

SENATE BILL NO. 277—SENATOR KIECKHEFER

MARCH 15, 2013

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to firearms.
(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 firearms; prohibiting the sale or disposal of a
firearm or ammunition to certain persons; and providing
other matters properly relating thereto.**Legislative Counsel's Digest:**

Existing law prohibits the sale or disposal of a firearm or ammunition to a person who: (1) is under indictment for, or has been convicted of, a felony; (2) is a fugitive from justice; (3) has been adjudicated as mentally ill or has been committed to any mental health facility; or (4) is illegally or unlawfully in the United States. (NRS 202.362) Existing law also provides for the filing of a petition for an involuntary court-ordered admission of a person to a mental health facility. (NRS 433A.200) **Section 1** of this bill prohibits, under certain circumstances, the sale or disposal of a firearm or ammunition to a person for whom a petition was filed for an involuntary court-ordered admission to a mental health facility, if such petition was filed after the person was admitted on an emergency basis. **Section 5** of this bill requires a court: (1) to transmit to the Central Repository for Nevada Records of Criminal History a record of any petition filed for the involuntary court-ordered admission of the person to a mental health facility, if such petition was filed after the person was admitted on an emergency basis, along with a statement that the record is being transmitted for inclusion in all appropriate databases of the National Instant Criminal Background Check System; and (2) to notify the person who is the subject of the petition that he or she is prohibited from purchasing a firearm and that after 3 years the person may petition the court for removal of the record and the disability.

Existing law requires the Central Repository to take reasonable steps to ensure that certain records transmitted to it by the court are included in each appropriate database of the National Instant Criminal Background Check System and provides a procedure for a person who is the subject of such a record to petition a court to have the record removed from the National Instant Criminal Background Check System and to have his or her disability relating to firearms removed. (NRS 179A.163) **Section 2** of this bill: (1) requires the Central Repository to take such steps relating to records transmitted to it by the court pertaining to a person for



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whom a petition for an involuntary court-ordered admission to a mental health facility was filed, if such petition was filed after the person was admitted on an emergency basis; (2) provides that a person subject to such a record may petition the court to remove the disability to purchase a firearm after a period of 3 years; and (3) requires that the petition be granted unless the State proves by a preponderance of the evidence that the petitioner is likely to act in a manner that is dangerous to public safety.

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

Section 1. 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 or she 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 the other person has received a pardon and the pardon does not restrict his or her 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; ~~for~~

(d) *Has been the subject of a petition filed pursuant to subsection 3 of NRS 433A.200; or*

(e) 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 *or state* laws pursuant to 18 U.S.C. § 925(c) or NRS 179A.163.

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

179A.163 1. Upon receiving a record transmitted pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425, *433A.200* or 433A.310, the Central Repository shall take reasonable steps to ensure that the information reported in the record is included in each



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1 appropriate database of the National Instant Criminal Background
2 Check System.

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

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

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

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

14 3. To the extent authorized by federal law, if the record
15 concerning the petitioner was transmitted to the Central Repository
16 pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 ,
17 *433A.200* or 433A.310, the petitioner may not file a petition
18 pursuant to subsection 2 until 3 years after the date of the order
19 transmitting the record to the Central Repository.

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

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

22 (1) *Made* the adjudication or finding pursuant to NRS
23 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310; *or*

24 (2) *Received the petition filed pursuant to subsection 3 of*
25 *NRS 433A.200*; and

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

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

30 6. The court shall grant the petition and issue the order
31 described in subsection 2 if the court finds that the petitioner has
32 established that:

33 (a) The basis for the *petition being filed or the* adjudication or
34 finding made pursuant to NRS 159.0593, 174.035, 175.533,
35 175.539, 178.425 , *433A.200* or 433A.310 concerning the petitioner
36 no longer exists;

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

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

42 7. Except as otherwise provided in this subsection, the
43 petitioner must establish the provisions of subsection 6 by a
44 preponderance of the evidence. *If the petition was filed after*
45 *notification was made pursuant to paragraph (b) of subsection 3*



1 *of NRS 433A.200, the court shall grant the relief requested by the*
2 *petitioner pursuant to subsection 2, unless the State can establish*
3 *by a preponderance of the evidence that the petitioner is likely to*
4 *act in a manner dangerous to public safety.* If the adjudication or
5 finding concerning the petitioner was made pursuant to NRS
6 159.0593 or 433A.310, the petitioner must establish the provisions
7 of subsection 6 by clear and convincing evidence.

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

12 9. Within 5 business days after receiving a record of an order
13 transmitted pursuant to subsection 8, the Central Repository shall
14 take reasonable steps to ensure that information concerning the
15 *petition being filed or the* adjudication or finding made pursuant to
16 NRS 159.0593, 174.035, 175.533, 175.539, 178.425 , *433A.200* or
17 433A.310 is removed from the National Instant Criminal
18 Background Check System.

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

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

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

28 179A.165 1. Any record described in NRS 179A.163 is
29 confidential and is not a public book or record within the meaning
30 of NRS 239.010. A person may not use the record for any purpose
31 other than for inclusion in the appropriate database of the National
32 Instant Criminal Background Check System.

33 2. If a person or governmental entity is required to transmit,
34 report or take any other action concerning a record pursuant to NRS
35 159.0593, 174.035, 175.533, 175.539, 178.425, 179A.163 ,
36 *433A.200* or 433A.310, no action for damages may be brought
37 against the person or governmental entity for:

38 (a) Transmitting or reporting the record or taking any other
39 required action concerning the record;

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

42 (c) Delaying the transmission or reporting of the record or
43 delaying in taking any other required action concerning the record;

44 or



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

433A.200 1. Except as otherwise provided in NRS 432B.6075, a proceeding for an involuntary court-ordered admission of any person in the State of Nevada may be commenced by the filing of a petition with the clerk of the district court of the county where the person who is to be treated resides. The petition may be filed by the spouse, parent, adult children or legal guardian of the



1 person to be treated or by any physician, psychologist, social worker
2 or registered nurse, by an accredited agent of the Department or by
3 any officer authorized to make arrests in the State of Nevada. The
4 petition must be accompanied:

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

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

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

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

19 2. Except as otherwise provided in NRS 432B.6075, if the
20 person to be treated is a minor and the petitioner is a person other
21 than a parent or guardian of the minor, the petition must, in addition
22 to the certificate or statement required by subsection 1, include a
23 statement signed by a parent or guardian of the minor that the parent
24 or guardian does not object to the filing of the petition.

25 *3. If a petition is filed pursuant to this section with the clerk*
26 *of the district court to commence a proceeding for an involuntary*
27 *court-ordered admission of a person pursuant to NRS 433A.145 or*
28 *433A.150, the court shall:*

29 (a) *Notwithstanding the provisions of NRS 433A.715, cause,*
30 *on a form prescribed by the Department of Public Safety, a record*
31 *of the petition to be transmitted to the Central Repository for*
32 *Nevada Records of Criminal History, along with a statement*
33 *indicating that the record is being transmitted for inclusion in*
34 *each appropriate database of the National Instant Criminal*
35 *Background Check System; and*

36 (b) *Notify the person who is the subject of the petition that he*
37 *or she is prohibited from purchasing a firearm pursuant to NRS*
38 *202.362, and that 3 years after the date of the transmission of the*
39 *record the person may petition the court pursuant to NRS*
40 *179A.163 for an order for the removal of the record from the*
41 *National Instant Criminal Background Check System and relief*
42 *from the disability.*



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

