

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED <u>2/13/24</u> ORIGINAL DATE <u>2/1/24</u>
SHORT TITLE <u>Firearm Sale Waiting Period Changes</u>	BILL NUMBER <u>CS/House Bill 129/HJCS/aHF1#1/aSJC/aSFI#1</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	Indeterminate but minimal	\$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.

Relates to House Bill 127, House Bill 46, House Bill 47, Senate Bill 69, and House Bill 58.

Sources of Information

LFC Files

Agency Analysis Received From
 Office of the Attorney General (NMAG)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)
 Department of Health (DOH)

SUMMARY

Synopsis of SFL#1 Amendment to HJC Committee Substitute for House Bill 129

The Senate Floor #1 amendment to the House Judiciary Committee substitute for House Bill 129 adds language specifying a firearm may be transferred to a buyer if the required federal instant background check has not been completed within 20 days.

Synopsis of SJC Amendment to HJC Committee Substitute for House Bill 129

The Senate Judiciary Committee Amendment to the House Judiciary Committee substitute for House Bill 129 adds exceptions to the seven day waiting period for concealed carry license holders and federal firearms license holders, and moving all the language regarding exceptions to its own section of the bill, the newly created section H.

Synopsis of HFI#1 Amendment to HJC Committee Substitute for House Bill 129

The House Floor amendment #1 to the House Judiciary Committee substitute for House Bill 129 (HB129) shortens the waiting period from 14 to 7 calendar-days for firearm sales. This period

includes the time needed to conduct a federal instant background check. The bill stipulates that the firearm must remain with the seller until the waiting period ends and the background check is complete.

Synopsis of HJC Committee Substitute for House Bill 129

The House Judiciary Committee substitute for House Bill 129 (HB129) focuses on creating and enforcing a mandatory 14 calendar-day waiting period for firearm sales. This period includes the time needed to conduct a federal instant background check. The bill stipulates that the firearm must remain with the seller until the waiting period ends and the background check is complete.

The sale of a firearm before the end of this waiting period or before the completion of the background check, if it takes longer, is defined as an unlawful act. The bill outlines penalties for violations, treating each unlawful sale as a separate offense and categorizing such violations as misdemeanors.

The bill requires sellers to keep firearm sales records and make them available for law enforcement inspection upon request. An exception to these provisions is made for firearm sales between immediate family members, which the bill defines as an individual's spouse, parent, child, sibling, grandparent, grandchild, great-grandchild, niece, nephew, first cousin, aunt, or uncle.

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. HB129 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 by \$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 HB129, are not included in this analysis but may be incurred.

SIGNIFICANT ISSUES

Gun Violence and Waiting Periods. The Department of Health (DOH) reported 550 firearm-related deaths in New Mexico in 2022, including 295 suicides. The state's firearm death rate in 2022 was 26.5 deaths per 100 thousand residents, 84 percent higher than the nationwide rate of 14.4 deaths per 100 thousand residents and the third-highest firearm age-adjusted death rate in the nation.¹ New Mexico's firearm death rate has escalated significantly, moving from the seventh highest in the nation in 1999 to the third highest in 2022. In New Mexico, there have been 140 firearm deaths among children aged 0 – 18 between 2016 and 2020, which include 68 suicide deaths and 64 homicide deaths.¹

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 the gun industry.²

DOH also noted recent studies have contributed to the understanding of the impact of mandatory waiting periods and background checks on firearm fatalities. One study analyzed changes in suicide rates across all 50 states and the District of Columbia between 2013 and 2014, discovering that states with both mandatory waiting periods and universal background checks exhibited notably lower suicide rates than those without such measures.³ Another used CDC data to investigate the effects of restrictive firearm laws on firearm-related suicides between 2009 and 2021, finding that states enforcing background checks and mandatory waiting periods had lower suicide rates involving handguns and large firearms.⁴ Another study in 2022 focused on Wisconsin, examining the consequences of repealing the 48-hour mandatory waiting period for handgun purchases in 2015. Their findings indicated significant increases in suicide rates among people of color and urban residents following the repeal.⁵

According to DOH, these studies underline the potential life-saving effects of mandatory waiting periods, which not only delay immediate access to firearms, thus preventing impulsive acts of violence, including suicides and homicides, but also allow law enforcement more time to complete background checks. Annually, around 3,800 ineligible individuals manage to acquire firearms due to incomplete background checks. As of this writing, 11 states and the District of Columbia have implemented waiting periods for firearm purchases, reflecting a growing recognition of their potential to reduce firearm-related fatalities.

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.

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

² https://www.rand.org/pubs/research_reports/RRA243-4.html

³ <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2016.303650>

⁴ https://journals.lww.com/journalacs/abstract/2023/01000/restrictive_firearm_laws_and_firearm_related.8.aspx

⁵ <https://www.tandfonline.com/doi/abs/10.1080/13811118.2021.1886209>

National Instant Criminal Background Check System (NICS). Analysis of a similar bill (Senate Bill 69) 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 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 also stated that 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 reported⁶ 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 suggests legislation like HB129, which imposes a mandatory waiting period on firearm possession 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB129 relates to House Bill 127, which raises the minimum age for firearm purchases to 21.

HB129 relates to House Bill 46, which amends the Criminal Code to allow for a third-degree felony conviction if a felon is convicted of being in possession of a firearm or "destructive device.

HB129 relates to House Bill 47, which creates a new third-degree felony crime of unlawful carrying of a firearm while trafficking a controlled substance.

HB129 relates to House Bill 58, which seeks to repeal the criminal code section mandating instant background checks for firearm sales.

HB129 relates to Senate Bill 69, which also establishes a 14-day waiting period for firearm purchases.

⁶ <https://www.fbi.gov/file-repository/nics-2022-operations-report.pdf/view>

OTHER SUBSTANTIVE ISSUES

The analysis provided by NMAG expressed the following concerns:

HB129 does not include a definition of “firearm,” which if included would help clearly define the prohibited conduct. Although the text of the statute refers to Section 30-7-7.1 NMSA 1978, it does not clearly or implicitly incorporate the definition of “firearm” included in that section.

HB129 does not specify who must make records of gun sales available for inspection upon request of a law enforcement agency—a seller, a buyer, or both. If the requirement applies to buyers/private individuals, it could implicate Fourth Amendment search and seizure concerns by requiring the automatic production of records to law enforcement.

HB129 requires a waiting period of 14 “business days,” but does not define “business day” or address the potential effect of government holidays on the required 14-day waiting period.

HB129 does not specify a mental state for the crime of transferring ownership of a firearm before the required 14-day waiting period ends, meaning it is unclear whether an inadvertent or unintentional transfer of ownership would be criminalized. As written, HB129 appears to create a strict-liability crime; if this is not the Legislature’s intent, the Legislature may wish to explicitly define what mental state is required to constitute a violation of the statute.

SS/ne/al/ne/ss/rl/ne