

ASSEMBLY BILL NO. 46—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 6, 2008

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning the right of certain persons to purchase or possess a firearm. (BDR 14-271)

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

CONTAINS UNFUNDED MANDATE (§§1-4, 11.5, 13)
(REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 firearms; requiring a court to transmit certain records of adjudication concerning a person's mental health to the Central Repository for Nevada Records of Criminal History for certain purposes relating to the purchase or possession of a firearm; establishing procedures for those persons to petition a court to regain certain rights relating to the purchase or possession of a firearm; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Federal law requires states to transmit to the National Instant Criminal
2 Background Check System records of adjudication of mental illness or
3 incompetence, involuntary admission to mental health facilities and other records
4 which indicate a person is prohibited from purchasing a firearm. Federal law also
5 requires states to implement a program by which a person who was previously
6 adjudicated mentally ill or involuntarily committed can apply to have his right to
7 possess a firearm restored and ties this requirement to certain federal funding for
8 states under the NICS Improvement Amendments Act of 2007. (Public Law
9 110-180) Nevada law prohibits a person from owning or possessing a firearm if he
10 has been adjudicated as mentally ill or has been committed to any mental health
11 facility. (NRS 202.360)

12 **Sections 1-4 and 13** of this bill require a court to transmit to the Central
13 Repository for Nevada Records of Criminal History a record of any court order,
14 judgment, plea or verdict concerning the involuntary admission of a person to a



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15 mental health facility, the appointment of a guardian for a person who has a mental
16 defect, a finding that a person is incompetent to stand trial, a verdict acquitting a
17 person by reason of insanity or a plea of guilty but mentally ill, along with a
18 statement that the record is being transmitted for inclusion in all appropriate
19 databases of the National Instant Criminal Background Check System. (NRS
20 159.055, 174.035, 175.533, 175.539, 178.425, 433A.310)

21 **Section 7** of this bill requires the Central Repository to take reasonable steps to
22 ensure that the records transmitted to it by the court are included in each
23 appropriate database of the National Instant Criminal Background Check System.
24 In accordance with federal law, this section also provides a procedure for a person
25 who is the subject of such a record to petition a court to have the record removed
26 from the National Instant Criminal Background Check System and to have his right
27 to possess or purchase a firearm restored.

28 **Section 8** of this bill provides that the records transmitted by the court to the
29 Central Repository are confidential, may not be used for any purpose other than for
30 inclusion in each appropriate database of the National Instant Criminal Background
31 Check System, and no cause of action for damages may be brought for
32 transmission, failure to transmit, delay in transmitting or inaccuracies within such
33 records.

34 **Section 8.5** of this bill authorizes a person who is or believes he is the subject
35 of a record of mental health held by the Central Repository to inspect and correct
36 such records. This section, which is modeled after NRS 179A.150, also requires the
37 Central Repository and the Director of the Department of Public Safety to adopt
38 certain regulations relating to the inspection and correction of such records.

39 **Section 11.5** of this bill requires a court, when appointing a general guardian,
40 to determine whether a proposed ward is a person with a mental defect who is
41 prohibited from possessing a firearm pursuant to federal law.

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

1 **Section 1.** NRS 174.035 is hereby amended to read as follows:

2 174.035 1. A defendant may plead not guilty, guilty, guilty
3 but mentally ill or, with the consent of the court, nolo contendere.
4 The court may refuse to accept a plea of guilty or guilty but
5 mentally ill.

6 2. If a plea of guilty or guilty but mentally ill is made in a
7 written plea agreement, the agreement must be in substantially the
8 form prescribed in NRS 174.063. If a plea of guilty or guilty but
9 mentally ill is made orally, the court shall not accept such a plea or a
10 plea of nolo contendere without first addressing the defendant
11 personally and determining that the plea is made voluntarily with
12 understanding of the nature of the charge and consequences of the
13 plea.

14 3. With the consent of the court and the district attorney, a
15 defendant may enter a conditional plea of guilty, guilty but mentally
16 ill or nolo contendere, reserving in writing the right, on appeal from
17 the judgment, to a review of the adverse determination of any



1 specified pretrial motion. A defendant who prevails on appeal must
2 be allowed to withdraw the plea.

3 4. A plea of guilty but mentally ill must be entered not less
4 than 21 days before the date set for trial. A defendant who has
5 entered a plea of guilty but mentally ill has the burden of
6 establishing his mental illness by a preponderance of the evidence.
7 Except as otherwise provided by specific statute, a defendant who
8 enters such a plea is subject to the same criminal, civil and
9 administrative penalties and procedures as a defendant who pleads
10 guilty.

11 5. The defendant may, in the alternative or in addition to any
12 one of the pleas permitted by subsection 1, plead not guilty by
13 reason of insanity. A plea of not guilty by reason of insanity must be
14 entered not less than 21 days before the date set for trial. A
15 defendant who has not so pleaded may offer the defense of insanity
16 during trial upon good cause shown. Under such a plea or defense,
17 the burden of proof is upon the defendant to establish by a
18 preponderance of the evidence that:

19 (a) Due to a disease or defect of the mind, he was in a delusional
20 state at the time of the alleged offense; and

21 (b) Due to the delusional state, he either did not:

22 (1) Know or understand the nature and capacity of his act; or

23 (2) Appreciate that his conduct was wrong, meaning not
24 authorized by law.

25 6. If a defendant refuses to plead or if the court refuses to
26 accept a plea of guilty or guilty but mentally ill or if a defendant
27 corporation fails to appear, the court shall enter a plea of not guilty.

28 7. A defendant may not enter a plea of guilty or guilty but
29 mentally ill pursuant to a plea bargain for an offense punishable as a
30 felony for which:

31 (a) Probation is not allowed; or

32 (b) The maximum prison sentence is more than 10 years,

33 ➔ unless the plea bargain is set forth in writing and signed by the
34 defendant, the defendant's attorney, if he is represented by counsel,
35 and the prosecuting attorney.

36 8. *If the court accepts a plea of guilty but mentally ill*
37 *pursuant to this section, the court shall cause, on a form*
38 *prescribed by the Department of Public Safety, a record of that*
39 *plea to be transmitted to the Central Repository for Nevada*
40 *Records of Criminal History along with a statement indicating*
41 *that the record is being transmitted for inclusion in each*
42 *appropriate database of the National Instant Criminal*
43 *Background Check System.*

44 9. As used in this section ~~[-a "disease"]~~ :



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1 (a) “Disease or defect of the mind” does not include a disease or
2 defect which is caused solely by voluntary intoxication.

3 (b) “National Instant Criminal Background Check System”
4 has the meaning ascribed to it in section 6 of this act.

5 Sec. 2. NRS 175.533 is hereby amended to read as follows:

6 175.533 1. During a trial, upon a plea of not guilty by reason
7 of insanity, the trier of fact may find the defendant guilty but
8 mentally ill if the trier of fact finds all of the following:

9 (a) The defendant is guilty beyond a reasonable doubt of an
10 offense;

11 (b) The defendant has established by a preponderance of the
12 evidence that due to a disease or defect of the mind, he was mentally
13 ill at the time of the commission of the offense; and

14 (c) The defendant has not established by a preponderance of the
15 evidence that he is not guilty by reason of insanity pursuant to
16 subsection 5 of NRS 174.035.

17 2. Except as otherwise provided by specific statute, a defendant
18 who is found guilty but mentally ill is subject to the same criminal,
19 civil and administrative penalties and procedures as a defendant who
20 is found guilty.

21 3. *If the trier of fact finds a defendant guilty but mentally ill*
22 *pursuant to subsection 1, the court shall cause, on a form*
23 *prescribed by the Department of Public Safety, a record of the*
24 *finding to be transmitted to the Central Repository for Nevada*
25 *Records of Criminal History, along with a statement indicating*
26 *that the record is being transmitted for inclusion in each*
27 *appropriate database of the National Instant Criminal*
28 *Background Check System.*

29 4. As used in this section ~~[-a “disease”]~~ :

30 (a) “Disease or defect of the mind” does not include a disease or
31 defect which is caused solely by voluntary intoxication.

32 (b) “National Instant Criminal Background Check System”
33 has the meaning ascribed to it in section 6 of this act.

