

LFC Requester:	Scott Sanchez
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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 25, 2024
Bill No: Senate Bill 178

Sponsor: Sens. Daniel Ivey-Soto, Kathleen Cates and Debra M. Sariñana
Short Title: Sealing Records & Background Checks

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 178 would amend Section 32A-2-26 NMSA 1978 to allow the disclosure of sealed juvenile records pursuant to an inquiry made pursuant to a federal instant background check.

Senate Bill 178 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 - none

SIGNIFICANT ISSUES - Federal law restricts persons under the age of twenty-one from legally being able to purchase a handgun but allows a person who is eighteen years old to buy a long gun, including an assault weapon. 18 U.S.C. 922(b)(1) 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. The FBI must complete the background checks within three business days.

In 2022, Congress enacted the Bipartisan Safer Communities Act requiring the FBI to contact state juvenile justice and mental health repositories and local law enforcement whenever a person under the age of twenty-one attempts to purchase a gun from a licensed firearms dealer. 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 attempting to purchase a firearm. Potential disqualifying records include criminal records and involuntary mental health commitments.

In New Mexico, the Administrative Office of the Courts (AOC) was identified as the only entity that has access to juvenile and mental health records. In January 2023, the AOC began processing these enhanced background checks for attempted gun purchasers between 18 and 20 years old who are legal residents of New Mexico, commonly referred to as “U21” checks. From January 3, 2023 – January 16, 2024, the FBI reports that the AOC processed:

- 3,420 - Juvenile U21 checks for New Mexico residents
- 3,201 – Purchases allowed to proceed
- 15 – Purchases denied (based on current criminal history-not as a result of the enhanced outreach)
- 10 - Purchases denied based upon enhanced outreach only

The AOC is prohibited from disclosing any sealed juvenile dispositions under Section 32A-2-26(C) NMSA 1978 of the Children’s Code, which states, “Upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted. The court, law enforcement officers and departments and agencies shall reply, and the person may reply, to an inquiry that no record exists with respect to the person.” Currently, if a juvenile criminal record is sealed, the AOC must respond that “no records exist” to an enhanced background check for a firearm purchase. SB 178 would allow the AOC to disclose sealed juvenile criminal records to the FBI as part of the enhanced U21 background request.

PERFORMANCE IMPLICATIONS – none identified.

ADMINISTRATIVE IMPLICATIONS – none identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP – none identified.

TECHNICAL ISSUES

Under 18 U.S.C. § 922(g), federal law defines nine categories that prohibit a person from being able to possess or receive a firearm or ammunition. The nine categories include a person: (1) convicted of a felony offense, (2) who is a fugitive from justice, (3) who is an unlawful user/addicted to any controlled substance, (4) adjudicated as mental defective, (5) illegally in the United States, (6) dishonorably discharged from the Armed Forces, (7) who has renounced their citizenship, (8) subject to a domestic violence order of protection and (9) convicted of a misdemeanor crime of domestic violence.

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 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>

OTHER SUBSTANTIVE ISSUES

Under New Mexico law, proceedings on a petition under the Delinquency Act (Children’s Code) “shall not be deemed a conviction of a crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime.” Section 32A-2-18 NMSA 1978.

ALTERNATIVES – none.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS – none.