

LFC Requester:	JULIA DOWNS
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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** 8 February, 2016
Original **Amendment** **Bill No:** SB 331
Correction **Substitute**

Sponsor: Sen. Sanchez **Agency Code:** 305
Short PUBLIC PEACE, HEALTH, **Person Writing** Mona Valicenti, AAG
Title: SAFETY & WELFARE **Phone:** 827-6994 **Email** mvalicenti@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)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: HB 91

Relates to: HB 51

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

SB 331(substitute) amends Chapter 34, Article 9 by adding a new section mandating that the Administrative Office of the Courts (“OAC”) electronically notify the FBI’s National Instant Criminal Background Check System (“NICS”) of court proceedings “relating to a person’s eligibility to receive or possess a firearm or ammunition” under State or Federal law. AOC has a continuing duty to update the NICS, as soon as practicable within ten days of becoming aware of any changes to the person’s eligibility.

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 the court that originated the order to remove the person’s firearm disability and restore the person’s right to possess a firearm and ammunition as well as the right to be eligible for a concealed handgun license. A copy of the petition shall 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 the petitioner relief, AOC and other state agencies must each update their records, and promptly notify the U.S. attorney general, for purposes of reporting to the NICS, the reason why 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 SB 331.

FISCAL IMPLICATIONS None to this Office.

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.
The last sentence stating that “Information compiled and transmitted under this section is *not a public record* and is not subject to disclosure pursuant to the Inspection of Public Records” should be rephrased. The document is a public record, however it is excepted from inspection under the IPRA.
Rephrasing as follows may be a more accurate statement of the law: “Information compiled and transmitted under this section is not subject to disclosure pursuant to the Inspection of Public Records Act.”
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

SB 331 is identical to HB 91.

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.

TECHNICAL ISSUES N/A

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES See significant issues.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo

AMENDMENTS None