



Duplicates/Conflicts with/Companion to/Relates to: N/A  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: House Bill 39 amends Sections 30-7-16 NMSA 1978 as follows:

- Makes an adult prohibited from receiving, transporting or possessing a firearm or destructive device in New Mexico if, when the adult was a juvenile, they received a disposition for a delinquent act involving the use of a firearm under the Delinquency Act, that if committed by an adult would have been felony offense.
- Defines an adult as a person eighteen years of age or older subject to a juvenile disposition involving the use of a firearm, and less than ten years have passed since the juvenile disposition involving the use of a firearm and a pardon has not been issued for this juvenile disposition.

House Bill 39 also amends Section 32A-2-26 NMSA 1978 as follows:

- Allows records of a juvenile disposition that involve the use of a firearm for a delinquent act, that would be a felony if committed by adult, be made available to federal authorities, and state and local law enforcement for purposes of conducting federal instant background checks pursuant to 18 U.S.C. Section 922(t) and to determine whether a person may receive, transport or possess a firearm or destructive device pursuant to Section 30-7-16(A) NMSA 1978.

House Bill 39 does not contain an effective date and would be effective on June 20, 2025, 90 days following adjournment of the Legislature, if signed into law.

#### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for the statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. 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.

#### **SIGNIFICANT ISSUES**

NMSA 1978 Section 30-7-16 defines the types of persons that are prohibited from receiving, transporting or possessing a firearm or destructive device in New Mexico. HB39 adds “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.” Under New Mexico’s Delinquency Act, juvenile dispositions are not convictions, so when an adult attempts to purchase a firearm and a federal instant background check is conducted, juvenile dispositions cannot be considered and the firearm sale is allowed to proceed.

NMSA 1978 Section 32A-2-26(H) provides for the automatic sealing of juvenile records when “the child reaches the age of eighteen or at the expiration of the disposition, whichever occurs later”. NMSA 1978 Section 32A-2-26(C) further states that “upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred” and response to an inquiry shall be “that no record exists with respect to the person.”

Pursuant to the Bipartisan Safer Communities Act, the Administrative Office of the Courts (AOC) conducts enhanced background checks, commonly referred to as “U21 checks” for juvenile criminal and mental health cases when individuals under the age of twenty-one years old attempt to purchase a firearm. In calendar year 2024, the AOC conducted the following U21 enhanced background checks:

2,807 juvenile U21 checks (New Mexico residents 18-20 years old)  
19 denials (based on current criminal history-not as a result of the enhanced outreach)  
9 denials based on enhanced outreach only

Currently, NMSA 1978 Section 32A-2-26(C) prevents the AOC from disclosing any sealed juvenile dispositions pursuant to a federal instant background check. HB39 would allow the AOC to disclose sealed juvenile dispositions involving the use of a firearm for a delinquent act that would be felony if committed by an adult. As written, HB39 would not allow the AOC to disclose any other violent juvenile adjudications that do not involve the use of a firearm. Under 18 U.S.C. Section 922(g)(1) a person who has been “convicted in any court of, a crime punishable by imprisonment for a term exceeding one year” is prohibited under federal law from possessing or receiving a firearm. In New Mexico, that includes all felony criminal offenses. Some examples of the types of felony charges that do not involve the “use of a firearm” and under HB39 could not be disclosed pursuant to “U21 check” or an adult firearm background check include:

Murder or manslaughter  
Assault/Battery  
Kidnapping  
Sexual offenses  
Robbery/burglary  
Property damage  
Controlled substances  
Unlawful taking of a motor vehicle  
Vehicular homicide

In addition, the AOC would not be able to disclose sealed juvenile dispositions that are misdemeanor crimes of domestic violence, although these crimes if committed by an adult are federal firearm prohibitors under 18 U.S.C. 922 (g)(9).

## **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

**ADMINISTRATIVE IMPLICATIONS** – none identified.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP** – none identified.

**TECHNICAL ISSUES** – none.

**OTHER SUBSTANTIVE ISSUES** –

As currently drafted, HB39 would only allow disclosure of juvenile dispositions involving the use of a firearm to “federal authorities” for purposes of conducting a federal instant background check. According to the FBI’s website (<https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics>):

The National Instant Criminal Background Check System (NICS) was established as a result of the Brady Handgun Violence Prevention Act of 1993 (Brady Act) requirements. The Brady Act required a national namecheck system for federal firearms licensees (FFL). FFLs, such as gun shop owners, pawn shop dealers, and retailers use NICS to determine whether a person can legally buy or own a firearm. NICS is operated by the FBI.

The FBI provides full service to the FFLs in 31 states, five U.S. territories, and the District of Columbia. The FBI provides partial service to four states. The remaining 15 states perform their own checks through the National Instant Criminal Background Check System.

In order to ensure disclosure of juvenile dispositions involving the use of a firearm to the 15 states that conduct their own NICS checks, the term “federal authorities” should be expanded to include any authorized entity required to conduct a background check under 18 U.S.C. Section 922(t).

**ALTERNATIVES** – none.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL** – none.

**AMENDMENTS** - none