

HOUSE HEALTH, GOVERNMENT AND INDIAN AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 442

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

AN ACT

RELATING TO PUBLIC SAFETY; REQUIRING THE ADMINISTRATIVE OFFICE
OF THE COURTS TO TRANSMIT INFORMATION FROM COURT PROCEEDINGS
RELATING TO ELIGIBILITY TO RECEIVE OR POSSESS A FIREARM TO THE
NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM, INCLUDING
CERTAIN MENTAL HEALTH ADJUDICATION INFORMATION; REQUIRING THE
ADMINISTRATIVE OFFICE OF THE COURTS TO REPORT INFORMATION
REGARDING A PERSON WHO HAS BEEN ADJUDICATED AS A MENTAL
DEFECTIVE OR COMMITTED TO A MENTAL HEALTH INSTITUTION 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

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

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

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

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

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1 information affecting a person's eligibility to receive or
2 possess a firearm pursuant to state or federal law in the
3 national instant criminal background check system.

4 B. The administrative office of the courts shall
5 electronically transmit information to the federal bureau of
6 investigation for entry into the national instant criminal
7 background check system regarding each person who has been
8 adjudicated as a mental defective or committed to a mental
9 institution, as those terms are defined in 27 C.F.R 478.11.

10 C. Upon entry of a court order, judgment or verdict
11 referred to in Subsection B of this section, the administrative
12 office of the courts shall forward only such information as
13 necessary to identify the person to the federal bureau of
14 investigation for the sole purpose of inclusion in the national
15 instant criminal background check system.

16 D. Consistent with federal law, a person reported
17 to the federal bureau of investigation by the administrative
18 office of the courts pursuant to Subsection B of this section
19 may petition the court that originated the order, judgment or
20 verdict that was reported to the federal bureau of
21 investigation, or any other court of competent jurisdiction,
22 for a redetermination of the person's mental condition for the
23 purpose of restoring the person's right to receive or possess
24 any firearm or ammunition. A copy of the petition seeking a
25 redetermination of mental condition shall be served upon the

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1 office of the attorney general and upon all parties to the
2 proceeding resulting in a court order, judgment or verdict
3 described in Subsection B of this section.

4 E. Upon completion of the hearing on the petition,
5 the court shall grant the person's petition to restore the
6 person's right to receive or possess any firearm or ammunition
7 if the court finds that the person will not be likely to act in
8 a manner dangerous to public safety and that restoration of the
9 person's right to receive or possess any firearm or ammunition
10 is not contrary to the public interest.

11 F. A record shall be kept of the proceeding to
12 redetermine the person's mental condition for the purpose of
13 restoring the person's right to receive or possess any firearm
14 or ammunition, but it shall be sealed and shall be disclosed
15 only to a court or the parties in the event of an appeal. The
16 petitioner may appeal a denial of the requested relief, and
17 review on appeal shall be de novo.

18 G. A person may petition for restoration of that
19 person's right to receive or possess any firearm or ammunition
20 under this section not more than once every two years and, in
21 the case of a person who was committed to a mental institution,
22 not before the person has been discharged from such commitment.

23 H. The administrative office of the courts shall
24 promptly notify the federal bureau of investigation upon the
25 entry of a court order restoring the person's right to receive

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1 or possess any firearm or ammunition.

2 I. Information transmitted by the administrative
3 office of the courts pursuant to the provisions of this section
4 shall be confidential and may only be disclosed to the person
5 who is the subject of the report, or an authorized
6 representative of the person who is the subject of the report,
7 and shall not be used for any other purpose than inclusion in
8 the national instant criminal background check system. No
9 cause of action shall be brought for transmission, failure to
10 transmit, delay in transmitting or inaccurate information
11 contained in such report.

12 J. A person who is the subject of a report made by
13 the administrative office of the courts under this section, or
14 the person's authorized representative, has a right to inspect
15 and correct information contained in such report.

16 K. The administrative office of the courts shall
17 promulgate rules relating to the inspection and correction of
18 information contained in such report and relating to reporting
19 of corrected information by the office to the federal bureau of
20 investigation and such other rules as necessary to implement
21 the provisions of this section.

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