

LFC Requester:	
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AGENCY BILL ANALYSIS
2016 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: Date Jan. 14, 2016
Original Amendment Bill No: HB 091
Correction Substitute

Sponsor: Nate Gentry Agency Code: 264
Short Title: Background Check Reporting for Firearms Person Writing: Gary Cade
Phone: 505-507-7752 Email: cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 91 would create a new statute in Chapter 34, Court Structure and Administration, that would charge the Administrative Office of the Courts (“AOC”) with reporting “...information from court proceedings relating to a person’s eligibility to possess a firearm or ammunition pursuant to state or federal law to the federal bureau of investigations national instant criminal background check system (“NCIC”).” It would also charge AOC with reporting to NCIC any person “who has been adjudicated as a mental defective or committed to a mental institution” and is prohibited by federal law from receiving or possessing a firearm or ammunition, and informing the person that the adjudication prohibits them from possessing a firearm or ammunition. The bill would also establish a procedure for persons adjudicated a mental defective or committed to a mental institution to petition the court to restore their right to receive and possess a firearm and ammunition and right to be eligible for a concealed handgun license.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

HB 91 states that AOC must obtain and electronically transmit information from court proceedings relating to a person’s eligibility to receive or possess a firearm or ammunition pursuant to state or federal law. 18 U.S.C. 922(g)(1) makes possession of a firearm or ammunition by the following list of persons illegal: anyone convicted of a crime in any court punishable by imprisonment for more than one year; fugitive from justice; unlawful user of or addicted to a controlled substance; has been adjudicated as a mental defective or committed to a mental institution; alien who is illegally in the United States or in violation of their non-immigrant visa; dishonorably discharged from the armed forces; U.S. citizen who has renounced their citizenship; subject to a restraining order from any court against harassing, stalking or threatening their intimate partner or child(ren); and, convicted of a misdemeanor crime of domestic violence in any court. 18 U.S.C. 922(d)(1) makes it illegal for anyone to sell or otherwise dispose of a firearm or ammunition to anyone in those categories, and also including anyone under indictment for a felony. As drafted, HB 91 would require AOC to report to NCIC not only all felony convictions, but also all felony indictments. AOC would then have to send another report if the person was not convicted, unless they were convicted of a domestic violence offense, even if that is a misdemeanor. The prescribed deadline for submitting the reports to NCIC is ten days within receipt of the information to correct, modify or remove information regarding eligibility to receive or possess a firearm or ammunition.

It could potentially require AOC to also report on persons on bench warrants, persons charged with possession (by use) of controlled substances, aliens who made admissions regarding their immigration status in court proceedings, and monitor petitions for a restraining order in cases involving domestic violence, in addition to reporting on the cases involving persons adjudicated as a mental defective or committed to a mental institution. Since misdemeanor domestic violence cases can be prosecuted in district, magistrate and metropolitan courts AOC would have to monitor convictions in all of those courts. Aliens who might have appearances in all those courts and bench warrant cases in all could make it very challenging for AOC to report on all of the persons possibly ineligible to possess firearms or ammunition.

Another significant portion of HB 91 is the requirement for AOC to report to NCIC, and to any person "...adjudicated as a mental defective or committed to a mental institution" regarding their eligibility to receive or possess a firearm. The bill states those terms would have the same meaning stated in their definitions in the federal regulations. Mental defective is defined in 27 CFR Sect. 478.11 as someone who is a danger to themselves or others, or lacks the mental capacity to contract or manage their affairs, and expressly includes someone found insane in a criminal case or found incompetent to stand trial or not guilty by reason of lack of mental responsibility.

Competency to proceed in a New Mexico criminal case can be raised at any time in the proceedings and in any court. See, Sect. 31-9-1, NMSA 1978. A district judge can determine that a defendant is not competent to proceed and dismiss the case, without prejudice, but can still order a defendant confined. See, Sect. 31-9-1.2(A), NMSA 1978. If the case is not dismissed the court can commit the defendant for treatment to attain competency but some persons can be refused acceptance at a mental institution or if accepted released later whether they have attained competency or not. See, Sect. 31-9-1.2(B) and Sects. 31-9-1.2(C), 31-9-1.3, 31-9-1.4, 31-9-1.5 and 31-9-1.6, NMSA 1978. The competency proceedings suppose that some persons will be transferred for proceedings under the Mental Health and Developmental Disabilities Code (See, Sect. 43-1-1, NMSA 1978) but those proceedings are not required.

HB 91 would permit persons who have been adjudicated as a mental defective or committed to a mental institution to petition the court that originated the order, judgment or verdict, or another court of competent jurisdiction, to remove those disabilities against possessing a firearm or ammunition. The bill requires the petition to be served on the attorney general ("AG") and "all parties to the proceedings resulting in a court order, judgment or verdict." It is unclear if "all parties to the proceeding" would include the prosecuting attorney's office, defendant's attorney(s), victim(s) of the defendant's crime(s), state department of health, and—if applicable—other qualified health care professionals, and potentially even a guardian ad litem. It is also unclear what role the AG and those possible other parties may take in the proceedings provided for if a petition is filed. The bill would require the court to take evidence from the petitioner "...concerning: (1) the circumstances regarding the firearm disabilities from which relief is sought; (2) the petitioner's mental health and criminal history records, if any; (3) the petitioner's reputation, developed, at a minimum through character witness statements, testimony or other character evidence; and (4) changes in the petitioner's condition or circumstances since the original order...that are relevant to the relief sought." It is unclear if the proceeding would be adversarial or if the other parties involved could even challenge evidence from the petitioner or cross-examine persons testifying in their behalf, or if they could offer evidence in contradiction or rebuttal to the petitioner. It is also unclear if another court of competent jurisdiction would have to be in the same judicial district as the court that entered the original order. The judge must find a "...preponderance of evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that granting the relief will not be contrary to the public interest" before

restoring the petitioners' right to receive or possess a firearm or ammunition. If the judge found for the petitioner then AOC would be required to report that change in status to NCIC. Petitions could not be filed more than once every two years and could not be filed by a person committed to a mental institution until after they had been discharged. Information regarding the proceedings involving persons with mental disabilities that could prohibit them from receiving or possessing a firearm or ammunition would be confidential and exempt from disclosure as a public record under the bill. Since competency proceedings are, ordinarily, done in open court and included in court filings, the limited disclosures could be problematic.

FISCAL IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS