

SENATE BILL NO. 477

INTRODUCED BY E. BOLDMAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; PROVIDING A PROCEDURE FOR CERTAIN PEOPLE WHO HAVE LOST THEIR RIGHT TO POSSESS A FIREARM DUE TO A DETERMINATION OF A MENTAL DISEASE OR DEFECT TO REGAIN THEIR RIGHT TO POSSESS A FIREARM; REQUIRING A DISTRICT COURT GRANTING A PETITION TO RESTORE A PERSON'S RIGHT TO POSSESS A FIREARM OR MAKING ANY TYPE OF FINDING THAT A PERSON SUFFERS FROM A MENTAL DISEASE OR DEFECT OR IS AN INCAPACITATED PERSON TO FORWARD A COPY OF THE ORDER TO THE DEPARTMENT OF JUSTICE; REQUIRING THE DEPARTMENT OF JUSTICE TO UPDATE THE FEDERAL BUREAU OF INVESTIGATION AND THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; REQUIRING A DISTRICT COURT TO FORWARD CERTAIN ORDERS OF COMMITMENT TO THE DEPARTMENT OF JUSTICE; REQUIRING THE DEPARTMENT OF JUSTICE TO NOTIFY CERTAIN PERSONS WHOSE FIREARM POSSESSION RIGHTS HAVE BEEN REMOVED OF THE RIGHT TO PETITION A COURT TO REMOVE THE FIREARMS DISABILITY; AND AMENDING SECTIONS 44-2-206 AND 53-21-166, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Relief from firearms disabilities.** (1) A district court shall make a finding as to whether a person who is the subject of an order, adjudication, or commitment is a person to whom the provisions of 18 U.S.C. 922(g)(4) apply in each of the following situations:

- (a) when a district court orders commitment under Title 53, chapter 21, part 1;
- (b) when a guardian or conservator of an incapacitated person is appointed under Title 72, chapter 5, part 3;
- (c) when a district court finds a defendant lacks fitness to proceed under 46-14-221; or
- (d) when a defendant is found not guilty by reason of mental disease or defect under Title 46,

1 chapter 14, part 2.

2 (2) If the court finds that a person is the subject of an adjudication or commitment to whom the  
3 provisions of 18 U.S.C. 922(g)(4) apply as provided in subsections (1)(a) through (1)(d), the court shall order  
4 the clerk of the district court to forward a copy of the order to the department of justice, which shall forward a  
5 copy to the federal bureau of investigation or its successor agency for inclusion in the national instant criminal  
6 background check system database.

7 (3) A person who is subject to the provisions of 18 U.S.C. 922(g)(4) or an order, including an  
8 appointment or finding described in subsection (1), as a result of an adjudication or commitment that occurred  
9 in this state may petition the district court that issued the order to remove the person's firearms-related  
10 disabilities as provided in section 105(a) of Public Law 110-180. A copy of the petition for relief must also be  
11 served on the director of the department of public health and human services and the county attorney of the  
12 county in which the original order, appointment, or finding occurred. The department of public health and  
13 human services and the county attorney may appear, support, and object to and present evidence relevant to  
14 the relief sought by the petitioner. The court must receive and shall consider evidence, including evidence  
15 offered by the petitioner, concerning:

16 (a) the circumstances of the original adjudication, commitment, appointment, or finding;

17 (b) the petitioner's mental health and criminal history records, if any;

18 (c) the petitioner's reputation; and

19 (d) changes in the petitioner's condition or circumstances relevant to the relief sought.

20 (4) If the petitioner, the department of public health and human services, or the county attorney  
21 requests a hearing, the court shall hold a hearing and receive and consider evidence, including evidence  
22 offered by the petitioner, concerning the factors listed in subsections (3)(a) through (3)(d).

23 (5) The court shall grant the petition for relief if it finds by a preponderance of the evidence that the  
24 petitioner is not likely to act in a manner dangerous to public safety and that granting the relief would not be  
25 contrary to the public interest. The petitioner may appeal a denial of the requested relief, and review on appeal  
26 must be de novo. A person may file a petition for relief under this section no more than once every 2 years.

27 (6) When a court issues an order granting a petition for relief under this section, the clerk of the  
28 district court shall immediately forward a copy of the order to the department of justice, which in turn shall

1 immediately forward a copy to the federal bureau of investigation or its successor agency for inclusion in the  
2 national instant criminal background check system database.

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4 **NEW SECTION. Section 2. Notification of person whose rights to possess firearms removed.**

5 Within 5 years of transmitting information to the national instant criminal background check system database as  
6 required in 44-2-206(2) for a person to whom the provisions of 18 U.S.C. 922(g)(4) apply as provided in [section  
7 1(1)(a) or (1)(b)] and every subsequent 5 years, the department of justice shall notify the person of the person's  
8 right to use the process provided in [section 1(3) through (6)] to have the firearms disability removed. The  
9 notification must include a sample petition and contact information for the district court of the county in which  
10 the person resides at the time of the notification.

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12 **Section 3.** Section 44-2-206, MCA, is amended to read:

13 **"44-2-206. Cooperation with FBI and other states.** The department shall:

14 (1) cooperate with identification bureaus in other states and with the federal bureau of investigation  
15 to develop and carry on a complete interstate and international system of criminal identification and  
16 investigation; and

17 (2) obtain and electronically transmit to the national instant criminal background check system  
18 database, in accordance with federal law, information relating to eligibility to receive or possess a firearm  
19 pursuant to state or federal law. Upon notification to the department that the basis for any information  
20 previously transmitted to the database does not apply or no longer applies, the department shall, as soon as is  
21 practicable, notify the system of the change and shall update, correct, or modify the information or remove it  
22 from the database."

23

24 **NEW SECTION. Section 4. Commitment order to department of justice.** If a court commits the  
25 respondent as provided in 53-21-127(3), the court shall forward the order to the department of justice for  
26 inclusion in the national instant criminal background check system database.

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28 **Section 5.** Section 53-21-166, MCA, is amended to read:

1           **"53-21-166. Records to be confidential -- exceptions.** All information obtained and records  
2 prepared in the course of providing any services under this part to individuals under any provision of this part  
3 are confidential and privileged matter and must remain confidential and privileged after the individual is  
4 discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be  
5 disclosed only:

6           (1)       in communications between qualified professionals in the provision of services or appropriate  
7 referrals;

8           (2)       when the recipient of services designates persons to whom information or records may be  
9 released or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing  
10 persons to whom records or information may be disclosed. However, this section may not be construed to  
11 compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal  
12 information that has been given to the physician, psychologist, social worker, nurse, attorney, or other  
13 professional person in confidence by members of a patient's family.

14           (3)       to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical  
15 assistance to which a recipient may be entitled;

16           (4)       for research if the department has promulgated rules for the conduct of research. Rules must  
17 include but are not limited to the requirement that all researchers shall sign an oath of confidentiality.

18           (5)       to the courts as necessary for the administration of justice;

19           (6)       to persons authorized by an order of court, after notice and opportunity for hearing to the  
20 person to whom the record or information pertains and the custodian of the record or information pursuant to  
21 the rules of civil procedure;

22           (7)       to members of the mental disabilities board of visitors or their agents when necessary to  
23 perform their functions as set out in 53-21-104; ~~and~~

24           (8)       to the mental health ombudsman when necessary to perform the ombudsman functions as  
25 provided in 2-15-210; and

26           (9)       to the department of justice as necessary to perform its functions as set forth in 44-2-206,  
27 [section 1], and [section 2]."

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