

**HB**

**366**

<TARGET><BILL>HB 366</BILL><SUBJECT>HB  
366</SUBJECT><COMM>HJUD28</COMM></TARGET>

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 12, 2014

FURTHER REFERRALS:

Date of Committee Action: 3/21/14

The JUDICIARY Committee considered:

HB 366

**HOUSE BILL NO. 366**

"An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence."

**HB 366-INVOLUNTARY COMMITMENT**

Recommends it be replaced with  HCS or  CS for HB 366 (JUD)  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 DHS  
 LWF  
 LAW  
 LEG  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

<b>NEW FISCAL NOTES</b>				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero
	ADM~DPA			✓
	ADM~PDA			✓
	DPS			✓
	LAW			✓

<b>PREVIOUS FISCAL NOTES</b>				
FN#	List by Dept(s):	Fiscal	Indet.	Zero
1	CRT			✓
2	HSS			✓

<b>Signing with recommendations</b>	Printed Last Name	DP	DNP	NR	AM
	Milica			X	
	Ladd	X			
	Pruitt	X			
	Foster	X			
	Brennan	-			
Chair:  ACTING chair	LYNN	X			
Chair:					

# ALASKA STATE LEGISLATURE

*Interim:*  
716 West 4th Avenue  
Anchorage, Alaska 99501-2133  
Phone: 907-269-0100  
Fax: 907-269-0105  
Rep.Lance.Pruitt@akleg.gov



*Session:*  
State Capitol  
Juneau, Alaska 99801-1182  
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Toll Free: 888-478-3438

## REPRESENTATIVE LANCE PRUITT HOUSE MAJORITY LEADER

### MEMORANDUM

To: Representative Wes Keller, Chair  
From: Rep. Lance Pruitt  
Date: March 11<sup>th</sup>, 2014  
Re: HB 366 Hearing Request

I respectfully request that HB 366 be scheduled to be heard in House Judiciary. Please feel free to contact me, or my aide Morgan Hopson, at 465-2721 with any questions. Attached you will find a background packet for HB 366 including a current version of the bill, a sponsor statement, and backup information. We are also including a sectional from Legislative Legal that was recently received and is not yet on Basis.

We will also be requesting teleconferencing for this hearing, and will forward a list of witnesses and sites when this information is available.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Lance Pruitt", with a long horizontal flourish extending to the right.

Representative Lance Pruitt

# ALASKA STATE LEGISLATURE

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## REPRESENTATIVE LANCE PRUITT HOUSE MAJORITY LEADER

### Sponsor Statement

#### HB 366

*An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence.*

Alaska upholds a steadfast tradition of the right to responsible firearm ownership. A fundamental component of this responsibility is the assurance that firearm retailers will have access to timely and relevant information in the National Instant Criminal Background Check System (NICS) database.

HB 366 pertains to the transmittal of information from the Alaska Court System to the NICS administrators. The database was established in 1994 to provide information to Federal Firearms Licensees (FFLs) regarding persons who are prohibited from possessing a firearm under Section 922 (g) or (n) of Title 18 USC.

Currently, the State of Alaska does not require the courts to transmit these records. This places the Federal Firearms Licensees at a greater risk of selling a firearm to an individual who may pose a risk to themselves or to the public. Alaskan FFLs submitted 93,405 transaction inquiries to the NICS database in 2013, ranking the state second highest in the number of inquiries per capita. However, the NICS database only contains a single entry regarding an individual who is prevented from firearm possession due to mental health reasons, as adjudicated by the courts.

House Bill 366 works with the courts to establish a system to transfer the limited necessary information with the NICS administrators regarding persons who are adjudicated in Alaska courts as unfit to possess a firearm due to mental health reasons. The bill also addresses the process for appealing such adjudications.

The State of Alaska leads the way in our defense of firearms rights, and the key to preserving that right is the assurance that FFLs will not be at risk of selling a firearm to an individual who is legally barred by the courts. HB 366 assures that Alaska's courts will transmit information to the NICS database, thereby protecting our FFLs, our gun rights, and the people of Alaska.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
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Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 21, 2014

**SUBJECT:** CSHB 366( ) -- Changes recommended by the Bureau of Alcohol, Tobacco, Firearms and Explosives; other (Work Order No. 28-LS1172\Y)

**TO:** Representative Lance Pruitt  
Attn: Morgan Hopson

**FROM:** Kathleen Strasbaugh  
Legislative Counsel

Please find enclosed a draft of the above bill that incorporates changes that an attorney with the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the United States Department of Justice (BATFE) has told the Department of Public Safety (DPS) are necessary. In my opinion, the change regarding the use of "resulting from" instead of "record of" makes no substantive difference with respect to compliance with federal law, but the changes have been incorporated to address the concern expressed by BATFE to DPS.

I have changed the language concerning the court's role in ruling on the motion for relief from "may" to "shall." It was not clear to me that this is required by federal law. However, I have spoken with the attorney from BATFE to whom you have referred me. It is BATFE's position that persons from Alaska would not be eligible for relief from the disabilities imposed by 18 U.S.C. 922(g)(4) if the statute is not worded in this manner. This is surprising but of course we want to make sure the court is effective.

I have also incorporated amendment P.1 into this draft. Please let me know if you did not wish to do this.

If I may be of further assistance, please advise.

KJS:lem  
14-149.lem

Enclosure

28-LS1172NY  
Strasbaugh  
3/21/14

**CS FOR HOUSE BILL NO. 366( )**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE PRUITT

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to reporting an involuntary mental health commitment to the National  
2 Instant Criminal Background Check System; relating to the sealing of records of mental  
3 health proceedings; and relating to relief from a disability resulting from an involuntary  
4 commitment or an adjudication of mental illness or mental incompetence."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 \* Section 1. AS 44.41 is amended by adding a new section to read:

7 **Sec. 44.41.045. Information and records concerning involuntary**  
8 **commitment and adjudication of mental illness or mental incompetence.** (a) Upon  
9 receiving information under AS 47.30.907, the Department of Public Safety shall  
10 transmit the information to the United States Department of Justice for inclusion in the  
11 National Instant Criminal Background Check System established under P.L. 103-159,  
12 107 Stat. 1536 (Brady Handgun Violence Prevention Act).

13 (b) In transmitting information to the National Instant Criminal Background  
14 Check System under (a) of this section, the Department of Public Safety may not

1 disclose diagnostic or treatment information regarding the person.

2 (c) The Department of Public Safety may not use or permit the use of the  
3 information obtained or retained under this section for a purpose not specified in this  
4 section, except that the department may use the information to determine whether a  
5 person is qualified to receive and hold a permit to carry a concealed handgun under  
6 AS 18.65.705.

7 (d) Information obtained or retained under this section is confidential and is  
8 not a public record.

