

Section 30-7-16 NMSA 1978 defines the types of persons who are prohibited from receiving, transporting, or possessing a firearm or destructive device in New Mexico. The bill amends statute to prohibit an adult from receiving, transporting, or possessing a firearm or destructive device in New Mexico if, when the adult was a juvenile, they receive a disposition for a delinquent act involving the use of a firearm under the Juvenile Delinquency Act that if committed by an adult would have been a felony offense. The bill defines “adult” as a person eighteen years of age or older subject to a juvenile disposition involving the use of a firearm, if less than ten years have passed since the juvenile disposition involving the use of the firearm and a pardon has not been issued. HB39 would make possession by such an adult a third-degree felony.

The bill amends Section 32A-2-26 NMSA 1978 to allow records of a juvenile disposition that involve the use of a firearm for a delinquent act that would have been 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 NMSA 1978.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Operating Budget Impacts

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and the length of time served in prison as a result of this bill could have moderate financial impacts. The creation of any new crime, increase of a felony degree, or increase of sentencing penalties will likely increase the population of the state’s jails and prisons, consequently increasing the long-term costs to state and county general funds. Due to the high fixed costs of the state’s prisons facilities and administrative overhead, LFC estimate a marginal cost (the cost of each additional inmate) of \$28.2 thousand per year across all facilities. House Bill 39 is anticipated to increase the number of incarcerated individuals and increase the time they spend in jail or prison. The New Mexico Corrections Division also noted the bill may result in the need for stricter supervision of prior juvenile offenders, which may increase probation and parole officer caseloads and the need for increased training.

Because juvenile records are currently sealed it is difficult to determine how many potential adults may be ineligible for firearm ownership based on their delinquency record. In addition, it is difficult to estimate how many individuals will be charged, convicted, or serve time in jail or prison based on the creation of a new crime. Without additional information, this analysis assumes at least ten people will be admitted to prison each year for this crime, a cost of roughly \$282 thousand annually. Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under HB39 are not included in this analysis but could be moderate.

The Administrative Office of the Courts (AOC) notes a minimal administrative cost for the statewide distribution and documentation of statutory changes, and any additional fiscal impact of the judiciary would be proportional to the enforcement of this law and commenced

prosecutions. New laws and amendments to existing laws have the potential to increase caseloads in the courts, requiring additional resources in the future.

The Law Offices of the Public Defender (LOPD) notes because data is lacking, it is difficult to predict how much of the previously legal behavior occurs now and how much might continue and would be prosecuted. However, the LOPD notes current workloads are high and notes the constitutional requirement to provide effective legal representation to indigent clients. As a result, the bill could result in increased costs to fund additional attorneys. LOPD estimates the cost of an additional attorney, including salary, benefits, and support, total \$291 thousand. If two additional attorneys were required, that would result in a cost to LOPD of \$582 thousand.

The Administrative Office of the District Attorneys noted the bill could result in additional cases for prosecution but noted the fiscal impact would not likely be significant.

SIGNIFICANT ISSUES

Juvenile Dispositions

Juvenile dispositions are not treated as convictions under the Delinquency Act (32A-2-1 through 32A-2-33 NMSA 1978). When an adult attempts to purchase a firearm and a federal instant background is conducted, juvenile dispositions cannot be considered, and individuals with juvenile dispositions can purchase firearms.

This bill would prevent adults who have juvenile dispositions under the Delinquency Act that, had they been committed as an adult, would have been a felony, regardless of whether the judgment resulted in an adult sentence. Under federal law (18 U.S.C Section 922(g)1) a person convicted in a court of a crime punishable by imprisonment for a term exceeding one year is prohibited from possessing or receiving a firearm. In New Mexico, this includes all felony criminal offenses.

Section 32A-2-26 NMSA 1978 currently provides for the automatic sealing of juvenile records when the child reaches the age of 18 or at the expiration of the disposition, whichever occurs later. Upon the sealing of an order, current law treats the case as if it never occurred. However, pursuant to the Bipartisan Safer Communities Act, AOC conducts enhanced background checks, commonly referred to as “U21 checks” for juvenile criminal and mental health cases when individuals are under the age of 21 and attempt to purchase a firearm. AOC reports conducting 2,807 U21 checks and issuing 19 denials in calendar year 2024.

