

HOUSE BILL 442

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Paul A. Pacheco

AN ACT

RELATING TO PUBLIC SAFETY; PROVIDING CERTAIN MENTAL HEALTH
ADJUDICATION INFORMATION FOR BACKGROUND CHECKS RELATING TO THE
PURCHASE OR POSSESSION OF A FIREARM OR AMMUNITION; REQUIRING
THE ADMINISTRATIVE OFFICE OF THE COURTS TO REPORT A PERSON
ADJUDICATED A DANGER TO THAT PERSON'S SELF OR OTHERS OR A
PERSON COMMITTED TO A MENTAL HEALTH FACILITY TO THE FEDERAL
BUREAU OF INVESTIGATION FOR ENTRY INTO THE NATIONAL INSTANT
CRIMINAL BACKGROUND CHECK SYSTEM; LIMITING INFORMATION
REPORTED; PROVIDING PROCEDURES FOR THE PERSON WHO IS THE
SUBJECT OF THE REPORT TO SEEK A REDETERMINATION OF MENTAL
CONDITION AND RESTORATION OF THE RIGHT TO RECEIVE OR POSSESS
ANY FIREARM OR AMMUNITION; SETTING STANDARDS FOR A COURT TO
RESTORE THE RIGHT TO RECEIVE OR POSSESS ANY FIREARM OR
AMMUNITION; REQUIRING THE COURT TO SEAL THE RECORD OF SUCH
PROCEEDINGS; MAKING THE REPORT TRANSMITTED BY THE

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1 ADMINISTRATIVE OFFICE OF THE COURTS TO THE FEDERAL BUREAU OF
2 INVESTIGATION CONFIDENTIAL; PERMITTING DISCLOSURE ONLY TO THE
3 PERSON WHO IS THE SUBJECT OF SUCH REPORT OR THAT PERSON'S
4 AUTHORIZED REPRESENTATIVE; LIMITING THE USE OF SUCH REPORT;
5 PROVIDING THAT NO CAUSE OF ACTION SHALL BE BROUGHT FOR
6 TRANSMISSION, FAILURE TO TRANSMIT, DELAY IN TRANSMITTING OR
7 INACCURATE INFORMATION CONTAINED IN SUCH REPORT; PROVIDING A
8 RIGHT TO INSPECT AND CORRECT RECORDS; AUTHORIZING THE
9 DEPARTMENT OF PUBLIC SAFETY TO OVERSEE AND AUDIT REPORTING BY
10 THE ADMINISTRATIVE OFFICE OF THE COURTS; AUTHORIZING THE
11 ADMINISTRATIVE OFFICE OF THE COURTS AND THE DEPARTMENT OF
12 PUBLIC SAFETY TO PROMULGATE RULES.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. REPORTING TO THE NATIONAL INSTANT CRIMINAL
16 BACKGROUND CHECK SYSTEM.--

17 A. The administrative office of the courts shall
18 obtain and electronically transmit information from court
19 proceedings relating to eligibility to receive or possess a
20 firearm pursuant to state or federal law to the federal bureau
21 of investigation's national instant criminal background check
22 system. The administrative office of the courts shall also be
23 responsible for notifying, as soon as practicable, the federal
24 bureau of investigation to update, correct, modify or remove
25 information affecting a person's eligibility to receive or

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1 possess a firearm pursuant to state or federal law from the
2 national instant criminal background check system.

3 B. The administrative office of the courts shall
4 electronically transmit information to the federal bureau of
5 investigation for entry into the national instant criminal
6 background check system regarding each person who is the
7 subject of any court order, judgment or verdict that:

8 (1) results in the involuntary admission of a
9 person to a mental health facility;

10 (2) appoints a guardian for a person who lacks
11 capacity and who is a danger to that person's self or others;
12 or

13 (3) finds a person incompetent to manage that
14 person's own affairs and that the person is a danger to that
15 person's self or others.

16 C. Upon entry of a court order, judgment or verdict
17 referred to in Subsection B of this section, the administrative
18 office of the courts shall forward only such information as
19 necessary to identify the person to the federal bureau of
20 investigation for the sole purpose of inclusion in the national
21 instant criminal background check system.

22 D. A person reported to the federal bureau of
23 investigation by the administrative office of the courts
24 pursuant to Subsection B of this section may petition the court
25 that originated the order, judgment or verdict that was

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1 reported to the federal bureau of investigation, or any other
2 court of competent jurisdiction, for a redetermination of the
3 person's mental condition for the purpose of restoring the
4 person's right to receive or possess any firearm or ammunition.

5 A copy of the petition seeking a redetermination of mental
6 condition shall be served upon the office of the attorney
7 general and upon all parties to the proceeding resulting in a
8 court order, judgment or verdict described in Subsection B of
9 this section.

10 E. At the hearing on the petition, the person may
11 be represented by counsel of that person's choosing and shall
12 have the right to present evidence on that person's behalf,
13 including testimony by an independent mental health
14 professional of the person's choosing, and to cross-examine
15 witnesses.

16 F. Upon completion of the hearing on the petition,
17 the court may grant the person's petition to restore the
18 person's right to receive or possess any firearm or ammunition
19 if the court finds by clear and convincing evidence that the
20 person does not present a likelihood of serious harm to that
21 person's self or others, and that restoration of the person's
22 right to receive or possess any firearm or ammunition is not
23 contrary to the public interest.

24 G. A record shall be kept of the proceeding to
25 redetermine the person's mental condition for the purpose of

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1 restoring the person's right to receive or possess any firearm
2 or ammunition, but it shall be sealed and be disclosed only to
3 a court or the parties in the event of an appeal. The
4 petitioner may appeal a denial of the requested relief, and
5 review on appeal shall be de novo.

6 H. A person may petition for restoration of that
7 person's right to receive or possess any firearm or ammunition
8 under this section not more than once every two years and, in
9 the case of a person who was committed to a mental institution,
10 not before the person has been discharged from such commitment.

11 I. The administrative office of the courts shall
12 promptly notify the federal bureau of investigation upon the
13 entry of a court order restoring the person's right to receive
14 or possess any firearm or ammunition.

15 J. Information transmitted by the administrative
16 office of the courts pursuant to the provisions of this section
17 shall be confidential and may only be disclosed to the
18 department of public safety, the person who is the subject of
19 the report, or an authorized representative of the person who
20 is the subject of the report, and shall not be used for any
21 other purpose than inclusion in the national instant criminal
22 background check system. No cause of action shall be brought
23 for transmission, failure to transmit, delay in transmitting or
24 inaccurate information contained in such report.

25 K. A person who is the subject of a report made by

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1 the administrative office of the courts under this section, or
2 the person's authorized representative, has a right to inspect
3 and correct information contained in such report.

4 L. The administrative office of the courts shall
5 promulgate rules relating to the inspection and correction of
6 information contained in such report and relating to reporting
7 of corrected information by the office to the federal bureau of
8 investigation and such other rules as necessary to implement
9 the provisions of this section.

10 M. The department of public safety shall oversee
11 and audit the reporting by the administrative office of the
12 courts of persons disqualified from receiving or possessing any
13 firearm or ammunition under state or federal law to the federal
14 bureau of investigation's national instant criminal background
15 check system and shall promulgate rules necessary to implement
16 the provisions of this section.