

SENATE BILL NO. 277—SENATOR KIECKHEFER

MARCH 15, 2013

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to public safety. (BDR 15-923)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public safety; prohibiting the sale or disposal of a firearm or ammunition to certain persons; requiring certain records to be transmitted to the Central Repository for Nevada Records of Criminal History; providing procedures for the removal of such records and the restoration of certain rights; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law prohibits the sale or disposal of a firearm or ammunition to a
2 person who: (1) is under indictment for, or has been convicted of, a felony; (2) is a
3 fugitive from justice; (3) has been adjudicated as mentally ill or has been
4 committed to any mental health facility; or (4) is illegally or unlawfully in the
5 United States. (NRS 202.362) Existing law also provides for the filing of a petition
6 for an involuntary court-ordered admission of a person to a mental health facility,
7 and if the court grants the petition and orders the person admitted to a mental health
8 facility, existing law requires the court to transmit a record of that order to the
9 Central Repository for Nevada Records of Criminal History for inclusion in all
10 appropriate databases of the National Instant Criminal Background Check System.
11 (NRS 433A.200, 433A.310)

12 **Section 1** of this bill prohibits, under certain circumstances, the sale or disposal
13 of a firearm or ammunition to a person for whom a petition was filed for an
14 involuntary court-ordered admission to a mental health facility, if such a petition
15 was filed after the person was admitted on an emergency basis. Upon the filing of
16 such a petition, **section 5** of this bill requires the court to: (1) transmit a record of
17 the petition to the Central Repository, along with a statement that the record is
18 being transmitted for inclusion in all appropriate databases of the National Instant
19 Criminal Background Check System; and (2) notify the person who is the subject of
20 the petition that he or she is prohibited from purchasing a firearm or ammunition
21 and that certain procedures are available for removal of the record and the disability
22 to purchase a firearm or ammunition if the petition is deferred, dismissed or denied.



23 With regard to those procedures, **section 5** provides that if the petition is denied
24 because the court finds that the facts do not support involuntary admission, the
25 court must order immediate removal of the record and the disability. If the petition
26 is deferred, dismissed or denied for any other reason, the person may petition the
27 court for removal of the record and the disability. If the person files such a petition
28 less than 3 years after the date on which the record is transmitted to the Central
29 Repository, the person has the burden of proving that he or she is entitled to the
30 requested relief. If the person files the petition 3 years or more after the date on
31 which the record is transmitted to the Central Repository, the State has the burden
32 of proving that the person is not entitled to the requested relief.

33 Existing law requires the Central Repository to take reasonable steps to ensure
34 that certain records transmitted to it by the court are included in each appropriate
35 database of the National Instant Criminal Background Check System and provides
36 a procedure for a person who is the subject of such a record to petition a court to
37 have the record and any disability relating to firearms removed. (NRS 179A.163)
38 **Section 2** of this bill: (1) requires the Central Repository to take such steps relating
39 to records transmitted to it by the court pertaining to a person for whom a petition
40 for an involuntary court-ordered admission to a mental health facility was filed, if
41 such a petition was filed after the person was admitted on an emergency basis; and
42 (2) provides that a person subject to such a record may petition the court for
43 removal of the record and disability pursuant to the procedures set forth in
44 **section 5**.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 202.362 is hereby amended to read as follows:

2 202.362 1. Except as otherwise provided in subsection 3, a
3 person within this State shall not sell or otherwise dispose of any
4 firearm or ammunition to another person if he or she has actual
5 knowledge that the other person:

6 (a) Is under indictment for, or has been convicted of, a felony in
7 this or any other state, or in any political subdivision thereof, or of a
8 felony in violation of the laws of the United States of America,
9 unless the other person has received a pardon and the pardon does
10 not restrict his or her right to bear arms;

11 (b) Is a fugitive from justice;

12 (c) Has been adjudicated as mentally ill or has been committed
13 to any mental health facility; ~~for~~

14 (d) *Has been the subject of a petition for involuntary court-*
15 *ordered admission to any mental health facility and is prohibited*
16 *from purchasing a firearm or ammunition pursuant to subsection*
17 *3 of NRS 433A.200; or*

18 (e) Is illegally or unlawfully in the United States.

19 2. A person who violates the provisions of subsection 1 is
20 guilty of a category B felony and shall be punished by imprisonment
21 in the state prison for a minimum term of not less than 1 year and a



1 maximum term of not more than 10 years, and may be further
2 punished by a fine of not more than \$10,000.

3 3. This section does not apply to a person who sells or disposes
4 of any firearm or ammunition to:

5 (a) A licensed importer, licensed manufacturer, licensed dealer
6 or licensed collector who, pursuant to 18 U.S.C. § 925(b), is not
7 precluded from dealing in firearms or ammunition; or

8 (b) A person who has been granted relief from the disabilities
9 imposed by federal *or state* laws pursuant to 18 U.S.C. § 925(c) or
10 NRS 179A.163.

11 **Sec. 2.** NRS 179A.163 is hereby amended to read as follows:

12 179A.163 1. Upon receiving a record transmitted pursuant to
13 NRS 159.0593, 174.035, 175.533, 175.539, 178.425 , *433A.200* or
14 433A.310, the Central Repository shall take reasonable steps to
15 ensure that the information reported in the record is included in each
16 appropriate database of the National Instant Criminal Background
17 Check System.

18 2. Except as otherwise provided in subsection 3, if the Central
19 Repository receives a record described in subsection 1, the person
20 who is the subject of the record may petition the court for an order
21 declaring that:

22 (a) The basis for the *petition or* adjudication reported in the
23 record no longer exists;

24 (b) The *petition or* adjudication reported in the record is deemed
25 not to have occurred for purposes of 18 U.S.C. § 922(d)(4) and
26 (g)(4) and NRS 202.360; and

27 (c) The information reported in the record must be removed
28 from the National Instant Criminal Background Check System.

29 3. To the extent authorized by federal law, if the record
30 concerning the petitioner was transmitted to the Central Repository
31 pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425,
32 *433A.200* or 433A.310, the petitioner may not file a petition
33 pursuant to subsection 2 until 3 years after the date of the order
34 transmitting the record to the Central Repository ~~H~~ , *unless the*
35 *petitioner is authorized to file the petition sooner pursuant to*
36 *subsection 5 of NRS 433A.200.*

37 4. A petition filed pursuant to subsection 2 must be:

38 (a) Filed in the court which ~~made~~ :

39 (1) *Made* the adjudication or finding pursuant to NRS
40 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310; *or*

41 (2) *Received the petition and transmitted the record*
42 *pursuant to subsection 3 of NRS 433A.200;* and

43 (b) Served upon the district attorney for the county in which the
44 court described in paragraph (a) is located.



1 5. The Nevada Rules of Civil Procedure govern all proceedings
2 concerning a petition filed pursuant to subsection 2.

3 6. ~~The~~ *Except as otherwise provided in subsection 5 of NRS*
4 *433A.200, the* court shall grant the petition and issue the order
5 described in subsection 2 if the court finds that the petitioner has
6 established that:

7 (a) The basis for the *petition being filed or the* adjudication or
8 finding made pursuant to NRS 159.0593, 174.035, 175.533,
9 175.539, 178.425 , *433A.200* or 433A.310 concerning the petitioner
10 no longer exists;

11 (b) The petitioner's record and reputation indicate that the
12 petitioner is not likely to act in a manner dangerous to public safety;
13 and

14 (c) Granting the relief requested by the petitioner pursuant to
15 subsection 2 is not contrary to the public interest.

16 7. Except as otherwise provided in this subsection ~~§~~ *and*
17 *subsection 5 of NRS 433A.200*, the petitioner must establish the
18 provisions of subsection 6 by a preponderance of the evidence. If
19 the adjudication or finding concerning the petitioner was made
20 pursuant to NRS 159.0593 or 433A.310, the petitioner must
21 establish the provisions of subsection 6 by clear and convincing
22 evidence.

23 8. The court, upon entering an order pursuant to this section,
24 shall cause, on a form prescribed by the Department of Public
25 Safety, a record of the order to be transmitted to the Central
26 Repository.

27 9. Within 5 business days after receiving a record of an order
28 transmitted pursuant to subsection 8 ~~§~~ *or subsection 4 of NRS*
29 *433A.200*, the Central Repository shall take reasonable steps to
30 ensure that information concerning the *petition being filed or the*
31 adjudication or finding made pursuant to NRS 159.0593, 174.035,
32 175.533, 175.539, 178.425 , *433A.200* or 433A.310 is removed
33 from the National Instant Criminal Background Check System.

34 10. If the Central Repository fails to remove a record as
35 provided in subsection 9, the petitioner may bring an action to
36 compel the removal of the record. If the petitioner prevails in the
37 action, the court may award the petitioner reasonable attorney's fees
38 and costs incurred in bringing the action.

39 11. If a petition brought pursuant to subsection 2 is denied, the
40 person who is the subject of the record may petition for a rehearing
41 not sooner than 2 years after the date of the denial of the petition.

42 **Sec. 3.** NRS 179A.165 is hereby amended to read as follows:

43 179A.165 1. Any record described in NRS 179A.163 is
44 confidential and is not a public book or record within the meaning
45 of NRS 239.010. A person may not use the record for any purpose



1 other than for inclusion in the appropriate database of the National
2 Instant Criminal Background Check System.

3 2. If a person or governmental entity is required to transmit,
4 report or take any other action concerning a record pursuant to NRS
5 159.0593, 174.035, 175.533, 175.539, 178.425, 179A.163 ,
6 **433A.200** or 433A.310, no action for damages may be brought
7 against the person or governmental entity for:

8 (a) Transmitting or reporting the record or taking any other
9 required action concerning the record;

10 (b) Failing to transmit or report the record or failing to take any
11 other required action concerning the record;

12 (c) Delaying the transmission or reporting of the record or
13 delaying in taking any other required action concerning the record;
14 or

15 (d) Transmitting or reporting an inaccurate or incomplete
16 version of the record or taking any other required action concerning
17 an inaccurate or incomplete version of the record.

18 **Sec. 4.** NRS 179A.167 is hereby amended to read as follows:

19 179A.167 1. The Central Repository shall permit a person
20 who is or believes he or she may be the subject of information
21 relating to records of mental health held by the Central
22 Repository to inspect and correct any information contained in such
23 records.

24 2. The Central Repository shall adopt regulations and make
25 available necessary forms to permit inspection, review and
26 correction of information relating to records of mental health by
27 those persons who are the subjects thereof. The regulations must
28 specify:

29 (a) The requirements for proper identification of the persons
30 seeking access to the records; and

31 (b) The reasonable charges or fees, if any, for inspecting
32 records.

33 3. The Director of the Department shall adopt regulations
34 governing:

35 (a) All challenges to the accuracy or sufficiency of information
36 or records of mental health by the person who is the subject of the
37 allegedly inaccurate or insufficient record;

38 (b) The correction of any information relating to records of
39 mental health found by the Director to be inaccurate, insufficient or
40 incomplete in any material respect;

41 (c) The dissemination of corrected information to those persons
42 or agencies which have previously received inaccurate or
43 incomplete information; and



1 (d) A reasonable time limit within which inaccurate or
2 insufficient information relating to records of mental health must be
3 corrected and the corrected information disseminated.

4 4. As used in this section, "information relating to records of
5 mental health" means information contained in a record:

6 (a) Transmitted to the Central Repository pursuant to NRS
7 159.0593, 174.035, 175.533, 175.539, 178.425 , **433A.200** or
8 433A.310; or

9 (b) Transmitted to the National Instant Criminal Background
10 Check System pursuant to NRS 179A.163.