9 \* **Sec. 2.** AS 47.30.845 is amended to read:

10 **Sec. 47.30.845. Confidential records.** Information and records obtained in the  
11 course of a screening investigation, evaluation, examination, or treatment are  
12 confidential and are not public records, except as the requirements of a hearing under  
13 AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and  
14 records may be copied and disclosed under regulations established by the department  
15 only to

16 (1) a physician or a provider of health, mental health, or social and  
17 welfare services involved in caring for, treating, or rehabilitating the patient;

18 (2) the patient or an individual to whom the patient has given written  
19 consent to have information disclosed;

20 (3) a person authorized by a court order;

21 (4) a person doing research or maintaining health statistics if the  
22 anonymity of the patient is assured and the facility recognizes the project as a bona  
23 fide research or statistical undertaking;

24 (5) the Department of Corrections in a case in which a prisoner  
25 confined to the state prison is a patient in the state hospital on authorized transfer  
26 either by voluntary admission or by court order;

27 (6) a governmental or law enforcement agency when necessary to  
28 secure the return of a patient who is on unauthorized absence from a facility where the  
29 patient was undergoing evaluation or treatment;

30 (7) a law enforcement agency when there is substantiated concern over  
31 imminent danger to the community by a presumed mentally ill person;

1 (8) the department in a case in which services provided under  
2 AS 47.30.660 - 47.30.915 are paid for, in whole or in part, by the department or in  
3 which a person has applied for or has received assistance from the department for  
4 those services;

5 (9) the Department of Public Safety as provided in AS 47.30.907;  
6 information provided under this paragraph may not include diagnostic or clinical  
7 information regarding a patient.

8 \* **Sec. 3.** AS 47.30.850 is amended to read:

9 **Sec. 47.30.850. Sealing [EXPUNGING OR SEALING] records.** Following  
10 the discharge of a person [RESPONDENT] from a treatment facility or the issuance  
11 of a court order denying a petition for commitment, the person [RESPONDENT] may  
12 at any time move to have all court records pertaining to the proceedings sealed  
13 [EXPUNGED] on condition that the person [RESPONDENT] file a full release of all  
14 claims of whatever nature arising out of the proceedings and the statements and  
15 actions of persons and facilities in connection with the proceedings. Upon the filing of  
16 the motion and full release, the court shall order the court records [EITHER  
17 EXPUNGED OR] sealed [, WHICHEVER THE COURT CONSIDERS  
18 APPROPRIATE UNDER THE CIRCUMSTANCES].

19 \* **Sec. 4.** AS 47.30 is amended by adding a new section to read:

20 **Sec. 47.30.851. Relief from legal disability.** (a) A person who is prohibited  
21 from possessing a firearm or ammunition under AS 18 U.S.C. 922(g)(4) as a result of  
22 an involuntary commitment or an adjudication of mental illness or mental  
23 incompetence that occurred in this state may, at any time, move to be relieved from  
24 the disability resulting from an involuntary commitment or an adjudication of mental  
25 illness or mental incompetence.

26 (b) In ruling on a motion under (a) of this section, the court

27 (1) shall consider

28 (A) the circumstances of the involuntary commitment or  
29 adjudication of mental illness or mental incompetence;

30 (B) the time that has elapsed since the involuntary commitment  
31 or adjudication of mental illness or mental incompetence;

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(C) the person's reputation and mental health and criminal history records;

(D) any conduct by the person that would constitute a crime against a person under AS 11.41 or a violation of AS 11.61.190 - 11.61.250; and

(E) any changes in the person's condition or circumstances relevant to the relief sought; and

(2) shall grant relief from the disability resulting from an involuntary commitment or adjudication of mental illness or mental incompetence if the court finds, by a preponderance of the evidence, that

(A) the person is unlikely to act in a manner dangerous to self or to public safety; and

(B) granting the relief is not contrary to the public interest.

(c) The court shall order a hearing conducted under (b) of this section to be held open or closed to the public at the option of the person.

(d) A decision to grant or deny relief under this section may be appealed as provided in AS 22.05.010. In reviewing the decision of the superior court, the standard of review may be de novo.

\* Sec. 5. AS 47.30 is amended by adding a new section to read:

**Sec. 47.30.907. Report to Department of Public Safety concerning involuntary commitment or relief from a disability resulting from an involuntary commitment or an adjudication of mental illness or mental incompetence. (a)**

Notwithstanding AS 47.30.845, when a superior court orders the involuntary commitment of a person under AS 47.30.735 - 47.30.755 or when relief from a disability resulting from an involuntary commitment or an adjudication of mental illness or mental incompetence is granted under AS 47.30.851(b), the court shall immediately transmit the following information, if known, to the Department of Public Safety:

(1) the person's

(A) name, date of birth, and address;

(B) aliases;

- 1 (C) social security number;
- 2 (D) driver's license or state identification card number;
- 3 (2) the date of the order and whether the order is
- 4 (A) an involuntary commitment; or
- 5 (B) relief from the disability resulting from an involuntary
- 6 commitment or an adjudication of mental illness or mental incompetence;
- 7 (3) the statutory authority for the involuntary commitment or the
- 8 disability resulting from an involuntary commitment or an adjudication of mental
- 9 illness or mental incompetence;
- 10 (4) whether the person was offered an opportunity to be heard and
- 11 represented by counsel in the involuntary commitment proceeding or adjudication of
- 12 mental illness or mental incompetence; and
- 13 (5) any other information required by the Department of Public Safety
- 14 or by the United States Department of Justice for inclusion in the National Instant
- 15 Criminal Background Check System established under P.L. 103-159, 107 Stat. 1536
- 16 (Brady Handgun Violence Prevention Act).
- 17 (b) This section does not apply to initial involuntary commitment procedures,
- 18 emergency detention for evaluation, or hospitalization for examination under
- 19 AS 47.30.700 - 47.30.715 if the person is released under AS 47.30.720.

20 \* **Sec. 6.** AS 47.30.915 is amended by adding new paragraphs to read:

- 21 (19) "adjudication of mental illness or mental incompetence" means a
- 22 court order finding that a person is
- 23 (A) not guilty by reason of insanity or guilty but mentally ill
- 24 under AS 12.47.040;
- 25 (B) incompetent to stand trial for a criminal offense under
- 26 AS 12.47.100 - 12.47.120; or
- 27 (C) a danger to self or others, or is gravely disabled because of
- 28 incapacity, incompetence, mental illness, dementia, or some other cause;
- 29 (20) "disability resulting from an involuntary commitment or an
- 30 adjudication of mental illness or mental incompetence" means the prohibition against
- 31 the possession of a firearm or ammunition under 18 U.S.C. 922(g)(4) that results from

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an involuntary commitment or adjudication of mental illness or mental incompetence.

AMENDMENT #1

*adopted unanimously*

OFFERED IN THE HOUSE  
TO: CSHB 366(STA)

- 1 Page 4, lines 27 - 28:
- 2 Delete "and the Department of Health and Social Services"

28-LS1172\O  
Strasbaugh  
3/5/14

**CS FOR HOUSE BILL NO. 366( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE PRUITT**

**A BILL**

**FOR AN ACT ENTITLED**

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2 **Instant Criminal Background Check System; relating to the sealing of records of mental**  
3 **health proceedings; and relating to relief from disabilities of a record of involuntary**  
4 **commitment and an adjudication of mental illness or mental incompetence."**

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9 receiving information under AS 47.30.907, the Department of Public Safety shall  
10 transmit the information to the United States Department of Justice for inclusion in the  
11 National Instant Criminal Background Check System established under P.L. 103-159,  
12 107 Stat. 1536 (Brady Handgun Violence Prevention Act).

13 (b) In transmitting information to the National Instant Criminal Background  
14 Check System under (a) of this section, the Department of Public Safety may not

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disclose diagnostic or treatment information regarding the person.

(c) The Department of Public Safety may not use or permit the use of the information obtained or retained under this section for a purpose not specified in this section, except that the department may use the information to determine whether a person is qualified to receive and hold a permit to carry a concealed handgun under AS 18.65.705.

(d) Information obtained or retained under this section is confidential and is not a public record.

\* **Sec. 2.** AS 47.30.845 is amended to read:

**Sec. 47.30.845. Confidential records.** Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to

(1) a physician or a provider of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient;

(2) the patient or an individual to whom the patient has given written consent to have information disclosed;

(3) a person authorized by a court order;

(4) a person doing research or maintaining health statistics if the anonymity of the patient is assured and the facility recognizes the project as a bona fide research or statistical undertaking;

(5) the Department of Corrections in a case in which a prisoner confined to the state prison is a patient in the state hospital on authorized transfer either by voluntary admission or by court order;

(6) a governmental or law enforcement agency when necessary to secure the return of a patient who is on unauthorized absence from a facility where the patient was undergoing evaluation or treatment;

(7) a law enforcement agency when there is substantiated concern over imminent danger to the community by a presumed mentally ill person;

1 (8) the department in a case in which services provided under  
 2 AS 47.30.660 - 47.30.915 are paid for, in whole or in part, by the department or in  
 3 which a person has applied for or has received assistance from the department for  
 4 those services;

5 **(9) the Department of Public Safety as provided in AS 47.30.907;**  
 6 **information provided under this paragraph may not include diagnostic or clinical**  
 7 **information regarding a patient.**

8 \* **Sec. 3.** AS 47.30.850 is amended to read:

9 **Sec. 47.30.850. Sealing [EXPUNGING OR SEALING] records.** Following  
 10 the discharge of a **person** [RESPONDENT] from a treatment facility or the issuance  
 11 of a court order denying a petition for commitment, the **person** [RESPONDENT] may  
 12 at any time move to have all court records pertaining to the proceedings **sealed**  
 13 [EXPUNGED] on condition that the **person** [RESPONDENT] file a full release of all  
 14 claims of whatever nature arising out of the proceedings and the statements and  
 15 actions of persons and facilities in connection with the proceedings. Upon the filing of  
 16 the motion and full release, the court shall order the court records [EITHER  
 17 EXPUNGED OR] sealed [, WHICHEVER THE COURT CONSIDERS  
 18 APPROPRIATE UNDER THE CIRCUMSTANCES].

19 \* **Sec. 4.** AS 47.30 is amended by adding a new section to read:

20 **Sec. 47.30.851. Relief from legal disability.** (a) A person who has a record of  
 21 an involuntary commitment or an adjudication of mental illness or mental  
 22 incompetence in a proceeding in this state, and who, because of the involuntary  
 23 commitment or adjudication, was prohibited from possessing a firearm or ammunition  
 24 under 18 U.S.C. 922(g)(4) may, at any time, move to be relieved from the disabilities  
 25 of a record of the involuntary commitment or the adjudication of mental illness or  
 26 mental incompetence.

27 (b) In ruling on the motion, the court  
 28 (1) shall consider  
 29 (A) the circumstances of the involuntary commitment or  
 30 adjudication of mental illness or mental incompetence;  
 31 (B) the time that has elapsed since the involuntary commitment

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or adjudication of mental illness or mental incompetence;

(C) the person's reputation and mental health and criminal history records;

(D) any conduct by the person that would constitute a crime against a person under AS 11.41 or a violation of AS 11.61.190 - 11.61.250; and

(E) any changes in the person's condition or circumstances relevant to the relief sought; and

(2) may grant relief from the disabilities of a record of an involuntary commitment or adjudication of mental illness or mental incompetence if the court finds, by a preponderance of the evidence, that

(A) the person is unlikely to act in a manner dangerous to self or to public safety; and

(B) granting the relief is not contrary to the public interest.

(c) The court shall order a hearing conducted under (b) of this section to be held open or closed to the public at the option of the person.

(d) A decision to grant or deny relief under this section may be appealed as provided in AS 22.05.010. In reviewing the decision of the superior court, the standard of review may be de novo.

\* **Sec. 5.** AS 47.30 is amended by adding a new section to read:

**Sec. 47.30.907. Report to Department of Public Safety concerning involuntary commitment or relief from the disabilities of a record of involuntary commitment or an adjudication of mental illness or mental incompetence.** (a) Notwithstanding AS 47.30.845, when a superior court orders the involuntary commitment of a person under AS 47.30.735 - 47.30.755 or when relief from the disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental incompetence is granted under AS 47.30.851(b), the court and the Department of Health and Social Services shall immediately transmit the following information, if known, to the Department of Public Safety:

(1) the person's

(A) name, date of birth, and address;

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- (B) aliases;
- (C) social security number;
- (D) driver's license or state identification card number;
- (2) the date of the order and whether the order is
  - (A) an involuntary commitment; or
  - (B) relief from the disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental incompetence;
- (3) the statutory authority for the involuntary commitment or relief from the disabilities of a record of an involuntary commitment;
- (4) whether the person was offered an opportunity to be heard and represented by counsel in the involuntary commitment proceeding or adjudication of mental illness or mental incompetence; and
- (5) any other information required by the Department of Public Safety or by the United States Department of Justice for inclusion in the National Instant Criminal Background Check System established under P.L. 103-159, 107 Stat. 1536 (Brady Handgun Violence Prevention Act).

(b) This section does not apply to initial involuntary commitment procedures, emergency detention for evaluation, or hospitalization for examination under AS 47.30.700 - 47.30.715 if the person is released under AS 47.30.720.

\* **Sec. 6.** AS 47.30.915 is amended by adding new paragraphs to read:

- (19) "adjudication of mental illness or mental incompetence" means a court order finding that a person is
  - (A) not guilty by reason of insanity or guilty but mentally ill under AS 12.47.040;
  - (B) incompetent to stand trial for a criminal offense under AS 12.47.100 - 12.47.120; or
  - (C) a danger to self or others, or is gravely disabled because of incapacity, incompetence, mental illness, dementia, or some other cause;
- (20) "disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental incompetence" means the prohibition against the possession of a firearm under 18 U.S.C. 922(g)(4) that results from an involuntary

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commitment or adjudication of mental illness or mental incompetence.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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State Capitol  
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Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 10, 2014

**SUBJECT:** Sectional summary: HB366 (Work Order No. 28-LS1172\O)

**TO:** Representative Lance Pruitt  
Attn: Morgan Hopson

**FROM:** Kathleen Strasbaugh  
Legislative Counsel

You have requested a sectional summary of the "O" version of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1** requires the Department of Public Safety (DPS) to transmit information concerning involuntary mental health commitments to the National Instant Criminal Background Check System established under P.L. 103 - 159, 107 Stat. 1536 (Brady Handgun Violence Prevention Act), and concerning relief from the legal disabilities of such commitments and other adjudications of mental illness and mental incompetence. The section also imposes certain confidentiality requirements.

**Section 2** amends AS 47.30.845 to authorize DPS to receive the information necessary to comply with sec. 1, except for diagnostic or clinical information.

**Section 3** amends AS 47.30.850 to provide that records are sealed rather than expunged, and changing "respondent" to "person."

**Section 4** creates a procedure that allows a person who has been involuntarily committed or otherwise adjudicated mentally ill or incompetent and who is, as a result, disqualified from possession of firearms under federal law to file a motion to be relieved of the disability. The section requires the reviewing court to consider the circumstances of the commitment or adjudication, the time that has elapsed since the commitment or adjudication, the person's criminal and mental health record, whether the person has engaged in conduct that would be a crime against a person, and other changes in the person's circumstances. The court may grant the relief if the person is unlikely to act in a manner dangerous to the person or to public safety and if granting relief is not contrary to the public interest.

