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HOUSE BILL 39

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Kathleen Cates and Charlotte Little and Marian Matthews

AN ACT

RELATING TO CHILDREN; PROVIDING ACCESS TO JUVENILE DELINQUENCY RECORDS FOR FIREARM BACKGROUND CHECKS; PROHIBITING AN ADULT SUBJECT TO A JUVENILE DISPOSITION INVOLVING USE OF A FIREARM FROM RECEIVING, TRANSPORTING OR POSSESSING A FIREARM OR DESTRUCTIVE DEVICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-7-16 NMSA 1978 (being Laws 1981, Chapter 225, Section 1, as amended) is amended to read:

"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT, TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

A. It is unlawful for the following persons to receive, transport or possess a firearm or destructive device in this state:

- (1) a felon;

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1 (2) a person subject to an order of protection
2 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; [~~or~~]

3 (3) a person convicted of any of the following
4 crimes:

5 (a) battery against a household member
6 pursuant to Section 30-3-15 NMSA 1978;

7 (b) criminal damage to property of a
8 household member pursuant to Section 30-3-18 NMSA 1978;

9 (c) a first offense of stalking pursuant
10 to Section 30-3A-3 NMSA 1978; or

11 (d) a crime listed in 18 U.S.C. 921; or

12 (4) an adult subject to a juvenile disposition
13 for a delinquent act involving use of a firearm under the
14 Delinquency Act that would be a felony if committed by an
15 adult, regardless of whether the judgment resulted in an adult
16 sentence.

17 B. A felon or an adult subject to a juvenile
18 disposition for a delinquent act involving use of a firearm
19 under the Delinquency Act that would be a felony if committed
20 by an adult, regardless of whether the judgment resulted in an
21 adult sentence, found in possession of a firearm shall be
22 guilty of a third degree felony.

23 C. A serious violent felon that is found to be in
24 possession of a firearm shall be guilty of a third degree
25 felony, and notwithstanding the provisions of Section 31-18-15

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1 NMSA 1978, shall be sentenced to a basic term of six years
2 imprisonment.

3 D. Any person subject to an order of protection
4 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted
5 of a crime listed in Paragraph (3) of Subsection A of this
6 section who receives, transports or possesses a firearm or
7 destructive device is guilty of a misdemeanor.

8 E. As used in this section:

9 (1) "adult subject to a juvenile disposition
10 for a delinquent act involving use of a firearm" means a person
11 eighteen years of age or older subject to a juvenile
12 disposition for a delinquent act involving use of a firearm
13 under the Delinquency Act; provided that:

14 (a) less than ten years have passed
15 since the juvenile disposition involving use of a firearm; and

16 (b) the person has not been pardoned for
17 the juvenile disposition involving use of a firearm by the
18 proper authority;

19 [~~(1)~~] (2) except as provided in Paragraph
20 [~~(2)~~] (3) of this subsection, "destructive device" means:

21 (a) any explosive, incendiary or poison
22 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge
23 of more than four ounces; 4) missile having an explosive or
24 incendiary charge of more than one-fourth ounce; 5) mine; or 6)
25 similar device;

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1 (b) any type of weapon by whatever name
2 known that will, or that may be readily converted to, expel a
3 projectile by the action of an explosive or other propellant,
4 the barrel or barrels of which have a bore of more than one-
5 half inch in diameter, except a shotgun or shotgun shell that
6 is generally recognized as particularly suitable for sporting
7 purposes; or

8 (c) any combination of parts either
9 designed or intended for use in converting any device into a
10 destructive device as defined in this paragraph and from which
11 a destructive device may be readily assembled;

12 [~~(2)~~] (3) the term "destructive device" does
13 not include any device that is neither designed nor redesigned
14 for use as a weapon or any device, although originally designed
15 for use as a weapon, that is redesigned for use as a signaling,
16 pyrotechnic, line throwing, safety or similar device;

17 [~~(3)~~] (4) "felon" means a person convicted of
18 a felony offense by a court of the United States or of any
19 state or political subdivision thereof and:

20 (a) less than ten years have passed
21 since the person completed serving a sentence or period of
22 probation for the felony conviction, whichever is later;

23 (b) the person has not been pardoned for
24 the felony conviction by the proper authority; and

25 (c) the person has not received a

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1 deferred sentence;

2 [~~(4)~~] (5) "firearm" means any weapon that will
3 or is designed to or may readily be converted to expel a
4 projectile by the action of an explosion or the frame or
5 receiver of any such weapon; and

6 [~~(5)~~] (6) "serious violent felon" means a
7 person convicted of an offense enumerated in Subparagraphs (a)
8 through (n) of Paragraph (4) of Subsection L of Section 33-2-34
9 NMSA 1978; provided that:

10 (a) less than ten years have passed
11 since the person completed serving a sentence or a period of
12 probation for the felony conviction, whichever is later;

13 (b) the person has not been pardoned for
14 the felony conviction by the proper authority; and

15 (c) the person has not received a
16 deferred sentence and completed the total term of deferment as
17 provided in Section 31-20-9 NMSA 1978."

