Brown* (2014-NMSC-038) as "the release decision would be based on the likelihood that the defendant will appear in court as required and will not pose a danger to any other person or the community."

The development of the database dovetails with the ad hoc committee's recommendation that Article II, Section 13 of the New Mexico Constitution be amended "to permit a court to order a defendant's pre-trial detention in a case where no type of pretrial release and/or conditions of pre-trial release will reasonably assure the defendant's appearance in court or the safety of any other person and the community" (New Mexico Supreme Court Ad Hoc Pre-trial Release Committee, August 11, 2015). Currently, a judge cannot deny bail to a defendant known to be a flight risk or hazard to the community.

Additionally, DPS provided information on the feasibility of a statewide criminal history clearinghouse. DPS is the central source for all statewide criminal databases as well as databases that are maintained by the district courts. The department believes that the ability to consult multiple databases is of critical importance, as not all information on a defendant may be up to date or relevant in any one system. The search combination that would yield the most relevant information about an offender is located in two databases: the Consolidated Offender Query (COQ) and the Law Enforcement Agencies Data System (LEADS) which combines the results of National Crime Information Center (NCIC) and Criminal Justice Information Services (CJIS).

Access to this information via a clearinghouse is critical to being able to accurately and expediently assess bond for an offender in accordance with the constitution. Missing or inaccurate information may hinder the process and lengthen the amount of time an offender waits for his determination.

ADMINISTRATIVE IMPLICATIONS

There will be an administrative impact associated with enhancing the COQ system, locating the space to house the unit and set up workstations and a secure, badged environment, and in the establishment of the positions and the hiring process.

TECHNICAL ISSUES

AOC states that the amendment provides a 10-day time limit from receipt of information for notification to the FBI to update, correct, modify or remove information affecting a person's eligibility to receive or possess a firearm or ammunition in the NICS, as well as a 10-day time limit for reporting the entry of a court order granting relief from disabilities. SB 331 does not provide any time limits for the reporting of court information that supports a person's ineligibility to receive or possess a firearm or ammunition.

The AGO states that Section 1(J) proposes to make mental-health related information not subject to public disclosure, but fails to mention sealing this information. Moreover, the petition process is unclear.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The amendment relates to HB 91.

Relates to HB 153, which appropriates \$700 thousand from the General Fund to DPS to create a criminal justice clearinghouse.

Conflicts with the House Appropriations and Finance Committee substitute for HB2. In Section 4, in the DPS Law Enforcement Program, \$450 thousand is included for both personnel and other costs. There is also a Section 7 Data Processing appropriation for \$150 thousand for the enhancement of the consolidated offender query database (COQ) for the criminal history clearinghouse.

TMR/jle

**CRIMINAL HISTORY CLEARINGHOUSE
ESTIMATE OF EXPENSES TO ESTABLISH AND OPERATE**

	<u>Quantity</u>	<u>Cost Source</u>	<u>Description</u>	<u>Cost Basis</u>	<u>Recurring</u>	<u>Non-recurring</u>				
PERSONNEL	8	Background Check Specialists (Business Operations - Operational)	24/7 Coverage, 2 day shift, 3 evening shift, 3 night shift	\$17.70	\$	413,925				
	4	Shift Differential		.90 hr.	\$	11,232				
	1	Business Operations Supervisor	Supervisor of the Clearinghouse employees, program technical lead and program evaluation.	\$22.00	\$	64,310				
		Overtime	Occasional need to cover for absences		\$	14,400				
	1	Help Desk Technician	DPS's Help Desk is already understaffed - DPS will need an additional Technician to cover access and system technical issues for to assist customers statewide.	\$18.00	\$	52,618				
							\$ 556,485			
EQUIPMENT	4	Desktop Computers & Monitors	Standard desktop, 2 monitors	\$1,300.00		\$	5,200			
	4	MS Office 365	Annual cost	\$108.00	\$	432				
	4	Desk Phones		\$47/mo.	\$	2,256				
	4	Desks & Chairs		\$1,300.00		\$	5,200			
SUPPLIES		Office Supplies			\$	2,500				
OFFICE SPACE		Lease Space	DPS HQ does not have any room to house this function.		\$	36,000				
			Set up a secure, badged area to meet Federal requirements and other one time set up costs.			\$	15,000			
SYSTEMS		COQ (Consolidated Offender Query) Enhancements	Federal regulations require incryption on database information; need to have multiple levels of user access; also need database search enhancements.			\$	100,000			
		COQ System Enhancements Installation	Require contractor to design/install COQ interface enhancements.			\$	50,000			
							\$ 41,188			
TOTAL ESTIMATED COSTS					\$	597,673	\$	175,400	\$	597,673
TOTAL FIRST YEAR COST:							\$	773,073		