

LFC Requester:

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AGENCY BILL ANALYSIS  
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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*{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 Feb. 8, 2016

Bill No: SB 331-SJC sub

Sponsor: Michael Sanchez

Agency Code: 264

Short Background Check Reporting

Person Writing Gary Cade

Title: for Firearms

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)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **HB 091**  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: The Senate Judiciary Committee substitute (“SJC sub”) for SB 331 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 investigation (“FBI”) national instant criminal background check system (“NCIC”).” It would also charge AOC with reporting to the FBI 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**

The SJC sub for SB 331 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, the SJC sub for SB 331 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 the SJC sub for SB 331 is the requirement for AOC to report to NCIC, and also to any person "...adjudicated as a mental defective or committed to a mental institution" that they are "disabled pursuant to federal law from receiving or possessing a firearm or ammunition." The bill states "... 'adjudicated as a mental defective' and 'committed to a mental institution'" would have the same meanings as 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.

The SJC sub for SB 331 would permit persons who have been adjudicated 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 that are provided for if a petition is filed.

The SJC sub for SB 331 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." (Emphasis added) It is unclear if the proceeding would be adversarial or even if the other parties involved could challenge evidence from the petitioner or cross-examine persons testifying for the petitioner, or if the other parties could offer their own evidence in contradiction or rebuttal. It is also unclear if another court of competent jurisdiction would even have to be in the same judicial district as the court that entered the original order. The judge considering the petition 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 petitioner's right to receive or possess a firearm or ammunition.

If the judge found for the petitioner then AOC and "...any other state agency as applicable" would be required to promptly update the change in status in their own data bases. The AOC and any applicable state agencies would also be charged with reporting to the United States Attorney General ("USAG") for purpose of reporting a change in status to the NCIC that the petitioner was no disabled under federal law from receiving or possessing a firearm. It is unclear why removal of the disability that disqualifies someone from receiving or possessing a firearm should be reported to the USAG so they could report it to the NCIC, since AOC would be required to report the initial disqualifying information to the FBI for inclusion in the NCIC. It's also unclear why any other applicable state agencies would also be charged with reporting a change in the petitioner's status to the USAG.

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 expressly exempted from disclosure as a public record under the SJC sub for SB 331. 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**

Same as HB 91

## **TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

Status quo.

**AMENDMENTS**