18 SECTION 2. Section 32A-2-26 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 55, as amended) is amended to read:

20 "32A-2-26. SEALING OF RECORDS.--

21 A. On motion by or on behalf of a person who has
22 been the subject of a delinquency petition or on the court's
23 own motion, the court shall vacate its findings, orders and
24 judgments on the petition and order the legal and social files
25 and records of the court, probation services and any other

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1 agency in the case sealed. If requested in the motion, the
2 court shall also order law enforcement files and records
3 sealed. An order sealing records and files shall be entered if
4 the court finds that:

5 (1) two years have elapsed since the final
6 release of the person from legal custody and supervision or two
7 years have elapsed since the entry of any other judgment not
8 involving legal custody or supervision;

9 (2) the person has not, within the two years
10 immediately prior to filing the motion, been convicted of a
11 felony or of a misdemeanor involving moral turpitude or been
12 found delinquent by a court and no proceeding is pending
13 seeking such a conviction or finding; and

14 (3) the person is eighteen years of age or
15 older or the court finds that good cause exists to seal the
16 records prior to the child's eighteenth birthday.

17 B. Reasonable notice of the motion shall be given
18 to:

19 (1) the children's court attorney;
20 (2) the authority granting the release;
21 (3) the law enforcement officer, department
22 and central depository having custody of the law enforcement
23 files and records; and

24 (4) any other agency having custody of records
25 or files subject to the sealing order.

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1 C. Upon the entry of the sealing order, the
2 proceedings in the case shall be treated as if they never
3 occurred and all index references shall be deleted. The court,
4 law enforcement officers and departments and agencies shall
5 reply, and the person may reply, to an inquiry that no record
6 exists with respect to the person. Copies of the sealing order
7 shall be sent to each agency or official named in the order.

8 D. Inspection of the files and records or the
9 release of information in the records included in the sealing
10 order may thereafter be permitted by the court only:

11 (1) upon motion by the person who is the
12 subject of the records and only to those persons named in the
13 motion; and

14 (2) in its discretion, in an individual case,
15 to any clinic, hospital or agency that has the person under
16 care or treatment or to other persons engaged in fact finding
17 or research.

18 E. Any finding of delinquency or need of services
19 or conviction of a crime subsequent to the sealing order may at
20 the court's discretion be used by the court as a basis to set
21 aside the sealing order.

22 F. A court may set aside a sealing order for the
23 juvenile disposition of a youthful offender and any evidence
24 given in a hearing in court for a youthful offender for the
25 purpose of considering the setting of bail or other conditions

1 of release of a person charged with a felony whether charged as
2 an adult or a juvenile.

3 G. A child who has been the subject of a petition
4 filed pursuant to the provisions of the Delinquency Act shall
5 be notified in writing by the department when the child reaches
6 the age of eighteen or at the expiration of legal custody and
7 supervision, whichever occurs later, that the department's
8 records have been sealed and that the court, the children's
9 court attorney, the child's attorney and the referring law
10 enforcement agency have been notified that the child's records
11 are subject to sealing.

12 H. The department shall seal the child's files and
13 records when the child reaches the age of eighteen or at the
14 expiration of the disposition, whichever occurs later. The
15 department shall notify the children's court attorney, the
16 child's attorney and the referring law enforcement agency that
17 the child's records are subject to sealing.

18 I. Youthful offender records sealed pursuant to
19 Subsection H of this section may be unsealed by the court along
20 with any evidence given in a hearing in court for a youthful
21 offender for the purpose of considering the setting of bail or
22 other conditions of release of a person charged with a felony,
23 whether charged as an adult or juvenile.

24 J. A child who is determined by the court not to be
25 a delinquent offender shall have the child's files and records

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1 in the instant proceeding automatically sealed by the court
2 upon motion by the children's court attorney at the conclusion
3 of the proceedings.

4 K. After sealing, the department may store and use
5 a person's records for research and reporting purposes, subject
6 to the confidentiality provisions of Section 32A-2-32 NMSA 1978
7 and other applicable federal and state laws.

8 L. Records of a juvenile disposition involving use
9 of a firearm for a delinquent act that would be a felony if
10 committed by an adult shall be made available to federal
11 authorities for purposes of conducting a federal instant
12 background check pursuant to 18 U.S.C. Section 922(t) and state
13 and local law enforcement for purposes of determining whether a
14 person may receive, transport or possess a firearm or
15 destructive device in New Mexico pursuant to Subsection A of
16 Section 30-7-16 NMSA 1978."