Currently, Section 32A-2-26 prevents AOC from disclosing any sealed dispositions pursuant to federal instant background checks. This bill would allow AOC to disclose these sealed dispositions involving the use of a firearm for a delinquent act that would have been a felony offense if committed by an adult. The bill would not allow AOC to disclose any other violent juvenile adjudication not involving a firearm, including adjudications for murder or manslaughter, assault and battery, kidnapping, burglary, controlled substances, or sexual offenses.

LOPD noted that should the bill take effect, it is possible that an undetermined and potentially large number of adults would become ineligible for firearm ownership, based on their delinquency record, and be in violation of a third-degree felony statute.

Firearm Offences Among Juveniles

The Children, Youth and Families Department (CYFD) notes social-environmental determinants of violent behavior include traumatic childhood experiences and a variety of factors. CYFD reports the following data related to referrals to Juvenile Justice Services for gun-related offences:

- FY23: 168 referrals for firearm-related offences.
- FY24: 249 referrals for firearm-related offences.
- FY25 (six months): 173 referrals for firearm-related offences.

In their analysis, both the New Mexico Sentencing Commission (NMSC) and DOH refer to a 2022 North Carolina study published in *Preventive Medicine*, indicating that subsequent convictions for gun-related violence were nine times as common among those who had received a juvenile disposition for a gun-related crime, compared with those who had no such record.

NMSC indicates that there have been 219 cases involving juveniles and guns since July 1, 2022, of which 119 resulted in a juvenile disposition that would, under House Bill 39, disqualify them from gun possession for ten years.

DOH also notes high and increasing rates of firearm deaths in New Mexico:

- Between 2011 and 2022, the age-adjusted firearm death rate in New Mexico increased by 84 percent (from 14.8 per 100,000 population in 2011 to 27.3 per 100,000 population in 2022).
- In 2011, New Mexico's firearm death rate was 45 percent higher than the national average, but by 2022, it was 90 percent higher than the U.S. average (Provisional Mortality Statistics, 2018 through last week request form cdc.gov).
- Between 2019 and 2023, firearm deaths in New Mexico increased by 7 percent, rising from 472 in 2019 to 505 in 2023. The number of deaths peaked at 562 in 2021, representing a 19 percent increase from 2019 to 2021.
- Suicide involving firearms remained relatively stable during this period (Unpublished data, DOH). However, homicides involving firearms rose by 29 percent, increasing from 158 in 2019 to 204 in 2023.
- Firearm homicides also peaked at 224 in 2021, a 42 percent increase compared to 2019 (Unpublished data, DOH).

Other Significant Issues

LOPD also notes the state already has a significant shortage of public-defenders; HB39, by increasing cases handled by the criminal justice system, would likely exacerbate this shortage.

Both CYFD and NMCD note the bill could have positive effects on public safety, including enhancing screening for firearm possession, which could reduce gun violence perpetrated by individuals who committed firearm-related offences as juveniles.

PERFORMANCE IMPLICATIONS

AOC notes HB39 could have an impact on district court performance, including cases disposed as a percent of cases filed, and other case-related output measures.

ADMINISTRATIVE IMPLICATIONS

CYFD notes that while sealed records are primarily housed in the judiciary, HB39 would potentially require CYFD to take on additional responsibilities related to record management, interagency collaboration, and oversight.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with House Bill 134, which amends the Delinquency Act in different ways.

OTHER SUBSTANTIVE ISSUES

AOC notes that, as currently drafted, the bill would only involve disclosure of juvenile dispositions involving the use of a firearm to “federal authorities” for the purposes of conducting a federal instant background check. The FBI provides full services to federal firearms licensees in 31 states and five U.S. territories. The remaining 15 states perform their own checks through the National Instant Criminal Background Check system. AOC notes the bill would not include these other entities.

The Law Office of the Public Defenders notes Section 32-A-2-18(A) NMSA 1978 states: “a judgment....resulting in a juvenile disposition shall not be deemed a conviction of a crime nor shall it impose any civil disabilities ordinarily resulting from a conviction of a crime.” The LOPD noted HB39 appears to conflict with this existing law, equating a juvenile adjudication with an adult conviction for certain purposes and this tension, if not resolved, could result in litigation.

RMG/LC/hj/SL2