34 Sec. 3. NRS 175.539 is hereby amended to read as follows:

35 175.539 1. Where on a trial a defense of insanity is
36 interposed by the defendant and he is acquitted by reason of that
37 defense, the finding of the jury pending the judicial determination
38 pursuant to subsection 2 has the same effect as if he were regularly
39 adjudged insane, and the judge must:

40 (a) Order a peace officer to take the person into protective
41 custody and transport him to a forensic facility for detention
42 pending a hearing to determine his mental health;

43 (b) Order the examination of the person by two psychiatrists,
44 two psychologists, or one psychiatrist and one psychologist who are
45 employed by a division facility; and



(c) At a hearing in open court, receive the report of the examining advisers and allow counsel for the State and for the person to examine the advisers, introduce other evidence and cross-examine witnesses.

2. If the court finds, after the hearing:

(a) That there is not clear and convincing evidence that the person is a person with mental illness, the court must order his discharge; or

(b) That there is clear and convincing evidence that the person is a person with mental illness, the court must order that he be committed to the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services until he is discharged or conditionally released therefrom in accordance with NRS 178.467 to 178.471, inclusive.

➔ The court shall issue its finding within 90 days after the defendant is acquitted.

3. The Administrator shall make the reports and the court shall proceed in the manner provided in NRS 178.467 to 178.471, inclusive.

4. *If the court accepts a verdict acquitting a defendant by reason of insanity pursuant to this section, the court shall cause, on a form prescribed by the Department of Public Safety, a record of that verdict to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.*

5. As used in this section, unless the context otherwise requires:

(a) "Division facility" has the meaning ascribed to it in NRS 433.094.

(b) "Forensic facility" means a secure facility of the Division of Mental Health and Developmental Services of the Department of Health and Human Services for offenders and defendants with mental disorders. The term includes, without limitation, Lakes Crossing Center.

(c) *"National Instant Criminal Background Check System" has the meaning ascribed to it in section 6 of this act.*

(d) "Person with mental illness" has the meaning ascribed to it in NRS 178.3986.

Sec. 4. NRS 178.425 is hereby amended to read as follows:

178.425 1. If the court finds the defendant incompetent, and that he is dangerous to himself or to society and that commitment is required for a determination of his ability to receive treatment to



1 competency and to attain competence, the judge shall order the
2 sheriff to convey the defendant forthwith, together with a copy of
3 the complaint, the commitment and the physicians' certificate, if
4 any, into the custody of the Administrator or his designee for
5 detention and treatment at a division facility that is secure. The
6 order may include the involuntary administration of medication if
7 appropriate for treatment to competency.

8 2. The defendant must be held in such custody until a court
9 orders his release or until he is returned for trial or judgment as
10 provided in NRS 178.450, 178.455 and 178.460.

11 3. If the court finds the defendant incompetent but not
12 dangerous to himself or to society, and finds that commitment is not
13 required for a determination of the defendant's ability to receive
14 treatment to competency and to attain competence, the judge shall
15 order the defendant to report to the Administrator or his designee as
16 an outpatient for treatment, if it might be beneficial, and for a
17 determination of his ability to receive treatment to competency and
18 to attain competence. The court may require the defendant to give
19 bail for his periodic appearances before the Administrator or his
20 designee.

21 4. Except as otherwise provided in subsection 5, proceedings
22 against the defendant must be suspended until the Administrator or
23 his designee or, if the defendant is charged with a misdemeanor, the
24 judge finds him capable of standing trial or opposing
25 pronouncement of judgment as provided in NRS 178.400.

26 5. Whenever the defendant has been found incompetent, with
27 no substantial probability of attaining competency in the foreseeable
28 future, and released from custody or from obligations as an
29 outpatient pursuant to paragraph (d) of subsection 4 of NRS
30 178.460, the proceedings against the defendant which were
31 suspended must be dismissed. No new charge arising out of the
32 same circumstances may be brought after a period, equal to the
33 maximum time allowed by law for commencing a criminal action
34 for the crime with which the defendant was charged, has lapsed
35 since the date of the alleged offense.

