

<b>LFC Requester:</b>	<b>Julia Downs</b>
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**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto: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** January 13, 2016  
**Original**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_  
**Bill No:** HB 91

**Sponsor:** Nate Gentry & Paul A. Pacheco    **Agency Code:** Attorney General's Office  
**Short Title:** Background Check Reporting for Firearms    **Person Writing:** Jason Yamato  
**Phone:** 505-222-9163    **Email:** jyamato@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</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 51.

Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

**BILL SUMMARY**

House Bill 91 tasks the Administrative Office of the Courts (“AOC”) with reporting instances to the Federal government in which a person is disqualified from owning a firearm.

HB 91 first mandates that AOC electronically notify the FBI’s National Instant Criminal Background Check System (“NICS”) of court proceedings “relating to” one’s eligibility to receive or possess a gun under State or Federal law. AOC has a continuing duty to update the NICS as it becomes aware of changes.

HB 91 also provides that AOC electronically notify the NICS if a person “has been adjudicated as a mental defective or committed to a mental institution” (as defined by Federal law) and is thus disqualified federally from possessing a gun. AOC can only transmit basic identifying information, and it must give the person prior notice.

One deemed mentally unfit may petition a court to again own a gun, and this petition must be served on all original parties, as well as the Attorney General. An appealable, on-the-record evidentiary hearing follows in which the petitioner must show by a preponderance of the evidence through essentially character evidence and changed circumstances that he “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.” One may petition every two years (but not while in a mental institution). If a court grants relief, AOC and other state agencies must update their records, and notify the Federal government the reason the restriction no longer applies.

AOC is broadly forbidden from disclosing any information regarding a restriction stemming from a mental defect, except to the affected person. AOC must promulgate rules to implement HB 91.

**FISCAL IMPLICATIONS**

HB 91 places new responsibilities upon AOC without directly providing any funding to aid in its implementation.

## **SIGNIFICANT ISSUES**

1. Section 1(J) proposes to make mental-health related information not subject to public disclosure, but fails to mention sealing this information.
2. The petition process is unclear. The following questions remain unanswered: Is it adversarial? Do evidentiary rules apply? Is the Attorney General the exclusive representative of the State in these proceedings?

## **PERFORMANCE IMPLICATIONS**

n/a

## **ADMINISTRATIVE IMPLICATIONS**

n/a

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Section 10 of HB 51 (Firearm Transfer Act) imposes virtually identical requirements on AOC to transmit relevant court proceedings to the NICS, and provides for the same mechanism to petition to have one's firearm restriction lifted. It appears Section 10 of HB 51 is substantially the same as HB 91.

## **TECHNICAL ISSUES**

None.

## **OTHER SUBSTANTIVE ISSUES**

None.

## **ALTERNATIVES**

n/a

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

Status quo.

## **AMENDMENTS**

None.