

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 January 22, 2024
Bill No: Senate Bill 69

Sponsor: Sen. Joseph Cervantes
Short Title: 14 Day Firearm Sale Waiting Period

Agency Name and Code
Number: 218 AOC
Person Writing Patricia M. Galindo
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
None	None	None	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 69 would create a new section in Chapter 30 (Criminal Offenses) Article 7 (Weapons and Explosives) dealing with the unlawful sale of a firearm before a required waiting period. Section 30-7-7.1 was first enacted in 2019 and requires a federal instant background check for all gun sales, including private gun sales. SB 69 amends Section 30-7-7.14 NMSA 1978 by:

- establishing a waiting period of fourteen business days between the initiation of the federal instant background check and the transfer of the firearm to the buyer;
- defining an unlawful sale to include transferring ownership, possession or physical control of the firearm before the end of the required waiting period;
- requiring records of firearm sales to be made available to law enforcement upon request; and
- clarifying that each party to an unlawful sale before the required waiting period may be separately charged and that each firearm sold constitutes a separate offense.

Violations under Section 30-7-7.1 NMSA 1978 are misdemeanor offenses.

SB 69 does not contain an effective date and would be effective on May 15, 2024, 90 days following adjournment of the Legislature, if signed into law.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. 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

SB 69 creates a “required waiting period” of 14 business days between the initiation of the federal instant background check and the transfer of the firearm to the buyer. The two primary reasons cited for this type of restriction is (1) to give authorities more time to conduct background check on gun sales and (2) to keep people experiencing emotional or mental stress from having immediate access to a firearm that they might use to kill themselves or others.

National Instant Criminal Background Check System (NICS)

The Brady Act is a federal law enacted in 1993 that requires federally licensed firearms dealers (FFLs) to conduct background checks on potential firearm purchasers. In order to comply with the Brady Act, the FBI created the National Instant Criminal Background Check System (NICS), to conduct background checks on potential firearm purchasers. Background checks must be completed within three (3) business days, or the gun dealer may proceed with the sale by default, also known as “default proceeds”. In 2015, a young man shot and killed nine African-American worshippers at the Emanuel AME Church in Charleston, South Carolina. Since the young man’s background check was not processed within three days, as required by federal law, the gun dealer proceeded with the gun sale. “Default proceeds” in background checks are now often referred to as the “Charleston Loophole”.

In 2022, Congress enacted the Bipartisan Safer Communities Act that requires NICS to contact state juvenile justice and mental health repositories and local law enforcement whenever a person under age 21 tries to buy a gun. The repositories and local law enforcement have an additional three business days to identify whether there might be a potentially disqualifying record for the person. If there is a potentially disqualifying record for a person under age 21, NICS has ten business days from when the FFL first contacted the system for a background check to determine whether the person is disqualified from possessing a gun.

According to the NICS 2022 Operational Report, in 2022, there were 372,308 background checks that could not be resolved in three business days. <https://www.fbi.gov/file-repository/nics-2022-operations-report.pdf/view>. As stated previously, after the third business day, federal law allows firearms dealers to sell weapons while the background check is still pending. The FBI has recommended extending the three-day period to allow agents more time to complete background check investigations and to reduce the number of prohibited purchasers who are able to purchase firearms by default. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/gun-control-implementation-national-instant-criminal-background>.

The FBI reports that nationally 131,865 denial decisions were made in 2022 and 153,565 denial decisions were made in 2021. In New Mexico, denial decisions were made in 2,498 cases in 2022. The leading reason for a NICS denial was under 18 U.S.C. § 922(g)(1), being convicted of a crime punishable by imprisonment for a term of one year or more. <https://www.fbi.gov/file-repository/nics-2022-operations-report.pdf/view>

In New Mexico, the Administrative Office of the Courts (AOC) reports case dispositions to the FBI on a nightly basis. The AOC reports felony convictions, certain mental health orders (involuntary commitments, incompetent to stand trial and plenary adult guardianship and conservatorships), misdemeanor crime of domestic violence convictions, domestic violence orders of protection and extreme risk firearm protection orders to the FBI for entry into NICS. The AOC is often contacted by the FBI to conduct additional research on older cases. The judiciary’s case management system, Odyssey, came on-line in 2009. For cases before 2009, the AOC must contact the original court to search for these older case records, which are often stored offsite or on microfiche, to be able to verify the information requested.

Suicide and Homicide – Accessibility to Firearms

In Tulsa, authorities said the gunman who killed his surgeon, another doctor and two other people in 2022 bought an AR-style rifle just hours beforehand. The shooter had recently had an

operation and blamed his doctor for continuing back pain. In Uvalde, Texas, the 18-year-old shooter who killed 21 people at Robb Elementary School had purchased two rifles in the preceding week.

Nine states and the District of Columbia have waiting period laws, ranging between three and 14 days, depending on the state. These waiting periods can create a buffer of time for a person in crisis, a cooling-off period that can reduce the number of deaths with a firearm. California, Florida, Hawaii, Illinois, Rhode Island and the District of Columbia have waiting periods for purchases of all types of weapons, ranging from three to 14 days. Minnesota and Washington impose waiting periods for handguns and semiautomatic rifles, while Maryland and New Jersey have waiting periods only for handguns. In addition, several other states, including Connecticut, Maryland and Massachusetts, require buyers of at least some types of guns to obtain permits first, sometimes including completion of safety classes. Those restrictions can function like waiting periods. <https://fortune.com/2022/06/05/gun-purchases-just-9-states-and-dc-have-waiting-periods-among-those-who-dont-federal-government/>

Certain studies suggest that access to firearms is associated with the risk for completed suicide and being the victim of homicide. *See* The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members A Systematic Review and Meta-analysis Andrew Anglemeyer, PhD, MPH; Tara Horvath, MA; and George Rutherford, MD. https://www.acpjournals.org/doi/suppl/10.7326/M13-1301/suppl_file/AIME201401210-00006-v1.pdf. The CDC's National Center for Health Statistics ranked New Mexico as number four (4) in the United States for suicide rates, with 24.2 deaths per 100,000 people. In 2022, 516 New Mexicans died by suicide. <https://www.cdc.gov/nchs/pressroom/sosmap/suicide-mortality/suicide.htm>

The presence of a gun in a domestic violence situation increases the risk of homicide by five times. *See* J.C. Campbell, et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study," *American Journal of Public Health* 93, no.7 (2003). The New Mexico Intimate Partner Violence Death Review Team is a statutory body created under Section 31-22-4.1 NMSA 1978 to review intimate partner violence/death cases. For case year 2019 (CY2019), the Team reviewed 58 incidents of intimate partner violence or sexual assault that resulted in at least one death. In these 58 incidents, 71 people died: 34 died from homicide, 36 were acts of suicide, and one was classified as undetermined manner of death. Of the 71 decedents, 73% died from a gunshot wound. <https://ipvdr.health.unm.edu/>

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. 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

ADMINISTRATIVE IMPLICATIONS – none identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP – none identified.

TECHNICAL ISSUES – none.

OTHER SUBSTANTIVE ISSUES – none identified.

ALTERNATIVES – none.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS - none