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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/10/16

**SPONSOR** Gentry/Ivey-Soto      **LAST UPDATED** \_\_\_\_\_      **HB** 91

**SHORT TITLE** Background Check Reporting for Firearms      **SB** \_\_\_\_\_

**ANALYST** Sánchez

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	Minimal	Minimal	Recurring	General Fund
		Minimal	Minimal	Minimal	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 331  
Conflicts HB 51

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Department of Public Safety (DPS)  
Attorney General’s Office (AGO)  
Administrative Office of the District Attorneys (AODA)  
Department of Health (DOH)  
New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of Bill

House Bill 91 proposes to enact a new section of Chapter 34, Article 9 NMSA 1978, requiring the AOC to obtain information from court proceedings relating to a person’s eligibility to receive or possess a firearm or ammunition.

The information shall be electronically transmitted to the Federal Bureau of Investigation (FBI) for inclusion in the federal national instant criminal background check system (NICS).

The AOC is also responsible for updates, corrections, modifications or removal of information affecting eligibility and shall also provide information about each person adjudicated as a mental defective or committed to a mental institution. The bill requires AOC to inform the person adjudicated a mental defective that he or she is not allowed to possess a firearm or ammunition.

The bill makes a person adjudicated a mental defective or committed to a mental institution ineligible for a concealed handgun license. The individual, however, may petition the court to have the firearms-related disability removed and the individual's rights restored.

Any information in the court order, judgment or verdict regarding the adjudication as a mental defective or regarding a petitioner or proceeding is not a public record and shall not be disclosed. The person to whom the information pertains or the person's personal representative is authorized to obtain, inspect and correct information compiled or transmitted. The AOC is required to promulgate rules relating to the inspection and correction of the information in its records.

## **FISCAL IMPLICATIONS**

DPS reports that there is grant money that is offered to the states that are compliant with the NICS reporting and mental defective appeal process. This money will assist in the information sharing and criminal justice records improvement. This further enhances information that relates to the disqualifiers for gun purchases.

AOC reports that its Judicial Information Division (JID) would require the following should HB 91 become law.

- Another statistician to maintain the submission and removal of required mental health records from NICS;
- Legal business processes developed to deal with persons who are no longer disabled and need to be removed from NICS. Courts would need to docket a "non-docketable" event code that tells the NICS query to ignore that case;
- Rewrite the current NICS report extract and submittal routine;
- Replace the current legacy report server that runs the NICS report to manage the larger report data submittal capacity;
- Create a nightly cycle to extract the Mental Health cases from Odyssey to submit to NICS daily or at least weekly and
- Expand JID's network infrastructure to allow for the larger amounts of data to be passed over the network for the reporting period.

It however does not assign a dollar value to the added resources.

There would be administrative costs for statewide update, distribution and documentation of statutory changes. Additionally, fiscal impact on the judiciary would be proportional to the enforcement of this law and required hearings and permitted appeals. 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

27 C.F.R. 478.11 defines terms as follows:

- *Adjudicated as a mental defective.* (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease:
  - (1) Is a danger to himself or to others; or
  - (2) Lacks the mental capacity to contract or manage his own affairs. (b) The term shall include –
    - (1) A finding of insanity by a court in a criminal case; and
    - (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.
- *Committed to a mental institution.* A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Currently, and since 2010, AOC submits reports on felony convictions, domestic violence protective orders, involuntary commitments and misdemeanor violence convictions to the NICS on a monthly basis. Included in each monthly report is the following information: New Mexico's Unique Identifier; criminal's last name, first name, middle initial, gender, date of birth, height, weight, eye color, hair color, social security number; record type; case number; charge number; court of case origin; and statute specific to charge.

The AOC, in 2015, sent an average of 10,050 names to the NICS database. Each "name" may not be a distinct person as a person can be added as many times as they qualify for reporting to the FBI. (NICS records are both person and case specific.) On average for 2015, 3,400 names were sent over for removal from the NICS database. (Getting your name removed from one case does not necessarily mean that the individual is out of NICS completely, if their name has been entered in relation to more than one case.)

AOC does not currently report to the FBI information regarding "each person who has been adjudicated as a mental defective", as the definition includes those found incompetent, although it does have access to this information through the compilation of data related to the entry of appropriate codes indicating whether there has been a finding of incompetency.

HB91 requires the AOC to report information to the FBI regarding those committed to a mental institution. (Subsection B) The applicable definition of "committed to a mental institution", found in 27 C.F.R. 478.11, includes those committed for drug use. Currently, AOC reports data for felony drug use convictions.

According to the [Law Center to Prevent Gun Violence](#) there are currently 43 states that have laws which require or authorize the reporting of some mentally ill people to the federal NICS database or a state database for use in firearm purchaser background checks. There are 5 states that authorize or require the collection of mental health records in an in-state database only (AR, CA, MI, OH, UT).

The following 5 states do not have any statute that authorizes or requires the collection of mental health records in an in-state database or reporting the information to the federal NICS database: MT, NH, NM, VT, WY. Currently, all 50 states have laws that require the reporting of disqualifying criminal history data to the federal NICS database for a potential firearm purchaser.

DOH reports that in 2015, there were a total of 147,912 NICS firearm background checks conducted for firearm transfers in New Mexico.

([https://www.fbi.gov/about-us/cjis/nics/reports/nics\\_firearm\\_checks\\_-\\_month\\_year\\_by\\_state.pdf](https://www.fbi.gov/about-us/cjis/nics/reports/nics_firearm_checks_-_month_year_by_state.pdf)). In a table of federal denials listing reasons why the NICS Section system denied gun transfers between November 30, 1998 and December 31, 2015, 54.9% were because of a transferee's criminal history; 11.6% were because the transferee was a fugitive from justice; 9.5% were because the transferee had a misdemeanor domestic violence conviction; 8.4% were because the transferee was an unlawful user of or addicted to a controlled substance, 4.0% were because the transferee was under a restraining order for domestic violence, and 1.7% were because the applicant had been adjudicated for a mental health diagnosis (NICS Federal Denials, FBI at <https://www.fbi.gov/about-us/cjis/nics>). Reporting of information from court proceedings about a person's eligibility to receive or possess a firearm to NICS could potentially reduce and prevent firearm injuries and deaths in New Mexico.

## **PERFORMANCE IMPLICATIONS**

. 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

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

Conflicts with House Bill 51 – Firearm Transfer Act

Duplicates Senate Bill 331 – Background Check Reporting for Firearms

## **TECHNICAL ISSUES**

AOC states that HB 91 provides a 10-day time limit from receipt of information for notification to the FBI to update, correct, modify or remove information affecting a person's eligibility to receive or possess a firearm or ammunition in the NICS, as well as a 10-day time limit for reporting the entry of a court order granting relief from disabilities. SB 331 does not provide any time limits for the reporting of court information that supports a person's ineligibility to receive or possess a firearm or ammunition.

The AGO states that Section 1(J) proposes to make mental-health related information not subject to public disclosure, but fails to mention sealing this information. Moreover, the petition process is unclear.

## **POSSIBLE QUESTIONS**

The following questions remain unanswered: Is it adversarial? Do evidentiary rules apply? Is the Attorney General the exclusive representative of the State in these proceedings?