11 **Sec. 5.** NRS 433A.200 is hereby amended to read as follows:

12 433A.200 1. Except as otherwise provided in NRS
13 432B.6075, a proceeding for an involuntary court-ordered admission
14 of any person in the State of Nevada may be commenced by the
15 filing of a petition with the clerk of the district court of the county
16 where the person who is to be treated resides. The petition may be
17 filed by the spouse, parent, adult children or legal guardian of the
18 person to be treated or by any physician, psychologist, social worker
19 or registered nurse, by an accredited agent of the Department or by
20 any officer authorized to make arrests in the State of Nevada. The
21 petition must be accompanied:

22 (a) By a certificate of a physician, psychiatrist or licensed
23 psychologist stating that he or she has examined the person alleged
24 to be a person with mental illness and has concluded that the person
25 has a mental illness and, because of that illness, is likely to harm
26 himself or herself or others if allowed his or her liberty; or

27 (b) By a sworn written statement by the petitioner that:

28 (1) The petitioner has, based upon the petitioner's personal
29 observation of the person alleged to be a person with mental illness,
30 probable cause to believe that the person has a mental illness and,
31 because of that illness, is likely to harm himself or herself or others
32 if allowed his or her liberty; and

33 (2) The person alleged to be a person with mental illness has
34 refused to submit to examination or treatment by a physician,
35 psychiatrist or licensed psychologist.

36 2. Except as otherwise provided in NRS 432B.6075, if the
37 person to be treated is a minor and the petitioner is a person other
38 than a parent or guardian of the minor, the petition must, in addition
39 to the certificate or statement required by subsection 1, include a
40 statement signed by a parent or guardian of the minor that the parent
41 or guardian does not object to the filing of the petition.

42 **3. *If a petition is filed pursuant to this section with the clerk***
43 ***of the district court to commence a proceeding for an involuntary***
44 ***court-ordered admission of a person pursuant to NRS 433A.145 or***
45 ***433A.150, the court shall:***



1 (a) Notwithstanding the provisions of NRS 433A.715, cause,
2 on a form prescribed by the Department of Public Safety, a record
3 of the petition to be transmitted to the Central Repository for
4 Nevada Records of Criminal History, along with a statement
5 indicating that the record is being transmitted for inclusion in
6 each appropriate database of the National Instant Criminal
7 Background Check System; and

8 (b) Notify the person who is the subject of the petition that :

9 (1) The person is prohibited from purchasing a firearm or
10 ammunition pursuant to NRS 202.362 ;

11 (2) If the petition is denied because the court finds that the
12 facts do not support involuntary admission pursuant to NRS
13 433A.310, the court will order immediate removal of the record
14 and relief from the disability pursuant to subsection 4; and

15 (3) If the petition is deferred, dismissed or denied for any
16 other reason, the person may petition the court pursuant to
17 subsection 5 for an order for the removal of the record from the
18 National Instant Criminal Background Check System and relief
19 from the disability.

20 4. If the petition is denied because the court finds that the
21 facts do not support involuntary admission of the person pursuant
22 to NRS 433A.310, the court shall:

23 (a) Order immediate removal of the record of the petition from
24 the National Instant Criminal Background Check System and
25 relief from the disability to purchase a firearm or ammunition;
26 and

27 (b) Cause, on a form prescribed by the Department of Public
28 Safety, the order to be transmitted to the Central Repository, along
29 with a statement indicating that the record is to be removed
30 immediately from each appropriate database of the National
31 Instant Criminal Background Check System.

32 5. If the petition is deferred, dismissed or denied for any other
33 reason, the person may petition the court pursuant to NRS
34 179A.163 for an order for the removal of the record from the
35 National Instant Criminal Background Check System and relief
36 from the disability to purchase a firearm or ammunition. If the
37 person files such a petition:

38 (a) Less than 3 years after the date on which the record is
39 transmitted to the Central Repository, the person has the burden
40 of proving that he or she is entitled to the requested relief pursuant
41 to subsection 6 of NRS 179A.163.

42 (b) Three years or more after the date on which the record is
43 transmitted to the Central Repository, the State has the burden of
44 proving that the person is not entitled to the requested relief
45 pursuant to subsection 6 of NRS 179A.163.



1 ***6. As used in this section, “National Instant Criminal***
2 ***Background Check System” has the meaning ascribed to it in***
3 ***NRS 179A.062.***

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