Representative Lance Pruitt  
March 10, 2014  
Page 2

**Section 5** requires the court and the Department of Health and Social Services to transmit information concerning involuntary commitment and the granting of relief under sec. 4 of the bill to DPS. The section does not apply to precommitment detention and evaluation information under AS 47.30.700 - 47.30.715 if the person was released under AS 47.30.720.

**Section 6** provides definitions.

KJS:lem  
14-123.lem

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: HB 366  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB366CS(JUD)-LAW-CIV-03-20-14  
Title: INVOLUNTARY COMMITMENT  
Sponsor: PRUITT  
Requester: (H) JUDICIARY

Department: Department of Law  
Appropriation: Civil Division  
Allocation: Human Services  
OMB Component Number: 2962

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Upon further consideration of the bill the amount of this fiscal note has been changed to zero. The reasoning behind the change can be found in the analysis below.

Prepared By: Loretta Withington, Division Operations Manager  
Division: Department of Law  
Approved By: Michael C. Geraghty, Attorney General  
Agency: Department of Law

Phone: (907)465-5427  
Date: 03/20/2014 03:53 PM  
Date: 03/20/14

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. HB 366

### Analysis

Section 1: Amends existing statute to expand the duties of the Department of Public Safety to transmit information regarding a person's adjudication as mentally ill (i.e., an involuntary commitment) to a U.S. Department of Justice database for inclusion in its criminal background check system (NICBCS).

Section 2: Amends current statute AS 47.30.845 to make clear that the only information to be reported by Public Safety to the national criminal background check system is the adjudication not specific patient diagnostic or clinical information.

Section 3: Amends an existing statute (AS 47.30.850) regarding the expunging or sealing of patient records to including a mechanism for a person to petition/motion the court to have the actual adjudication for mental illness (i.e., an involuntary commitment for up 30, 90, or 180 days) expunged or sealed.

Section 4: Creates a new section to AS 47.30.850 related to the sealing or expunging of patient records by setting out the grounds on which a superior court judge may erase a person's previous adjudicated as mentally ill from that person's record. This decision would effectively take this person out from under the federal law that prohibits a person adjudicated mentally ill from possessing a firearm or ammunition. The decision to deny or grant the request to expunge or seal knowledge of the adjudication is appealable to the Alaska Supreme Court.

Section 5: Creates a new section (AS 47.30.907) that will require the Alaska Court System and Department of Health and Social Services to report to Public Safety when a person is either adjudicated mentally ill and involuntarily committed for treatment or when the superior court allows the record of an adjudication for mental illness to be expunged or sealed. The report requires identification of the person and a number of details regarding the adjudication or judicial seal. This section also makes it clear that an adjudication for mental illness does not include emergency detention or hospitalization for evaluation (i.e., the 72-hour hold).

Section 6: Amends AS 47.30.915 to include a definition of "adjudication of mental illness or mental incompetence" and "disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental competence."

Although it is still not clear what the exact impact of section 4 will be; with the following assumptions the Department of Law's fiscal note is zero:

1. the application of the bill will be prospective;
2. the number of persons who seek this relief will not be significant;
3. we expect a very small number of those committed in the future to seek the relief offered under section 4; and
4. the hearings will be limited, with no court appointed attorney to represent the petitioner.

With the above assumptions, if there are cases where the state may want to assert an interest, it is anticipated that the number will be small and could be absorbed with current staffing.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: HB 366  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB366CS(JUD)-DPS-CRID-03-20-14  
Title: INVOLUNTARY COMMITMENT  
Sponsor: PRUITT  
Requester: House Judiciary

Department: Department of Public Safety  
Appropriation: Statewide Support  
Allocation: Alaska Criminal Records and Identification  
OMB Component Number: 1190

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Updated to reflect zero costs.
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Prepared By:	Kathy Monfreda, Criminal Records & Identification Bureau Chief	Phone:	(907)269-5581
Division:	Statewide Services	Date:	03/20/2014 03:15 PM
Approved By:	Gary Folger, Commissioner	Date:	03/20/14
Agency:	Department of Public Safety		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CS HB 366 (JUD)

### Analysis

This bill would allow the Department of Public Safety (DPS) to receive from the Alaska Court System and the Department of Health and Social Services certain records related to involuntary commitments and adjudications of mental illness or mental incompetence and subsequently transmit those records to the FBI for inclusion in the National Instant Criminal Background Check System (NICS).

The NICS is a national system that checks available records in three databases to determine if prospective firearm buyers are disqualified from receiving firearms. A NICS check includes a check of the following three databases that are maintained by the FBI:

- Interstate Identification Index (III or "Triple I"), a database on criminal history record information;
- National Crime Information Center (NCIC) which includes information on persons subject to civil protection orders and arrest warrants; and
- NICS Index which includes the information contributed by federal and state agencies identifying persons prohibited from possessing firearms who are not included in the III or NCIC, such as persons with a prohibiting mental health history.

When information about involuntary commitments and adjudications of mental illness or mental incompetence is provided to the NICS, the FBI can deny firearm transfers to persons with disqualifying mental health histories both in the state where the record was created and in other states to which the person may have subsequently moved.

The records DPS would receive under this bill would be maintained in a separate database. This would further protect the confidentiality of the records and ensure they would only be available for the purposes outlined in the bill.

Software development and programming is necessary to create a separate repository for records related to involuntary commitments and adjudications of mental illness or mental incompetence, safeguard access to them, allow semi-automated submission of records, allow modification or withdrawal of submitted records, and allow audits and reporting against the new database.

The one-time costs associated with this work were initially estimated at \$24,400 for contractor costs. DPS has reevaluated this estimate and believes these costs can be absorbed from within the department's existing budget. Passage of this bill would make DPS eligible to apply for grant funds made available through the NICS Improvement Amendments Act (NIAA) of 2007. Grant funds received through NIAA would be used to establish and upgrade information automation and identification technologies for timely submission of information relevant to NICS checks.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 366(STA)  
Fiscal Note Number: 1  
(H) Publish Date: 3/12/14

Identifier: HB366- ACS-TRC-03-07-14  
Title: INVOLUNTARY COMMITMENT  
Sponsor: PRUITT  
Requester: House State Affairs

Department: Alaska Court System  
Appropriation: Alaska Court System  
Allocation: Trial Courts  
OMB Component Number: 768

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial version
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Prepared By: Nancy Meade, General Counsel  
Division: Alaska Court System  
Approved By: Nancy Meade for Christine Johnson, Administrative Director  
Agency: Alaska Court System

Phone: (907)463-4736  
Date: 03/07/2014 01:00 PM  
Date: 03/07/14

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(STA)

**Analysis**

House Bill 366 would require the Court System to handle two additional case types and to report certain information about cases that involve involuntary commitments or certain adjudications.

Specifically, Section 3 gives persons the right to file a motion with the court to seal certain records that involve the discharge from the disabilities of a mental commitment or adjudication of mental incompetence.

Section 4 allows persons with a record of involuntary commitment or an adjudication of mental illness or mental incompetence to file a motion and go through certain steps to seek relief from the disabilities of that record. The court would typically hold a hearing and make findings, as set forth in Section 4.

Section 5 requires the Court System to transmit listed information about persons who are involuntarily committed or who obtain relief under Section 4 to the Department of Public Safety.

