

LFC Requester:

**AGENCY BILL ANALYSIS  
2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original** ☐ **Amendment** ☒ **Correction** ☐ **Substitute** ☐

**Date** 2/5/25

**Bill No:** HB 39-280

**Sponsor:** Kathleen Cates & Charlotte Little

**Short Title:** Juvenile Record in Firearm Background Checks

**Agency Name and Code Number:**

Law Offices of the Public Defender - 280

**Person Writing**

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY25          | FY26 |                           |               |
|               |      |                           |               |
|               |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY25              | FY26 | FY27 |                           |               |
|                   |      |      |                           |               |
|                   |      |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

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

|              | <b>FY25</b> | <b>FY26</b> | <b>FY27</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b> |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| <b>Total</b> |             |             |             |                              |                                      |                          |

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

**The contents of the analysis for the original bill are retained herein and changes from the CPAC analysis are discussed with the underlined text.**

House Bill 39 (HB 39) proposes to amend two sections of the New Mexico Code: NMSA 1978, Section 30-7-16 (“Firearms or Destructive Devices—Receipt, Transportation or Possession by Certain Persons—Penalty”) and NMSA 1978, Section 32A-2-26 (“Sealing of Records”).

Concerning the proposed amendments to Section 30-7-16:

- HB 39 propose s a new Subsection (A)(4), which would create an additional category of persons who may not lawfully possess firearms—any adult who committed a “delinquent act involving the use of a firearm” when that adult was a child, if such an act would be subject to felony prosecution if committed by an adult.”
- HB 39 proposes to amend Subsection (B) to make possession by such an adult a 3rd degree felony.
- HB 39 proposes a new Subsection (E)(1) to define “adult subject to a juvenile disposition of a delinquent act involving the use of a firearm” and to exclude from that definition individuals for whom 10 years have passed since the “juvenile disposition” and persons who have been “pardoned” by the “proper authority.” This proposed amendment would also renumber the currently existing subsections as necessary.

Concerning the proposed amendments to Section 32A-2-26, HB 39 proposes a new subsection L, which would appear to unseal—by operation of law—the records of such dispositions for two, specific purposes: (1) conducting federal instant background checks *and* (2) determining whether a person is or may be violating Section 30-7-16. The CPAC amendment attempts to negate any potential conflict with other statutes by adding the introductory clause, “Notwithstanding any other provision to the contrary” at the beginning of the new subsection L.

The CPAC amendment proposes to also amend NMSA 1978, Section 32A-2-18 (“Judgement—Noncriminal Nature—Nonadmissibility—Conviction of a Crime”), which currently explicitly bars treating a juvenile disposition as a criminal conviction. The CPAC amendment would create a new subsection D to carve out an exception making a “juvenile disposition for a delinquent act” a “conviction of a crime” under certain conditions.

## FISCAL IMPLICATIONS

Because juvenile records are sealed, it is impossible to assess how many potential adults would become ineligible for firearm ownership based on their delinquency record, much less how many of those are currently lawful gun owners who would suddenly be in violation of a third-degree felony statute upon enactment of this bill, however, it has the potential to impact a great number of currently law-abiding adults.

The LOPD cost for experienced defense attorneys, including salary, benefits, operational costs, and support staff is \$291,144.66 annually in the Albuquerque/Santa Fe areas, and \$299,633.95 in outlying geographic areas. A recent workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, “A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.”

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls-sclaid-moss-adams-nm-proj.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf). Barring some other way to reduce indigent defense workload, any increase in the number of serious, complex felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep the LOPD’s workload crisis from spreading.

## SIGNIFICANT ISSUES

NMSA 1978, Section 32A-2-18(A) currently states that “A judgement ... 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.”

