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FISCAL IMPACT REPORT

SPONSOR <u>Cervantes</u>	LAST UPDATED <u>1/31/2024</u>
	ORIGINAL DATE <u>1/23/2024</u>
SHORT TITLE <u>14-Day Firearm Sale Waiting Period</u>	BILL NUMBER <u>Senate Bill 69/aSHPAC</u>
	ANALYST <u>Sanchez</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Cost to County Jails	No fiscal impact	\$9.6 to \$19.2	\$9.6 to \$19.2	\$9.6 to \$19.2	Recurring	See Fiscal Implications

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 129 and House Bill 58

Relates to House Bill 127 and House Bill 114

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (NMAG)

New Mexico Sentencing Commission (NMSC)

Agency Analysis was Solicited but Not Received From

Department of Public Safety (DPS)

Department of Health (DOH)

New Mexico Municipal League

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from some state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of SHPAC Amendment to Senate Bill 69

The Senate Health and Public Affairs Committee amendment changes the required waiting period from 14 business days to 14 *calendar* days.

Synopsis of Senate Bill 69

Senate Bill 69 (SB69) establishes a 14-day waiting period before the completion of a sale of a firearm from the date of the initiation of a federal instant background check. The bill specifies that the seller must maintain physical control of the firearm until the waiting period ends and requires records of firearm sales to be made available by the seller for inspection upon the request of a law enforcement agency.

The penalty for violating the provisions of this bill is a misdemeanor offense. The bill exempts people with a valid New Mexico concealed carry license, buyers holding a valid federal firearms license, law enforcement agencies, and immediate family members to the third degree of consanguinity (excluding spouses and first cousins, who are included under current laws) from background check requirements and the 14-day waiting period established by the bill.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. LFC estimates a marginal cost (the cost per additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB427 may increase the number of incarcerated individuals.

The penalty for failing to adhere to the 14-day waiting period is a misdemeanor, punishable by up to a year in jail; for purposes of this analysis, it is estimated an individual could spend between six months and one year incarcerated for this offense. Based on the marginal cost of each additional inmate in New Mexico's jail system, each offender sentenced to jail for this crime could increase costs of \$9,614 to \$19.2 thousand to counties.

It is difficult to estimate how many individuals will be charged, convicted, or serve time in prison or jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to jail each year for this crime, at a cost of \$9,614 to \$19.2 thousand. To account for time to adjudication, these costs are not anticipated to be incurred until one year after the bill takes effect, in FY25; however, a minimal cost may apply in FY24 for individuals detained for some time prior to adjudication.

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 SB69, are not included in this analysis but may be incurred.

SIGNIFICANT ISSUES

Gun Violence and Waiting Periods. Responding to an analysis of a similar bill in the 2023 regular session (SB427), The Department of Health (DOH) reported 578 firearm-related deaths

in New Mexico in 2021, including 305 suicides, 230 homicides, and 26 legal interventions. The state's firearm death rate in 2021 was 27.8 deaths per 100 thousand residents, 22 percent higher than 2020 and the third-highest firearm age-adjusted death rate in the nation.¹ DOH noted the state's suicide death rate in 2020 was 24.6 deaths per 100 thousand residents, 23 percent higher than 2010.² New Mexico's firearm death rate has escalated significantly, moving from the seventh highest in the nation in 1999 to the third highest in 2021, with an 87 percent increase in the age-adjusted firearm death rate between 2010 and 2021.³

According to a 2023 meta-analysis of research evidence on the effects of gun policies in the United States from the Rand Corporation, there is moderate evidence waiting periods decrease firearm suicides and decrease overall homicides and limited evidence waiting periods decrease total suicides and decrease firearm homicides. Studies provided inconclusive evidence regarding both the existence and direction (increase or decrease) of the impact of waiting periods on mass shootings or on the gun industry.⁴

According to analysis from the New Mexico Sentencing Commission, the implementation of waiting periods is a measure increasingly considered by states to address gun violence, demonstrating a trend towards more stringent control measures in response to rising firearm-related deaths.

