

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.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}***Date Prepared:** 27 JAN 2025*Check all that apply:***Bill Number:** HB 39Original Correction Amendment Substitute **Agency Name****and Code**

790 – Department of Public Safety

Number:**Sponsor:** Kathleen Cates**Short Title:** Felony Firearm Possession and Prior Juvenile Delinquency**Person Writing** Emmanuel T. Gutierrez**Phone:** 505-917-2952 **Email:** emmanuel.gutierrez@dps.nm.gov.**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	NFI	NFI	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	\$400	\$400	\$800	\$50	General

(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

House Bill 39 (HB 39) brings an adult's record of juvenile delinquency and use of a firearm into consideration for adult felony firearm possession and firearm background checks. Requires that records of a juvenile disposition involving use of a firearm for a delinquent act that would be a felony if committed by an adult are to be made available to federal authorities for purposes of conducting federal instant background checks and to state and local law enforcement for purposes of determining whether a person may receive, transport, or possess a firearm or destructive device.

FISCAL IMPLICATIONS

The Law Enforcement Records Bureau (LERB), along with the Administrative Office of the District Attorneys (AoDA) and the Administrative Office of the Courts (AOC), will face significant fiscal impacts as they work to comply with the bill's requirements. Meeting these mandates will require merging, verifying, and standardizing juvenile firearm-related records currently held across disparate databases. These actions will demand substantial time and funding to ensure accurate and efficient data integration into a unified system.

DPS has demonstrated success in similar projects by collaborating with New Mexico Tech's Institute for Complex Additive Systems Analysis (ICASA) team, which is highly experienced with the data structures of DPS, AoDA, and AOC. Engaging ICASA for this initiative offers a practical and efficient solution. The estimated cost is \$400,000 for every 12 months of work, with the project expected to span approximately two years. However, a detailed analysis of the data and engineering requirements will be necessary to provide a full estimate of the time and cost involved.

The fiscal impact includes:

Data Integration and Standardization Costs:

Funds are needed to develop systems and processes for merging disparate records into a centralized repository at DPS. This includes addressing data format inconsistencies, resolving incomplete records, and ensuring secure data sharing.

Technology Upgrades:

Existing DPS systems will require enhancements to facilitate secure, real-time access to juvenile records for state, local, and federal background checks.

Training and Personnel:

Training programs for law enforcement and judicial staff will be essential to implement new record-handling protocols effectively.

Long-Term Maintenance:

Ongoing costs will include system updates, cybersecurity measures, and routine audits to ensure data accuracy and compliance with confidentiality laws.

SIGNIFICANT ISSUES

This bill addresses a gap in firearm background checks by including juvenile firearm-related offenses. Federal law (18 U.S.C. § 922(g)) prohibits felons and certain others from possessing firearms but does not explicitly include juvenile dispositions. HB 39 aligns state law with federal standards while closing loopholes that allow individuals with juvenile firearm offenses to bypass checks after reaching adulthood.

Makes it unlawful for an adult to be in possession of a firearm or destructive device if that adult is subject to a juvenile disposition for a delinquent act that involved use of a firearm that would be a felony if committed by an adult, regardless of whether the judgment resulted in an adult sentence. A violation constitutes a third-degree felony. Applies to a person 18 years old or older for whom less than 10 years have passed since the juvenile disposition and who has received no pardon for the juvenile disposition.

There could be some litigation challenges that arise if passed, as existing parts of NMSA 1978, Section 32A-2-2(A, B) allow for the filing of a motion to seal or vacate a court's findings, orders and judgments, particularly two years have elapsed prior to the filing of the motion and the subject of the motion has not had any convictions of any felonies or misdemeanors involving moral turpitude. Section (D) states, "Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the court only: (1) upon motion by the person who is the subject of the records and only to those persons named in the motion[,]" However, Section I allows for unsealing youthful offender records and many offenders who had prior offenses involving firearms will be adjudicated youthful offenders. Section F similarly allows a court to set aside a sealing order of a youthful offender, so the counterargument is that there are existing allowances for the unsealing or setting aside prior orders to seal records and this bill extends those exceptions for important societal safety considerations and concordance with existing federal laws.

PERFORMANCE IMPLICATIONS

The legislation will enhance public safety by restricting firearm access for individuals with a history of juvenile firearm-related delinquency. It supports law enforcement and judicial goals of crime prevention and ensures a robust background check system.

In New Mexico, possession of a firearm by a convicted felon is considered a felony offense. The severity of the penalty depends on various factors, including the individual's criminal record, the type of firearm, and whether any aggravating circumstances are present.

- **Felony Firearm Possession** (for a convicted felon) is typically classified as a fourth-degree felony, which can result in:
 - Up to 18 months in prison
 - Fines
 - Probation, depending on the case
- If the individual has prior felony convictions or if the firearm is used in the commission of another crime, the penalties can be more severe.

Prior Juvenile Delinquency and Benefits:

While a prior juvenile delinquency record does not necessarily eliminate the possibility of receiving benefits in future legal proceedings, there are some important things to consider:

- **Juvenile records are generally sealed:** In New Mexico, juvenile delinquency records may be sealed once the individual reaches adulthood, provided certain conditions are met. This means that the juvenile record might not be considered in subsequent adult criminal proceedings unless the person is charged with another serious offense.

- **Juvenile Delinquency as an Aggravating Factor:** If the individual has a history of juvenile offenses, it might be considered when sentencing for adult charges, especially if they have been previously convicted of serious crimes. However, this does not automatically result in harsher sentencing—judges often have discretion in considering prior juvenile history.

ADMINISTRATIVE IMPLICATIONS

To effectively enforce HB 39, a comprehensive plan between the Administrative Office of the District Attorneys (AODA), Administrative Office of the Courts (AOC), and the Department of Public Safety (DPS) must be developed to address the following elements:

Historic Record Analysis:

Mechanisms must be created to review, analyze, and integrate historic juvenile records related to firearm use into state (DPS) and federal databases. This will require coordination among the Administrative Office of the District Attorneys (AoDA), Administrative Office of the Courts (AoC), and the Department of Public Safety (DPS).

Disposition

Procedures must ensure the timely updating of juvenile firearm-related dispositions in state and federal systems, ensuring accurate and real-time record accessibility.

Updates:

Comprehensive

Plan

and

Funding:

A detailed implementation plan must include cost assessments for technology upgrades, data-sharing agreements, and staff training. Adequate funding should be secured to ensure seamless integration of juvenile records into background check frameworks while maintaining compliance with confidentiality laws.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 39 complements existing firearm restrictions under state law (NMSA 1978 § 30-7-16) and federal law (18 U.S.C. § 922). There are no evident conflicts, but it may overlap with broader juvenile justice reform initiatives and sealing provisions under NMSA 1978 § 32A-2-26.

TECHNICAL ISSUES

Ensuring the confidentiality of sealed records while granting specific access for firearm background checks is critical. Data-sharing agreements and protocols must comply with state and federal confidentiality laws.

OTHER SUBSTANTIVE ISSUES

Juvenile-specific substance use or addiction records may be underreported or sealed, requiring careful consideration to include these without violating confidentiality laws.

ALTERNATIVES

No proposed alternatives at this time.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without HB 39, individuals with significant juvenile firearm-related offenses may legally possess firearms upon reaching adulthood, potentially undermining public safety. Without juvenile records being incorporate, existing background checks would remain insufficient to prevent firearm access by such individuals.

AMENDMENTS

None at this time.