The requirements in HB 366 will increase the number of cases that are handled in the courts, but the number is anticipated to be small. The court anticipates that it can absorb the increased workload with no fiscal impact, and therefore submits this zero fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 366(STA)  
Fiscal Note Number: 2  
(H) Publish Date: 3/12/14

Identifier: HB366-DHSS-API-03-07-14  
Title: INVOLUNTARY COMMITMENT  
Sponsor: PRUITT  
Requester: House State Affairs Committee

Department: Department of Health and Social Services  
Appropriation: Behavioral Health  
Allocation: Alaska Psychiatric Institute  
OMB Component Number: 311

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **No**  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By: Barbara Henjum  
Division: Behavioral Health  
Approved By: Sarah Woods, Deputy Director, Finance & Management Services  
Agency: Health and Social Services

Phone: (907)269-3410  
Date: 03/07/2014 03:00 PM  
Date: 03/07/14

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(STA)

**Analysis**

HB366 requires the State of Alaska to make a report to the FBI's National Instant Criminal Background Check System (NICBCS) when a person is adjudicated mentally ill or mentally incompetent (to stand trial). A report to the FBI database will effectively prohibit that person from owning or buying a gun or ammunition. It requires the report to the NICBCS to be made by the Department of Public Safety, based on information received from both the Alaska Court System and the Department of Health & Social Services.

This would require API medical records staff to inform DPS whenever a person was adjudicated mentally ill and involuntarily committed to API for up to 30 days or more. This could be efficiently handled by the development of a form by DPS (or DHSS) for the transmittal of the required information to DPS within a few days of the actual commitment. The form could be faxed to DPS.

The bill also creates provisions whereby a person adjudicated mentally ill or mentally incompetent may seek to have that information expunged or sealed by an Alaska superior court judge. If the record is sealed or expunged, it would effectively remove the prohibition of gun ownership from the individual.

If API receives notice that a superior court judge has sealed a record, or ordered that the adjudication of a commitment be expunged from a patient's record, then API will need to develop an internal process within its medical records department to ensure that a sealed record is, indeed, identified as sealed, and that the expunged parts of a patient record are indeed removed from the patient's record.

The financial impact of the legislation on DHSS/Division of Behavioral Health/API is limited, so long as the legislation is future oriented.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 366(STA)  
Fiscal Note Number: 3  
(H) Publish Date: 3/12/14

Identifier: HB366-LAW-CIV-03-07-14  
Title: INVOLUNTARY COMMITMENT  
Sponsor: PRUITT  
Requester: (H) STATE AFFAIRS

Department: Department of Law  
Appropriation: Civil Division  
Allocation: Human Services  
OMB Component Number: 2962

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	***	0.0	***	***	***	***	***
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	***	0.0	***	***	***	***	***

**Fund Source (Operating Only)**

None							
<b>Total</b>	***	0.0	***	***	***	***	***

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial version, not applicable.

Prepared By: Loretta Withington, Division Operations Manager  
Division: Department of Law  
Approved By: Michael C. Geraghty, Attorney General  
Agency: Department of Law

Phone: (907)465-5427  
Date: 03/07/2014 03:53 PM  
Date: 03/07/14

### FISCAL NOTE ANALYSIS #3

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(STA)

#### Analysis

Section 1: Amends existing statute to expand the duties of the Department of Public Safety to transmit information regarding a person's adjudication as mentally ill (i.e., an involuntary commitment) to a U.S. Department of Justice database for inclusion in its criminal background check system (NICBCS).

Section 2: Amends current statute AS 47.30.845 to make clear that the only information to be reported by Public Safety to the national criminal background check system is the adjudication not specific patient diagnostic or clinical information.

Section 3: Amends an existing statute (AS 47.30.850) regarding the expunging or sealing of patient records to including a mechanism for a person to petition/motion the court to have the actual adjudication for mental illness (i.e., an involuntary commitment for up 30, 90, or 180 days) expunged or sealed.

Section 4: Creates a new section to AS 47.30.850 related to the sealing or expunging of patient records by setting out the grounds on which a superior court judge may erase a person's previous adjudicated as mentally ill from that person's record. This decision would effectively take this person out from under the federal law that prohibits a person adjudicated mentally ill from possessing a firearm or ammunition. The decision to deny or grant the request to expunge or seal knowledge of the adjudication is appealable to the Alaska Supreme Court.

Section 5: Creates a new section (AS 47.30.907) that will require the Alaska Court System and Department of Health and Social Services to report to Public Safety when a person is either adjudicated mentally ill and involuntarily committed for treatment or when the superior court allows the record of an adjudication for mental illness to be expunged or sealed. The report requires identification of the person and a number of details regarding the adjudication or judicial seal. This section also makes it clear that an adjudication for mental illness does not include emergency detention or hospitalization for evaluation (i.e., the 72-hour hold).

Section 6: Amends AS 47.30.915 to include a definition of "adjudication of mental illness or mental incompetence" and "disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental competence."

The cost of HB 366 to the Department of Law is indeterminate. The inclusion of sections 3 and 4 to this bill that allows for a person to petition the court to seal or expunge their records will result in increased work by the Department of Law. Each of these matters will be noticed to the Department of Law, who will need to take a position and in many instances litigate whether the request to seal or expunge the records should be granted. This could result in participation at the hearing by attorneys from both the civil and criminal divisions. At this time there is no way to estimate how many persons would seek this judicial relief and as such we cannot estimate the overall cost to the Department of Law.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSHB 366(STA)  
Fiscal Note Number: 4  
(H) Publish Date: 3/12/14

Identifier: HB366-DPS-CRID-03-07-14  
Title: INVOLUNTARY COMMITMENT  
Sponsor: PRUITT  
Requester: House State Affairs

Department: Department of Public Safety  
Appropriation: Statewide Support  
Allocation: Alaska Criminal Records and Identification  
OMB Component Number: 1190

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services	24.4							
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>24.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

1004 Gen Fund	24.4							
<b>Total</b>	<b>24.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.
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Prepared By:	Kathy Monfreda, Criminal Records & Identification Bureau Chief	Phone:	(907)269-5581
Division:	Statewide Services	Date:	03/07/2014 04:00 PM
Approved By:	Gary Folger, Commissioner	Date:	03/07/14
Agency:	Department of Public Safety		

## FISCAL NOTE ANALYSIS #4

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(STA)

### Analysis

This bill would allow the Department of Public Safety (DPS) to receive from the Alaska Court System and the Department of Health and Social Services certain records related to involuntary commitments and adjudications of mental illness or mental incompetence and subsequently transmit those records to the FBI for inclusion in the National Instant Criminal Background Check System (NICS).

The NICS is a national system that checks available records in three databases to determine if prospective firearm buyers are disqualified from receiving firearms. A NICS check includes a check of the following three databases that are maintained by the FBI:

- Interstate Identification Index (III or "Triple I"), a database on criminal history record information;
- National Crime Information Center (NCIC) which includes information on persons subject to civil protection orders and arrest warrants; and
- NICS Index which includes the information contributed by federal and state agencies identifying persons prohibited from possessing firearms who are not included in the III or NCIC, such as persons with a prohibiting mental health history.

When information about involuntary commitments and adjudications of mental illness or mental incompetence is provided to the NICS, the FBI can deny firearm transfers to persons with disqualifying mental health histories both in the state where the record was created and in other states to which the person may have subsequently moved.

The records DPS would receive under this bill would be maintained in a separate database. This would further protect the confidentiality of the records and ensure they would only be available for the purposes outlined in the bill.

This fiscal note includes software development and programming costs necessary to: create a separate repository for records related to involuntary commitments and adjudications of mental illness or mental incompetence; safeguard access to them; allow semi-automated submission of records; allow modification or withdrawal of submitted records; and allow audits and reporting against the new database.

The estimated costs are based on 232 hours of contracted programming costs at \$105 per hour.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: HB 366  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB366CS(STA)-DOA-PDA-03-14-14  
Title: INVOLUNTARY COMMITMENT  
Sponsor: PRUITT  
Requester: House Judiciary

Department: Department of Administration  
Appropriation: Legal and Advocacy Services  
Allocation: Public Defender Agency  
OMB Component Number: 1631

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

updated for committee substitute

Prepared By: <u>Quinlan Steiner, Public Defender</u>	Phone: <u>(907)334-4414</u>
Division: <u>Public Defender Agency</u>	Date: <u>03/14/2014 02:30 PM</u>
Approved By: <u>Curtis Thayer, Commissioner</u>	Date: <u>03/14/14</u>
Agency: <u>Department of Administration</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CS HB 366 (STA)

**Analysis**

HB366 requires the transmittal of information regarding persons adjudicated as mentally ill to the Department of Public Safety and then to the United States Department of Justice for the purpose of conducting background checks and making determinations regarding applications to possess firearms.

HB366 is not expected to have a fiscal impact on the Public Defender Agency. The agency therefore submits a zero fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: HB 366  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB366CS(STA)-DOA-OPA-03-14-2014  
Title: INVOLUNTARY COMMITMENT  
Sponsor: PRUITT  
Requester: House Judiciary

Department: Department of Administration  
Appropriation: Legal and Advocacy Services  
Allocation: Office of Public Advocacy  
OMB Component Number: 43

## Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## Fund Source (Operating Only)

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## Positions

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

## ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

## Why this fiscal note differs from previous version:

Updated for new committee substitute
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Prepared By: Richard Allen, Director  
Division: Office of Public Advocacy  
Approved By: Curtis Thayer, Commissioner  
Agency: Department of Administration

Phone: (907)269-3504  
Date: 03/14/2014 09:45 PM  
Date: 03/14/14

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CS HB366 (STA)

### Analysis

This legislation amends AS 44.41, concerning involuntary commitment proceedings, in several aspects. The effect of the bill would be to strengthen the role of the Department of Public Safety (DPS) in involuntary commitment proceedings, eliminate the option of expungement of the proceedings records for the person post-commitment and allow the person, post-commitment, to seek relief from the disability of being prohibited from owning a firearm.

The bill if enacted would impact both the persons who are committed and the general public, in that the question of such persons being able to possess firearms post-commitment would be able to be brought and litigated in the courts. The bill specifically allows for a person to appeal from an adverse ruling to the state supreme court under a de novo standard of review. Agencies affected would include the departments of Law, Public Safety, Administration and the Alaska Court System. Attorneys from the Office of Public Advocacy (OPA) and/or the Public Defender Agency (PD) assigned to represent a person in involuntary commitment proceedings would also be affected.

If enacted as most recently amended, the bill would likely have some impact on the caseloads of those Office of Public Advocacy (OPA) attorneys working those cases. The bill would likely not have any material impact upon the operations, administration or overall budget of OPA therefore, OPA submits a zero fiscal note.



*The FixNICS campaign has won victories in 13 states over the past year. In addition to the successes below, NSSF-backed legislation has been introduced and is under consideration this year in Alaska, Vermont, New Hampshire, Maine, and Oklahoma.*

State	Summary of New Laws/Actions
Alabama	May 2013: Strengthens requirements for state officials to send mental health records to NICS.
Hawaii	March 2014: HB 2246, passed the House with no dissenters and now it is in the Senate. House Committee on Judiciary voted (10-0) in favor of the bill.
Louisiana	May 2013: Requires any Louisiana resident who loses the right to possess firearms under state law to be reported to the State Supreme Court which will send this information to NICS.
Massachusetts	February 2014: MA Task Force supports FixNICS. Legislation will be introduced soon.
Mississippi	March 2013: Requires state officials to report mental health adjudications and court-ordered commitments to NICS.
Nebraska	Jan. 2014: State has started to transmit mental health records to NICS following an NSSF-backed administrative fix.
New Jersey	May 2013: Requires state to submit to NICS records showing those who have been involuntarily committed for mental health treatment.
Pennsylvania	Jan. 2013: State police submitted 643,167 records to NICS and will send to NICS on a continuous basis moving forward after administrative fix.
Rhode Island	Jan. 2014: NSSF-backed State task force recommended changing state law to mandate reporting of mental health records to NICS. Legislation pending.
South Carolina	May 2013: Requires the submission of records to NICS.
South Dakota	March 2014: HB 1229 Overwhelming passed both chambers. House (53-17) and Senate (26-9). Awaiting Governor's signature (3-7-14).
Tennessee	April 2013: Requires courts to submit mental health commitment information to NICS.
Wyoming	March 2014: FixNICS approved for an interim committee that will be studied in order to craft committee legislation.

*For more information visit: [www.FixNics.org](http://www.FixNics.org)*



## **Submission of Mental Health Records to NICS and the HIPAA Privacy Rule**

**Edward C. Liu, Coordinator**  
Legislative Attorney

**Erin Bagalman**  
Analyst in Health Policy

**Vivian S. Chu**  
Legislative Attorney

**C. Stephen Redhead**  
Specialist in Health Policy

April 15, 2013

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R43040

## Summary

Questions about the scope and efficacy of the background checks required during certain firearm purchases have gained prominence following recent mass shootings. These background checks are intended to identify whether potential purchasers are prohibited from purchasing or possessing firearms due to one or more “prohibiting factors,” such as a prior felony conviction or a prior involuntary commitment for mental health reasons. Operationally, such background checks primarily use information contained within the National Instant Criminal Background Check System (NICS) and a particular focus of the debate in Congress has been whether federal privacy standards promulgated under the Health Insurance Portability and Accountability Act (i.e., the HIPAA privacy rule) or state privacy laws are an obstacle to the submission of mental health records to NICS.

Under the Gun Control Act of 1968 (GCA), as amended, persons adjudicated to be mentally defective or who have been committed to a mental institution are prohibited from possessing, shipping, transporting, and receiving firearms and ammunition. Neither a diagnosis of a mental illness nor treatment for a mental illness is sufficient to qualify a person as “adjudicated as a mental defective.” Rather, an individual’s “adjudication as a mental defective” relies upon a determination or decision by a court, board, commission, or other lawful authority. The definition of “committed to a mental institution” may apply only to inpatient settings. At least one federal court has held that the Supreme Court’s recent recognition of an individual right to possess a firearm suggests that some emergency hospitalization or commitment procedures, that may not have as many procedural safeguards as formal commitment, should not be included within the meaning of “involuntary commitment” for purposes of the GCA. In 2007, Congress passed the NICS Improvement Amendments Act (NIAA), which authorizes the Attorney General to make additional grants to states to improve electronic access to records as well as to incentivize states to turn over records of persons who would be prohibited from possessing or receiving firearms.

In 2012, the Government Accountability Office (GAO) reported that a variety of technological, coordination, and legal (i.e., privacy) challenges limit the states’ ability to report mental health records to NICS. The HIPAA privacy rule, which applies to most health care providers, regulates the use or disclosure of protected health information. On February 14, 2013, HHS announced that it will seek to amend the HIPAA privacy rule to remove any potential impediments to state reporting of mental health records to NICS. The privacy rule is most relevant as a potential obstacle where information used to generate mental health records on individuals prohibited from gun possession under the GCA is held by health care providers in states that do not expressly require disclosure of such records to NICS. Courts and health care providers that generate such prohibiting mental health records may also be subject to state health privacy laws that may be more restrictive than the HIPAA privacy rule.

## Presidential Documents

Memorandum of January 16, 2013

### Improving Availability of Relevant Executive Branch Records to the National Instant Criminal Background Check System

#### Memorandum for the Heads of Executive Departments and Agencies

Since it became operational in 1998, the National Instant Criminal Background Check System (NICS) has been an essential tool in the effort to ensure that individuals who are prohibited under Federal or State law from possessing firearms do not acquire them from Federal Firearms Licensees (FFLs). The ability of the NICS to determine quickly and effectively whether an individual is prohibited from possessing or receiving a firearm depends on the completeness and accuracy of the information made available to it by Federal, State, and tribal authorities.

The NICS Improvement Amendments Act of 2007 (NIAA) (Public Law 1107–180) was a bipartisan effort to strengthen the NICS by increasing the quantity and quality of relevant records from Federal, State, and tribal authorities accessible by the system. Among its requirements, the NIAA mandated that executive departments and agencies (agencies) provide relevant information, including criminal history records, certain adjudications related to the mental health of a person, and other information, to databases accessible by the NICS. Much progress has been made to identify information generated by agencies that is relevant to determining whether a person is prohibited from receiving or possessing firearms, but more must be done. Greater participation by agencies in identifying records they possess that are relevant to determining whether an individual is prohibited from possessing a firearm and a regularized process for submitting those records to the NICS will strengthen the accuracy and efficiency of the NICS, increasing public safety by keeping guns out of the hands of persons who cannot lawfully possess them.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

**Section 1. *Improving the Availability of Records to the NICS.*** (a) Within 45 days of the date of this memorandum, and consistent with the process described in section 3 of this memorandum, the Department of Justice (DOJ) shall issue guidance to agencies regarding the identification and sharing of relevant Federal records and their submission to the NICS.

(b) Within 60 days of issuance of guidance pursuant to subsection (a) of this section, agencies shall submit a report to DOJ advising whether they possess relevant records, as set forth in the guidance, and setting forth an implementation plan for making information in those records available to the NICS, consistent with applicable law.

(c) In accordance with the authority and responsibility provided to the Attorney General by the Brady Handgun Violence Prevention Act (Public Law 103–159), as amended, the Attorney General, consistent with the process described in section 3 of this memorandum, shall resolve any disputes concerning whether agency records are relevant and should be made available to the NICS.

(d) To the extent they possess relevant records, as set forth in the guidance issued pursuant to subsection (a) of this section, agencies shall prioritize making those records available to the NICS on a regular and ongoing basis.

**Sec. 2. *Measuring Progress.*** (a) By October 1, 2013, and annually thereafter, agencies that possess relevant records shall submit a report to the President through the Attorney General describing:

- (i) the relevant records possessed by the agency that can be shared with the NICS consistent with applicable law;
- (ii) the number of those records submitted to databases accessible by the NICS during each reporting period;
- (iii) the efforts made to increase the percentage of relevant records possessed by the agency that are submitted to databases accessible by the NICS;
- (iv) any obstacles to increasing the percentage of records that are submitted to databases accessible by the NICS;
- (v) for agencies that make qualifying adjudications related to the mental health of a person, the measures put in place to provide notice and programs for relief from disabilities as required under the NIAA;
- (vi) the measures put in place to correct, modify, or remove records accessible by the NICS when the basis under which the record was made available no longer applies; and
- (vii) additional steps that will be taken within 1 year of the report to improve the processes by which records are identified, made accessible, and corrected, modified, or removed.

(b) If an agency certifies in its annual report that it has made available to the NICS its relevant records that can be shared consistent with applicable law, and describes its plan to make new records available to the NICS and to update, modify, or remove existing records electronically no less often than quarterly as required by the NIAA, such agency will not be required to submit further annual reports. Instead, the agency will be required to submit an annual certification to DOJ, attesting that the agency continues to submit relevant records and has corrected, modified, or removed appropriate records.

**Sec. 3. *NICS Consultation and Coordination Working Group.*** To ensure adequate agency input in the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS, there is established a NICS Consultation and Coordination Working Group (Working Group), to be chaired by the Attorney General or his designee.

(a) *Membership.* In addition to the Chair, the Working Group shall consist of representatives of the following agencies:

- (i) the Department of Defense;
- (ii) the Department of Health and Human Services;
- (iii) the Department of Transportation;
- (iv) the Department of Veterans Affairs;
- (v) the Department of Homeland Security;
- (vi) the Social Security Administration;
- (vii) the Office of Personnel Management;
- (viii) the Office of Management and Budget; and
- (ix) such other agencies or offices as the Chair may designate.

(b) *Functions.* The Working Group shall convene regularly and as needed to allow for consultation and coordination between DOJ and agencies affected by the Attorney General's implementation of the NIAA, including with respect to the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS. The Working Group may also consider, as appropriate:

- (i) developing means and methods for identifying agency records deemed relevant by DOJ's guidance;
- (ii) addressing obstacles faced by agencies in making their relevant records available to the NICS;
- (iii) implementing notice and relief from disabilities programs; and
- (iv) ensuring means to correct, modify, or remove records when the basis under which the record was made available no longer applies.

(c) *Reporting.* The Working Group will review the annual reports required by section 2(a) of this memorandum, and member agencies may append to the reports any material they deem appropriate, including an identification of any agency best practices that may be of assistance to States in supplying records to the NICS.

**Sec. 4. General Provisions.** (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

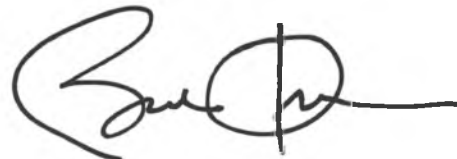
- (i) the authority granted by law to a department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

**Sec. 5. Publication.** The Attorney General is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,  
Washington, January 16, 2013



Highlights of GAO-12-684, a report to congressional requesters

## Why GAO Did This Study

The 2007 Virginia Tech shootings raised questions about how the gunman was able to obtain firearms given his history of mental illness. In the wake of this tragedy, the NICS Improvement Amendments Act of 2007 was enacted to, among other things, provide incentives for states to make more records available for use during firearm-related background checks. GAO was asked to assess the extent to which (1) states have made progress in making mental health records available for use during NICS checks and related challenges, (2) states have made progress in making unlawful drug records available and related challenges, (3) DOJ is administering provisions in the act to reward and penalize states based on the amount of records they provide, and (4) states are providing a means for individuals with a precluding mental health adjudication or commitment to seek relief from the associated federal firearms prohibition. GAO reviewed laws and regulations, analyzed Federal Bureau of Investigation data from 2004 to 2011 on mental health and unlawful drug use records, interviewed officials from a nongeneralizable sample of 6 states (selected because they provided varying numbers of records) to obtain insights on challenges, and interviewed officials from all 16 states that had legislation as of May 2012 that allows individuals to seek relief from their federal firearms prohibition.

## What GAO Recommends

GAO recommends that DOJ share promising practices in making mental health records available and assess the effectiveness of rewards and penalties and how to best implement them. DOJ agreed with the results.