36 6. *If a defendant is found incompetent pursuant to this*
37 *section, the court shall cause, on a form prescribed by the*
38 *Department of Public Safety, a record of that finding to be*
39 *transmitted to the Central Repository for Nevada Records of*
40 *Criminal History, along with a statement indicating that the*
41 *record is being transmitted for inclusion in each appropriate*
42 *database of the National Instant Criminal Background Check*
43 *System.*



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1 7. As used in this section, “National Instant Criminal
2 Background Check System” has the meaning ascribed to it in
3 section 6 of this act.

4 Sec. 5. Chapter 179A of NRS is hereby amended by adding
5 thereto the provisions set forth as sections 6 to 8.5, inclusive, of this
6 act.

7 Sec. 6. “National Instant Criminal Background Check
8 System” means the national system created by the federal Brady
9 Handgun Violence Prevention Act, Public Law 103-159.

10 Sec. 7. 1. Upon receiving a record transmitted pursuant to
11 NRS 174.035, 175.533, 175.539, 178.425 or 433A.310 or section
12 11.5 of this act, the Central Repository shall take reasonable steps
13 to ensure that the information reported in the record is included in
14 each appropriate database of the National Instant Criminal
15 Background Check System.

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

20 (a) The basis for the adjudication reported in the record no
21 longer exists;

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

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

27 3. To the extent authorized by federal law, if the record
28 concerning the petitioner was transmitted to the Central
29 Repository pursuant to NRS 174.035, 175.533, 175.539, 178.425 or
30 433A.310 or section 11.5 of this act, the petitioner may not file a
31 petition pursuant to subsection 2 until 3 years after the date of the
32 order transmitting the record to the Central Repository.

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

34 (a) Filed in the court which made the adjudication or finding
35 pursuant to NRS 174.035, 175.533, 175.539, 178.425 or 433A.310
36 or section 11.5 of this act; and

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

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

41 6. The court shall grant the petition and issue the order
42 described in subsection 2 if the court finds that the petitioner has
43 established that:



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(a) The basis for the adjudication or finding made pursuant to NRS 174.035, 175.533, 175.539, 178.425 or 433A.310 or section 11.5 of this act concerning the petitioner no longer exists;

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

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

7. Except as otherwise provided in this subsection, the petitioner must establish the provisions of subsection 6 by a preponderance of the evidence. If the adjudication or finding concerning the petitioner was made pursuant to NRS 433A.310 or section 11.5 of this act, the petitioner must establish the provisions of subsection 6 by clear and convincing evidence.

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

9. Within 5 business days after receiving a record of an order transmitted pursuant to subsection 8, the Central Repository shall take reasonable steps to ensure that information concerning the adjudication or finding made pursuant to NRS 174.035, 175.533, 175.539, 178.425 or 433A.310 or section 11.5 of this act is removed from the National Instant Criminal Background Check System.

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

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

Sec. 8. 1. Any record described in section 7 of this act is confidential and is not a public book or record within the meaning of NRS 239.010. A person may not use the record for any purpose other than for inclusion in the appropriate database of the National Instant Criminal Background Check System.

2. If a person or governmental entity is required to transmit, report or take any other action concerning a record pursuant to NRS 174.035, 175.533, 175.539, 178.425 or 433A.310 or section 7 or 11.5 of this act, no action for damages may be brought against the person or governmental entity for:



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1 (a) Transmitting or reporting the record or taking any other
2 required action concerning the record;

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

5 (c) Delaying the transmission or reporting of the record or
6 delaying in taking any other required action concerning the
7 record; or

8 (d) Transmitting or reporting an inaccurate or incomplete
9 version of the record or taking any other required action
10 concerning an inaccurate or incomplete version of the record.

11 **Sec. 8.5. 1. The Central Repository shall permit a person**
12 **who is or believes he may be the subject of information relating to**
13 **records of mental health held by the Central Repository to inspect**
14 **and correct any information contained in such records.**

15 **2. The Central Repository shall adopt regulations and make**
16 **available necessary forms to permit inspection, review and**
17 **correction of information relating to records of mental health by**
18 **those persons who are the subjects thereof. The regulations must**
19 **specify:**

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

22 (b) The reasonable charges or fees, if any, for inspecting
23 records.