HB 39 would appear to conflict with this existing law by effectively equating a juvenile adjudication with an adult conviction for certain purposes. HB 39 would impose a civil disability on certain adults, based on their behavior as a child, which would prohibit such adults from exercising constitutional rights under the Second Amendment of the United States Constitution and Article II, Section 6 of the New Mexico Constitution, both of which protect the right to keep and bear arms. Such disability would ordinarily result from the conviction of a felony crime, contrary to Section 32A-2-18(A). This tension, if not resolved, could result in litigation that would require the judiciary to construe and reconcile or declare unconstitutional the statutory provisions if enacted.

The CPAC amendment attempts to relieve this tension by carving out “a delinquent act involving use of a firearm that would constitute a felony if committed by an adult” from the general rule of prohibition stated in Section A. The CPAC amendment proposes to create a specific rule that **delinquent acts** that fall within the definition in Subsection D would be considered a **conviction of a crime** for purpose “of the federal Gun Control Act of 1968 for a period of ten years.”

Presumably this would allow for the records to be disclosed to federal employees conducting federal instant background checks for firearms pursuant to the proposed amendment to Section 32A-2-26 (“Sealing of Records”). It is not clear if this language would also permit the disclosure of records to “state and local law enforcement” as part of that same proposed amendment to Section 32A-2-26. Regardless, this amendment would appear to significantly alter the Children’s Code and reduce the protections that it now affords juveniles.

Because enactment of this law would declare to be criminal certain ordinary activities that have previously been legal since the founding days of New Mexico, any such enactment should come with profound fanfare, advertising and education to prevent innocents from inadvertently becoming criminals by simply continuing behavior they have legally done all their lives.

There is also significant concern about relying on juvenile delinquency history at all. Typically, juvenile records are sealed to protect the privacy of minors who have been involved in the judicial system, because minors are more likely to make choices without fully contemplating or understanding the implications or consequences of such choices. Sealing the records allows those individuals to move forward into their lives as adults without the stigma of past offences that would otherwise hinder their opportunities for employment, education, house, and other opportunities to enjoy a full, productive adult life after they have fully developed. Giving minors the opportunity to have a chance at a fresh start encourages positive behavior and reintegration into society, which could be undercut by HB 39. Although HB 39 does not impose a lifetime impediment, it does impose what some may consider to be a significant impediment that is in tension with the purposes of sealing juvenile records generally. It is also unclear how the information could be made available for background check purposes without undermining the privacy interests in sealing. *See* **Technical Issues**.

## **PERFORMANCE IMPLICATIONS**

It is difficult to predict the impact on the LOPD due to the creation of a new crime insofar as no statistics exist to suggest how much the previously legal behavior presently occurs (after all, it’s completely legal now) and would continue and would be prosecuted. It is important to remember that indigent criminal defense is a constitutionally mandated right, and that LOPD does not control the decision to charge or the number of resultant cases assigned to the agency. All that can be said at this time is that if more charges, case assignments and trials result, LOPD may need to hire more attorneys and staff. Accurate prediction of the fiscal impact is impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed higher-penalty scheme.

Under the present statutory scheme, LOPD workload is so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide effective assistance of counsel to their existing clients. The Legislature and LFC are well aware of the myriad constitutional concerns implicated in forcing indigent criminal defendants to proceed without effective assistance of counsel.

Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

## **ADMINISTRATIVE IMPLICATIONS**

None noted

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

Concerning the proposed amendment to Section 32A-2-26, which appears to unseal the records by function of law for certain purposes, it is unclear how it would work in practice. The language is broad enough to be interpreted in a manner that would effectively unseal such records of juvenile adjudication for all law enforcement agencies at any time, not just for the purposes of background checks.

Taken at face value, the CPAC amendment's change to Section 32A-2-18 fundamentally alters the policies of the children's code. However, it also appears to conflict internally with other provisions of the bill. CPAC's proposed amendment *could be* interpreted as effectively negating a portion of the new subsection L of Section 32A-2-26 that allows disclosure to "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." However, because Section 30-7-16(A)(d) refers to "a crime listed in 18 U.S. 921" the amendment could be interpreted to also allow such disclosure *to state and local law enforcement*. In other words, it is not clear whether the proposed language effectuate or frustrate the intent of the bill as it was introduced.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**