

HB 1339-FN - AS AMENDED BY THE HOUSE

22Feb2024... 0605h

2024 SESSION

24-2127

09/08

HOUSE BILL

***1339-FN***

AN ACT                    relative to background checks during motions to return firearms and ammunition.

SPONSORS:            Rep. Stone, Sull. 8; Rep. Tenczar, Hills. 1; Rep. D. Mannion, Rock. 25; Rep. Janvrin, Rock. 40; Rep. McGough, Hills. 12

COMMITTEE:          Criminal Justice and Public Safety

---

AMENDED ANALYSIS

This bill provides a procedure for conducting a discretionary background check prior to the return of firearms and/or ammunition in a court proceeding.

-----

Explanation:          Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears ~~[in brackets and struckthrough]~~  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Four*

AN ACT relative to background checks during motions to return firearms and ammunition.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1       1 New Section; Criminal Background Checks; Motions for the Return of Firearms and  
2 Ammunition. Amend RSA 159-D by inserting after section 3 the following new section:

3       159-D:4 Motions for the Return of Firearms and Ammunition.

4       I. In any matter pending before a court in New Hampshire where firearms and/or  
5 ammunition have been seized or removed from an individual in connection with a restraining order  
6 issued under RSA 173-B or RSA 633:3-a, an order pertaining to a criminal proceeding such as a bail  
7 order, or any other order issued pursuant to the statutory or equitable authority of a court, the  
8 individual whose firearms and/or ammunition property has been seized or removed shall be entitled  
9 to the prompt return of his or her property upon the termination or expiration of the relevant order,  
10 unless such individual is explicitly prohibited from receiving said property by state or federal  
11 statute.

12       II. A court shall not be required to request, conduct, or receive the results of a background  
13 check prior to returning firearm property to its owner. Should any New Hampshire court require, at  
14 its discretion, that a background check be conducted on an individual prior to the return of his or her  
15 firearm property, the following conditions shall apply:

16       (a) Upon receipt of a motion or other request for the return of firearms, whether written  
17 or oral, the court shall request a National Instant Criminal Background Check System (NICS) check  
18 with the New Hampshire department of safety within 2 business days.

19       (b) The department of safety shall initiate a NICS check and shall provide a conclusive  
20 response to the court within 10 business days of receiving the court's request stating either "proceed"  
21 or "deny." A "deny" response shall only be provided if the NICS check depicts that the individual is  
22 clearly prohibited from possessing a firearm pursuant to state or federal law. If the NICS check is  
23 inconclusive and the department of safety cannot explicitly demonstrate that the individual is  
24 prohibited from possessing a firearm within 10 business days of the court's request, the department  
25 of safety may provide a "proceed" response to the requesting court.

26       (c) If the department of safety issues a "deny" response, it must provide a specific  
27 citation to statute, such as one of the prohibited categories included in 18 USC §922(g), and a  
28 narration of the specific facts relied upon for finding that the individual is prohibited from  
29 possessing a firearm. The narration supporting a "deny" response shall be held in a confidential  
30 record with the court and only accessible to court staff, the individual seeking the return of firearms,  
31 and his or her designated legal counsel.

**HB 1339-FN - AS AMENDED BY THE HOUSE**

**- Page 2 -**

1           (d) Should the court receive a “deny” response from the department of safety, the  
2 individual seeking the return of firearms property shall be promptly notified and may, within 10  
3 business days of receiving notice, request that the court hold a hearing on the matter. Any such  
4 hearing shall be scheduled within 10 business days of the court's receiving such a request. At the  
5 hearing, the department of safety shall attend and shall hold the burden to demonstrate, by clear  
6 and convincing evidence, that the individual seeking the return of firearms property is prohibited  
7 from receiving said property under state or federal law. Should the department of safety fail to  
8 attend or to meet its burden, the court shall order that the firearms property at issue be returned.

9           (e) Should any person seeking the return of firearms be aggrieved by an order made by  
10 the trial court pursuant to the department of safety's determination pursuant to subparagraph II(c),  
11 or the court's determination after conducting a hearing as set forth in subparagraph II(d), such  
12 person shall be entitled to appeal the court's decision within 30 days, and have his or her case heard  
13 by the New Hampshire supreme court. In any such case, a transcript of the proceedings and the  
14 trial court's record shall be transmitted to the supreme court in full, without any fee charged to the  
15 petitioner.

16           2 Effective Date. This act shall take effect January 1, 2025.

**HB 1339-FN- FISCAL NOTE**  
AS AMENDED BY THE HOUSE (AMENDMENT #2023-0605h)

AN ACT                      relative to background checks during motions to return firearms and ammunition.

**FISCAL IMPACT:**    ☒ State                      ☐ County                      ☐ Local                      ☐ None

| Estimated State Impact - Increase / (Decrease) |              |   |         |         |
|--|--------------|---|---------|---------|
|  | FY 2024      | FY 2025   | FY 2026 | FY 2027 |
| Revenue  | \$0          | \$0   | \$0     | \$0     |
| Revenue Fund(s)                                | None         |   |         |         |
| Expenditures                                   | \$0          | Department of Safety Position<br>\$68K in FY25, \$71K in FY26, and \$73K in FY27<br><br>Judicial Branch - Indeterminable Increase |         |         |
| Funding Source(s)                              | General Fund |   |         |         |
| Appropriations                                 | \$0          | \$0   | \$0     | \$0     |
| Funding Source(s)                              | None         |   |         |         |

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

**METHODOLOGY:**

This bill, effective January 1, 2025, provides for conducting a discretionary background check prior to the court ordered return of firearms. The bill seeks to set time parameters by which the court must hold hearings on the return of firearms that have been seized pursuant to RSA 173-B and 633:3, (bail order, CBPO) or any other order as issued by the court. Furthermore, the bill specifies how the Department of Safety shall operate relative to conducting checks and providing the court with responses to those checks and what information shall be contained in those responses. The bill also allows for an appeals process. The Department states this bill's exact impact on increased workflow is unknown. At present, the New Hampshire State Police Gun Line staff perform "NICS" checks for court-ordered return of firearms for most of all civil cases throughout the State. Additionally, and often, the staff is called upon to assist local law enforcement with return-of-firearms issues, supplementing the local law enforcement effort. This bill speaks to a specific process and certainly allows the courts in every instance to seek assistance from the Department in all return-of-firearms proceedings potentially bypassing the local police effort and potentially funneling all workflow through the Department. As a result, the Department states it is assumed the workload will increase, the extent of which is currently unknown and unpredictable.

Given the time constraints placed upon the process defined in the bill, the Department states it is unlikely that the workload can be absorbed within its current staffing and states one (1) additional staff member (program assistant II, LG 15) would need to be added. Assuming a start date of September 1, 2024, the estimated cost for this position is \$58,000 in FY 2025, \$71,000 in FY 2026, and \$73,000 in FY 2027. The Department also states it would need approximately \$10,000 in FY 2025 to outfit the new position (equipment, supplies, etc.). This bill provides neither authorization nor appropriation for new personnel.

The Judicial Branch states it is not known how many cases will require hearings or the complexity of arguments that will be raised in those hearings under this bill. The Branch states this will result in an indeterminable increase in litigation.

**AGENCIES CONTACTED:**

Department of Safety and Judicial Branch