National Instant Criminal Background Check System (NICS). Analysis from the Administrative Office of the Courts (AOC) points out the Brady Act, enacted in 1993, mandates federally licensed firearms dealers to conduct background checks on potential buyers through the National Instant Criminal Background Check System (NICS), created by the FBI. These checks must be completed within three business days; otherwise, the sale may proceed by default, a situation known as "default proceeds." In 2022, the Bipartisan Safer Communities Act was passed, modifying the NICS process for individuals under 21. It requires additional checks with state juvenile justice, mental health repositories, and local law enforcement, providing an extended period of up to 10 business days to identify disqualifying records.

Analysis from AOC states despite these measures, in 2022, over 372 thousand background checks remained unresolved within the initial three-day window, highlighting the system's limitations. The FBI has suggested extending the three-day period to improve the thoroughness of background checks and prevent sales to potentially disqualified buyers. The FBI reported⁵ in 2022, there were 131,865 denial decisions nationally, a decrease from 153,565 in 2021. In New Mexico specifically, 2,498 denial decisions were made, primarily for convictions of crimes punishable by a year or more in prison. AOC contributes to NICS by reporting various dispositions, including felony convictions and mental health orders. For pre-2009 cases, the AOC faces challenges verifying records due to storage and format issues, as their case management system, Odyssey, only came online in 2009.

Constitutional Concerns. Analysis from the Office of the Attorney General (NMAG) suggests legislation like SB69, which imposes a mandatory waiting period on firearm possession

¹ <https://wonder.cdc.gov/Deaths-by-Underlying-Cause.html>

² <https://www.nmhealth.org/news/information/2021/12/?view=1739>

³ <https://www.nmhealth.org/publication/view/report/8463/>

⁴ https://www.rand.org/pubs/research_reports/RRA243-4.html

⁵ <https://www.fbi.gov/file-repository/nics-2022-operations-report.pdf/view>

following a federal instant background check, raises constitutional concerns. This is especially pertinent in light of the Supreme Court's rulings in *D.C. v. Heller* (2008) and *New York SRPAI v. Bruen* (2022), which did not address mandatory waiting periods directly. However, in 2018, the Supreme Court did not review a 9th Circuit Court of Appeals decision that upheld California's 10-day waiting period, indicating that such measures may not contravene the Second Amendment.

PERFORMANCE IMPLICATIONS

AOC expressed concerns regarding the impact SB69 might have on two of its key performance measures. Specifically, the number of cases disposed of as a percent of cases filed and the percent change in case filings by case type.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB69 conflicts with House Bill 129, which similarly creates a 14-day waiting period for firearm sales, but with differing provisions than SB69.

SB69 conflicts with House Bill 58, which eliminates the background check requirement for firearm sales under Section 30-7-7.1 NMSA 1978.

SB69 relates to House Bill 127, which establishes a minimum age of 21 to purchase or possess certain types of firearms.

SB69 relates to House Bill 114, which requires firearms sellers to implement controls and procedures regarding firearm sales.

OTHER SUBSTANTIVE ISSUES

NMAG provides the following analysis regarding other substantive issues with the proposed law: SB69 does not include a definition of “firearm,” which if included would help clearly define the prohibited conduct. Statutory definitions of “firearm” currently in force can be found at NMSA 1978 Sections 30-7-4.1(D)(2), and 30-7-7.1(C)(3).

The proposed language is silent on what type of intent, or mental state (“mens rea”) is necessary – must the crime be committed intentionally, knowingly, negligently, or is there no mental state requirement at all (a strict liability crime)? Courts will likely assume that some mental state is required if the Legislature does not include a specific intent. See *Santillanes v. State*, 1993-NMSC-012, ¶ 11, 115 N.M. 215, 218 (“When a criminal statute is silent about whether a mens rea element is required, we do not assume that the legislature intended to enact a no-fault or strict liability crime. Instead, it is well settled that we presume criminal intent as an essential element of the crime unless it is clear from the statute that the legislature intended to omit the mens rea element.” (citation omitted, italics in original)). The Legislature may wish to define what mental state is required explicitly in the text so there is no question under the statute of the elements of the crime.