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## FISCAL IMPACT REPORT

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	<b>ORIGINAL DATE</b> <u>2/16/23</u>
<b>SHORT TITLE</b> <u>Public Ed. Background Check Process</u>	<b>BILL NUMBER</b> <u>Senate Bill 383/aSJC</u>
	<b>ANALYST</b> <u>Liu</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate but minimal			Recurring	Educator Licensure Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to HB39, HB254, HB272, HB283, HB296, SB417

### Sources of Information

LFC Files  
Federal Bureau of Investigation (FBI)

Responses Received From  
Department of Public Safety (DPS)  
Public Education Department (PED)

## SUMMARY

### Synopsis of SJC Amendment to Senate Bill 383

The Senate Judiciary Committee amendment to Senate Bill 383 authorizes a court of competent jurisdiction to subpoena or require compliance with discovery requests for criminal history information that would be otherwise be confidential and not a public record under provisions of this bill.

### Synopsis of Original Bill

Senate Bill 383 amends the School Personnel Act to clarify the types of school personnel subject to criminal history record checks. The bill requires PED, DPS, and FBI to conduct a criminal history record check on all applicants for licensure, volunteers, and contractors and authorizes local school governing authorities to develop additional background or criminal history record checks.

The bill further prohibits PED from excluding an otherwise qualified person from licensure solely based on previous arrests or convictions, unless that person has a qualifying criminal

conviction. Criminal history information received from DPS or FBI would be confidential and not considered a public record. Additionally, instructional support providers would be required to maintain licensure for their respective professions to maintain PED licensure. The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

The bill does not include an appropriation but may have a minimal impact on public schools paying for criminal history record checks on additional school personnel needing a background check. Current statute requires public schools to pay for an applicant's background check. As such, costs of implementation for this provision are likely minimal or the same. According to a DPS analysis of a similar bill, applicants must pay a \$44 fee for each fingerprint criminal history check.

A PED analysis of a similar bill notes delays in licensing could negatively affect revenue to the educator licensure fund, which comes from licensure application fees. Provisions of this bill would ensure PED continues to receive FBI criminal history records and prevent potential delays in licensing fee collections.

## SIGNIFICANT ISSUES

New Mexico statutory provisions may not meet the requirements of PL92-544, which authorizes FBI to exchange criminal history records information with officials of state and local governmental agencies for licensing and employment purposes. According to a PED, failure to bring New Mexico statutes in alignment with requirements of Public Law 92-544 (PL92-544) may limit PED's access to national criminal history records, which are necessary to determine whether applicants receive licensure. PED has received a waiver from the FBI to continue background checks through June 2023. Only a state statute which has been approved by the Attorney General of the United States, or their representative, can authorize these procedures. PL92-544 establishes criteria for the approval of such statutes:

- The statute must result from legislative enactment;
- It must require fingerprinting of applicants who are subject to national criminal history background checks;
- It must authorize the use of FBI records for screening of applicants;
- It must identify the specific categories of licensees and employees falling within its purview;
- It must not violate public policy; and
- It may not authorize receipt of criminal history record information by a private entity.

New Mexico statutes currently do not adhere to requirements in several respects. Specifically:

- Section 22-10A-5 NMSA 1978, which requires "all applicants for initial licensure" undergo background checks, is overly broad and does not outline specific license types required to undergo the background check;
- The categories of license outlined in Section 22-10A-3 NMSA 1978 are also insufficiently specific to satisfy the requirements of PL92-544; and
- Section 22-10A-3 NMSA 1978 does not explicitly require the submission of fingerprints through the state identification bureau to FBI for the criminal background check, nor does it clearly require applicants for licensure undergo background checks required by Section 22-10A-5 NMSA 1978.

Provisions of the bill address deficiencies in New Mexico statutes pertaining to the exchange of criminal history records with FBI. The bill expands the definition of instructional support provider beyond educational assistants, school counselors, social workers, school nurses, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf, and diagnostician to include attendance coaches, practical nurses, school health assistants, school business officials, rehabilitation counselors, athletic coaches, educational alcohol and drug abuse counselors, and substance abuse associates.

The bill would require applicants for licensure or certification to undergo a criminal history record check, including all teachers, principals, Native American language teachers, substitutes, instructional support providers, educational assistants, administrators, and expedited or out-of-state reciprocity licensees. Instructional support providers must also hold an active license for their respective profession and notify PED within 14 days of any suspension, revocation, denial, or expiration of that license.

The bill authorizes PED to require an FBI criminal history record check of current licensees for purposes of evaluating potential suspension or revocation of the license but prohibits the department from excluding an otherwise qualified person from licensure on the sole basis that the person has been previously arrested or convicted of a crime, unless that person has a disqualifying criminal conviction pursuant to the Uniform Licensing Act.

The bill requires DPS to check applicants for PED licensure using state and federal criminal history record checks and authorizes PED to use the information for decisions relating to issuance or continuance of licensure and requires criminal history information received by DPS and FBI to be confidential. Further, the bill classifies criminal history record information received from DPS or FBI as confidential and not subject to the Inspection of Public Records Act, Section 14-2-1 NMSA 1978. The bill also prohibits PED from authorizing the receipt of criminal history information by a private entity.

## **PERFORMANCE IMPLICATIONS**

A 2023 LFC program evaluation on western school districts noted there were multiple incidents of adult sexual misconduct in school districts across the state. The evaluation specifically noted recent incidents where an athletics coach in Grants-Cibola County Schools and a junior reserve officer training corps (JROTC) instructor in the Central Consolidated School District were charged with engaging in sexual misconduct with students. The U.S. Department of Education reports there are three key areas for preventing, detecting, and addressing adult sexual misconduct: (1) staff screening, (2) policies and procedures, and (3) trainings for staff and students. The LFC program evaluation recommended PED strengthen its background check processes and update its rules to require all educators, contractors and their employees, and volunteers to undergo background checks at more regular intervals. The evaluation also recommended school boards adopt model policies and trainings for staff and students regarding professional boundaries and appropriate electronic communication.

## **ADMINISTRATIVE IMPLICATIONS**

Provisions of the bill authorize PED to access criminal history record information and require all applicants for licensure from PED to submit physical or electronic fingerprint cards to DPS.

After DPS conducts a state-level background check, the department forwards records to FBI for a national check, as required under PL92-544. Information obtained in the background check is then forwarded to PED to make decisions about initial and continuing licensure.

DPS notes the bill has no administrative implications for the department. DPS supports in theory what has been proposed by the legislation; however, FBI has the final say regarding any approval of an originating agency identifier to run criminal history background record checks for certain public school positions.

## **RELATIONSHIP**

This bill relates to House Bill 39, which integrates dual-licensed instructional support providers and administrators into the three-tiered licensure system; House Bills 254 and 283, which establish a school marshal program; House Bill 272, which adds chiropractic physicians to the list of licensed health care professionals treating student athlete brain injuries; House Bill 296, which adds instructional support providers to the teacher cost index; and Senate Bill 417, which creates a vocational education teacher license.

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