

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 331

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
REQUIRING REPORTS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND
CHECK SYSTEM; REQUIRING THE ADMINISTRATIVE OFFICE OF THE COURTS
AND OTHERS TO REPORT COURT PROCEEDINGS, ADJUDICATIONS AND
REDETERMINATIONS RELATING TO THE ELIGIBILITY OF A PERSON TO
RECEIVE OR POSSESS A FIREARM OR AMMUNITION OR TO OBTAIN A
CONCEALED HANDGUN LICENSE TO THE FEDERAL BUREAU OF
INVESTIGATION'S NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
SYSTEM; PROVIDING FOR A RIGHT TO INSPECT AND CORRECT RECORDS;
REQUIRING RULEMAKING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 34, Article 9 NMSA
1978 is enacted to read:

"[NEW MATERIAL] REPORTING TO THE NATIONAL INSTANT CRIMINAL

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underscored material = new
[bracketed material] = delete

1 BACKGROUND CHECK SYSTEM.--

2 A. In any circumstance other than that described in
3 Subsection B of this section, the administrative office of the
4 courts shall obtain and electronically transmit information
5 from court proceedings relating to a person's eligibility to
6 receive or possess a firearm or ammunition pursuant to state or
7 federal law to the federal bureau of investigation's national
8 instant criminal background check system. The administrative
9 office of the courts shall also be responsible for notifying,
10 as soon as practicable within ten days of receipt of the
11 information, the federal bureau of investigation to update,
12 correct, modify or remove information affecting a person's
13 eligibility to receive or possess a firearm or ammunition
14 pursuant to state or federal law in the national instant
15 criminal background check system.

16 B. The administrative office of the courts shall
17 electronically transmit information about a court order,
18 judgment or verdict to the federal bureau of investigation for
19 entry into the national instant criminal background check
20 system regarding each person who has been adjudicated as a
21 mental defective or committed to a mental institution and is
22 therefore, pursuant to federal law, disabled from receiving or
23 possessing a firearm or ammunition.

24 C. Upon entry of a court order, judgment or verdict
25 referred to in Subsection B of this section, the administrative

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1 office of the courts shall transmit to the federal bureau of
2 investigation only that information necessary to identify the
3 person for the sole purpose of inclusion in the national
4 instant criminal background check system. The administrative
5 office of the courts, consistent with rules promulgated
6 pursuant to Subsection L of this section, shall also notify the
7 person that, as an adjudicated mental defective or as a person
8 committed to a mental institution, the person is disabled
9 pursuant to federal law from receiving or possessing a firearm
10 or ammunition.

11 D. A person who has been adjudicated as a mental
12 defective or committed to a mental institution and is
13 therefore, pursuant to federal law, disabled from receiving or
14 possessing a firearm or ammunition or, pursuant to state law,
15 is ineligible for a concealed handgun license may petition the
16 court that originated the order, judgment or verdict or another
17 court of competent jurisdiction to remove that person's
18 firearm-related disabilities and restore the person's right to
19 receive and possess a firearm and ammunition and the right to
20 be eligible for a concealed handgun license. A copy of the
21 petition seeking relief from disabilities shall be served upon
22 the office of the attorney general and upon all parties to the
23 proceeding resulting in a court order, judgment or verdict
24 described in Subsection B of this section.

25 E. The court shall conduct a hearing and receive

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1 and consider evidence on a petition for relief described in
2 Subsection D of this section, including evidence offered by the
3 petitioner, concerning:

4 (1) the circumstances regarding the firearm
5 disabilities from which relief is sought;

6 (2) the petitioner's mental health and
7 criminal history records, if any;

8 (3) the petitioner's reputation, developed, at
9 a minimum, through character witness statements, testimony or
10 other character evidence; and

11 (4) changes in the petitioner's condition or
12 circumstances since the original court order, judgment or
13 verdict that are relevant to the relief sought.

14 F. After conducting a hearing on the petition, the
15 court shall grant the petition for relief from the disability
16 reported pursuant to Subsection B of this section if the court
17 finds by a preponderance of the evidence that the petitioner
18 will not be likely to act in a manner dangerous to public
19 safety and that granting the relief will not be contrary to the
20 public interest.

21 G. A record shall be kept of the proceedings held
22 pursuant to Subsection E of this section. The decision of the
23 court may be appealed.

24 H. Regardless of whether an earlier decision has
25 been appealed, a person may petition for relief pursuant to

1 Subsection D of this section not more than once every two years
2 and, in the case of a person who was committed to a mental
3 institution, not before the person has been discharged from
4 that commitment.

5 I. Upon the entry of a court order granting relief
6 from disabilities pursuant to Subsection F of this section, and
7 as soon as practicable within ten days of receipt of the court
8 order granting relief, the administrative office of the courts
9 and any other state agency as applicable shall each be
10 separately responsible for updating, correcting, modifying or
11 removing the petitioner's record from their own databases that
12 they make available to the national instant criminal background
13 check system and each shall promptly notify the United States
14 attorney general for the purpose of reporting to the national
15 instant criminal background check system that the basis for the
16 petitioner being disabled pursuant to federal law from
17 receiving or possessing a firearm or ammunition no longer
18 applies.

19 J. The administrative office of the courts is
20 prohibited from disclosing information regarding a court order,
21 judgment or verdict referred to in Subsection B of this section
22 or regarding a petitioner or proceedings under this section,
23 except as otherwise provided by law. Information compiled and
24 transmitted under this section is not a public record and is
25 not subject to disclosure pursuant to the Inspection of Public

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1 Records Act.

2 K. A person who is the subject of information
3 compiled or transmitted by the administrative office of the
4 courts pursuant to this section, or the person's authorized
5 representative, has a right to obtain, inspect and correct
6 information compiled or transmitted.

7 L. The administrative office of the courts shall
8 promulgate rules relating to the inspection and correction of
9 information contained in its records and relating to the
10 transmission of corrected information by the office for
11 inclusion in the national instant criminal background check
12 system database and other rules as necessary to implement the
13 provisions of this section.

14 M. As used in this section, the terms "adjudicated
15 as a mental defective" and "committed to a mental institution"
16 have the same meaning as those terms are defined in federal
17 regulations at 27 C.F.R. Section 478.11, as amended or
18 renumbered."