

**LFC Requester:**

**Scott Sanchez**

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**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**      X      **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_    **Substitute**    \_\_\_\_\_

**Date Prepared:**      1/25/2024  

**Bill No:**      SB178  

**Sponsor:**      Daniel Ivey-Soto, Kathleen  
                  Cates & Debra Sarinana  

**Agency Name and**      305 – New Mexico    
**Code Number:**      Department of Justice  

**Short Title:**      Sealing Records &  
                  Background Checks  

**Person Writing**      Walter Hart    
**Analysis:**  
**Phone:**      505-537-7676    
**Email:**      legisfir@nmag.gov  

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Senate Bill (“SB”) 178 would allow courts, law enforcement officers, departments and agencies, that are otherwise bound by court-issued sealing orders not to disclose juvenile delinquency proceeding information, to nevertheless disclose such information to facilitate the “national instant criminal background check system,” *see* 18 U.S.C. Section 922(t). If enacted, SB 178 would make juvenile delinquency information available to evaluate firearm transfer background checks, and potentially prevent disqualified individuals who submit to a background check from obtaining a firearm.

Section 32A-2-26 NMSA 1978 addresses methods and requirements for sealing and unsealing of records pertaining to a person who as a child has been “the subject of a delinquency petition.” *Id.* § 32A-2-26(A). SB 178 would add one sentence to the end of Section 32A-2-26(C) (hereinafter “Subsection (C)”, with the amendment providing: “The provisions of this subsection shall not apply to records involving the unlawful use or possession of a firearm when the inquiry is made pursuant to a federal instant background check.”

Section 32A-2-26(A) – and thus the provisions of Subsection (C) and any amendment thereto – will pertain only to the sealing of records *by court order* obtained by the filing a motion with the court and establishing the necessary criteria for issuance of the sealing order. It should be noted that all files and records of the Children, Youth and Families Department are *automatically* sealed no later than when the child turns eighteen (18) without the need for a court order. *See* Section 32A-2-26(H); 8.14.22.8-10 NMAC.

This amendment is intended to relieve “the court, law enforcement officers and departments and agencies” from the mandate of the first sentence of Subsection (C) which requires them to reply that “no record exists with respect to the person” in response to all requests for records that are subject to a court’s sealing order issued pursuant to Section 32A-26(A).

Though not defined in Section 32A, the term “federal instant background check” is defined in Section 30-7-7.1(C)(2) to mean “a background check that meets the requirements of 18 U.S.C. Section 922(t) *and that does not indicate* that a sale to the person receiving the firearm would violate 18 U.S.C. Section 922(g) or 18 U.S.C. Section 922(n) or state law”. (Emphasis added).

## **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

## **SIGNIFICANT ISSUES**

For clarity, the phrase “federal instant background check” could mirror “national instant criminal background check” to align with federal law, and be defined in the context of SB 178 as the background check contemplated by 18 U.S.C. Section 922(t) - without the additional and definitional language that is used in Section 30-7-7.1(C)(2).

The phrase “records involving the unlawful use or possession of a firearm” could be clearer to address questions of unlawful use or possession of a firearm, or only to those as to which a child has been adjudicated as *delinquent*, or only those leading ultimately to a *criminal conviction*.

To resolve this concern, SB 178 could be amended to identify those types of delinquency determinations that are relevant to a background check under 18 U.S.C. Section 922(t), and require any order that includes such information to be flagged.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

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

None identified.

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

See above.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**

See above.