24 **3. The Director of the Department shall adopt regulations**
25 **governing:**

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

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

32 (c) The dissemination of corrected information to those
33 persons or agencies which have previously received inaccurate or
34 incomplete information; and

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

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

40 (a) Transmitted to the Central Repository pursuant to NRS
41 174.035, 175.533, 175.539, 178.425 or 433A.310 or section 11.5 of
42 this act; or

43 (b) Transmitted to the National Instant Criminal Background
44 Check System pursuant to section 7 of this act.



Sec. 9. NRS 179A.010 is hereby amended to read as follows:

179A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 179A.020 to 179A.073, inclusive, *and section 6 of this act* have the meanings ascribed to them in those sections.

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 11.5. Chapter 159 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the court orders a general guardian appointed for a proposed ward, the court shall determine, by clear and convincing evidence, whether the proposed ward is a person with a mental defect who is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(d)(4) or (g)(4). If a court makes a finding pursuant to this section that the proposed ward is a person with a mental defect, the court shall include the finding in the order appointing the guardian and cause a record of the order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

2. As used in this section:

(a) "National Instant Criminal Background Check System" has the meaning ascribed to it in section 6 of this act.

(b) "Person with a mental defect" means a person who, as a result of marked subnormal intelligence, mental illness, incompetence, condition or disease, is:

(1) A danger to himself or others; or

(2) Lacks the capacity to contract or manage his own affairs.

Sec. 12. NRS 202.362 is hereby amended to read as follows:

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

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

(b) Is a fugitive from justice;

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

(d) Is illegally or unlawfully in the United States.



2. A person who violates the provisions of subsection 1 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

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

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

(b) A person who has been granted relief from the disabilities imposed by federal laws pursuant to 18 U.S.C. § 925(c) **§ 7 of this act.**

Sec. 13. NRS 433A.310 is hereby amended to read as follows:

433A.310 1. Except as otherwise provided in NRS 432B.6076 and 432B.6077, if the district court finds, after proceedings for the involuntary court-ordered admission of a person to a public or private mental health facility:

(a) That there is not clear and convincing evidence that the person with respect to whom the hearing was held has a mental illness or exhibits observable behavior such that he is likely to harm himself or others if allowed his liberty, the court shall enter its finding to that effect and the person must not be involuntarily detained in such a facility.

(b) That there is clear and convincing evidence that the person with respect to whom the hearing was held has a mental illness and, because of that illness, is likely to harm himself or others if allowed his liberty, the court may order the involuntary admission of the person for the most appropriate course of treatment. The order of the court must be interlocutory and must not become final if, within 30 days after the involuntary admission, the person is unconditionally released pursuant to NRS 433A.390.

2. Except as otherwise provided in NRS 432B.608, an involuntary admission pursuant to paragraph (b) of subsection 1 automatically expires at the end of 6 months if not terminated previously by the medical director of the public or private mental health facility as provided for in subsection 2 of NRS 433A.390. Except as otherwise provided in NRS 432B.608, at the end of the court-ordered period of treatment, the Division or any mental health facility that is not operated by the Division may petition to renew the detention of the person for additional periods not to exceed 6 months each. For each renewal, the petition must set forth to the court specific reasons why further treatment would be in the person's own best interests.



1 3. Before issuing an order for involuntary admission or a
2 renewal thereof, the court shall explore other alternative courses of
3 treatment within the least restrictive appropriate environment as
4 suggested by the evaluation team who evaluated the person, or other
5 persons professionally qualified in the field of psychiatric mental
6 health, which the court believes may be in the best interests of the
7 person.

8 4. *If the court issues an order involuntarily admitting a*
9 *person to a public or private mental health facility pursuant to this*
10 *section, the court shall, notwithstanding the provisions of NRS*
11 *433A.715, cause, on a form prescribed by the Department of*
12 *Public Safety, a record of such order to be transmitted to the*
13 *Central Repository for Nevada Records of Criminal History, along*
14 *with a statement indicating that the record is being transmitted for*
15 *inclusion in each appropriate database of the National Instant*
16 *Criminal Background Check System.*

17 5. *As used in this section, “National Instant Criminal*
18 *Background Check System” has the meaning ascribed to it in*
19 *section 6 of this act.*

20 **Sec. 14.** The provisions of NRS 354.599 do not apply to any
21 additional expenses of a local government that are related to the
22 provisions of this act.

23 **Sec. 15.** This act becomes effective on January 1, 2010.