View GAO-12-684. For more information, contact Carol Cha at (202) 512-4456 or [chac@gao.gov](mailto:chac@gao.gov).

## GUN CONTROL

### Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks

## What GAO Found

From 2004 to 2011, the total number of mental health records that states made available to the National Instant Criminal Background Check System (NICS) increased by approximately 800 percent—from about 126,000 to 1.2 million records—although a variety of challenges limited states' ability to share such records. This increase largely reflects the efforts of 12 states. However, almost half of all states increased the number of mental health records they made available by fewer than 100 over this same time period. Technological, legal, and other challenges limited the states' ability to share mental health records. To help address these challenges, the Department of Justice (DOJ) provides assistance to states, such as grants and training, which the 6 states GAO reviewed reported as helpful. DOJ has begun to have states share their promising practices at conferences, but has not distributed such practices nationally. By disseminating practices that states used to overcome barriers to sharing mental health records, DOJ could further assist states efforts.

The states' overall progress in making unlawful drug use records available to NICS is generally unknown because of how these records are maintained. The vast majority of records made available are criminal records—such as those containing arrests or convictions for possession of a controlled substance—which cannot readily be disaggregated from other records in the databases checked by NICS. Most states are not providing noncriminal records, such as those related to positive drug test results for persons on probation. On May 1, 2012, DOJ data showed that 30 states were not making any noncriminal records available. Four of the 6 states GAO reviewed raised concerns about providing records outside an official court decision. Two states also noted that they did not have centralized databases that would be needed to collect these records. DOJ has issued guidance for providing noncriminal records to NICS.

DOJ has not administered the reward and penalty provisions of the NICS Improvement Amendments Act of 2007 because of limitations in state estimates of the number of records they possess that could be made available to NICS. DOJ officials were unsure if the estimates, as currently collected, could reach the level of precision needed to serve as the basis for implementing the provisions. The 6 states GAO reviewed had mixed views on the extent to which the reward and penalty provisions—if implemented as currently structured—would provide incentives for them to make more records available. DOJ had not obtained the states' views. Until DOJ establishes a basis for administering these provisions—which could include revising its current methodology for collecting estimates or developing a new basis—and determining the extent to which the current provisions provide incentives to states, the department cannot provide the incentives to states that were envisioned by the act.

Nineteen states have received federal certification of their programs that allow individuals with a precluding mental health adjudication or commitment to seek relief from the associated firearms prohibition. Having such a program is required to receive grants under the 2007 NICS act. Officials from 10 of the 16 states we contacted said that grant eligibility was a strong incentive for developing the program. Reductions in grant funding could affect incentives moving forward.



March 11, 2014

The Honorable Lance Pruitt  
Alaska State House of Representatives  
State Capitol Rm. 204  
120 4th Street  
Juneau AK 99801-1182

Dear Representative Pruitt:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for sponsoring House Bill 366, **"An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence."**

The APOA Legislative Committee recently reviewed this proposed legislation and unanimously supports this bill in its current form. There is currently no method by which individuals legally barred from firearm possession have his or her name provided to firearms dealers. Even if this legislation passes there will be many ways for people who are mentally ill to acquire firearms, from family, from private sales, etc., however, this is a step in the right direction. APOA supports your efforts to protect the public, and police officers from armed, mentally ill assailants.

Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Brad Johnson  
State President



**NATIONAL SHOOTING SPORTS FOUNDATION, INC.**  
11 Mile Hill Road • Newtown, CT 06470-2359 • Tel (203) 426-1320 • Fax (203) 426-7182  
E-mail [jmcguigan@nssf.org](mailto:jmcguigan@nssf.org) • [www.nssf.org](http://www.nssf.org)

**JAKE MCGUIGAN**  
DIRECTOR, GOVERNMENT  
RELATIONS/STATE AFFAIRS

March 11, 2014

Representative Bob Lynn  
Chair  
120 4th St  
House State Affairs Capitol 106  
Juneau, Alaska 99801

**Re: Support HB 366 and NSSF's FixNICS®**

Dear Chair Lynn and Members of the State Affairs Committee:

The National Shooting Sports Foundation ("NSSF") is the trade association for America's firearms, ammunition, hunting and recreational shooting sports industry. Its mission is to promote, protect and preserve hunting and the shooting sports. NSSF has a membership of more than 10,000 manufacturers, distributors, firearms retailers, shooting ranges, and sportsmen's organizations. Our manufacturer members make the firearms used by law-abiding Alaska sportsmen, the U.S. military and law enforcement agencies throughout the state.

On behalf of our membership, we would like to introduce committee members to our Fix NICS initiative while at the same time expressing our strong support in making Alaska compliant by submitting records to the National Instant Criminal Background Check System (NICS) of those individuals prohibited from owning a firearm under federal law.

The goal of the firearms industry's FixNICS campaign is to encourage states to report to NICS all records that establish someone is prohibited from owning a firearm under current law. Through a multi-state effort focused on forming coalitions in the states with the fewest submitted records, the industry is dedicating significant resources to helping states overcome the legal, technological, and intrastate coordination challenges preventing effective record sharing. In Alaska we hope that the work of this committee addresses this problem and makes the citizens of the state safer.

FixNICS is about keeping firearms out of the hands of prohibited persons, like the shooter in the Virginia Tech tragedy who was able to purchase a firearm from a federally licensed firearms retailer because his prohibiting mental health records were not in the NICS system.

*This past legislative session (2013) Alabama, Louisiana, Mississippi, New Jersey, South Carolina, and Tennessee all passed FixNICS legislation. These states are now fully compliant with sending the appropriate records of prohibited individuals to NICS.*

*So far this legislative session we have experienced numerous victories as well, advancing the FixNICS initiative in Hawaii, Massachusetts, Nebraska, Rhode Island, South Dakota and Wyoming.*

Over the past couple of months NSSF has been working with various state agencies in Nebraska in hopes of making sure the state is reporting to NICS mental health records that establish someone is prohibited from owning a firearm under current law. We can report that over the past month Nebraska has begun to successfully transmit those records to NICS that would prohibit someone from owning a firearm.

Alaska's federally licensed retailers are required to run a background check through FBI's NICS when transferring a firearm to an individual. Firearms retailers rely on NICS to ensure the lawful transfer of firearms to law-abiding citizens. Since 1998 until October 2013 NICS has conducted about 725,000 background checks for Alaska retailers. By analyzing the federal denial rate there could be over 7,000 firearms in the hands of federally prohibited individuals in Alaska.

However, a background check is only as good as the records in the database. That is why the firearms industry supports improving the current NICS system by increasing the number of prohibiting records states submit to the FBI databases, helping to prevent illegal transfers of firearms to those who are prohibited from owning firearms under current law. Including these missing records will help ensure more accurate and complete background checks.

States must improve the NICS database by submitting any and all records establishing an individual is a prohibited person, such as mental health records showing someone is an "adjudicated mental defective" or involuntarily committed to a mental institute, as well as records showing someone is the subject of a domestic violence protective order, a drug addict or subject to another prohibited category.

We would like to continue to discuss some of the mental health record problems in Alaska and possibly direct some substantive changes with FixNICS. NSSF would also ask for your support of HB 366. Finally, we welcome the opportunity to participate in this important, public policy discussion and to make known our views. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jake McGuigan", with a long horizontal flourish extending to the right.

Jake McGuigan



## FAST FACTS

Federally licensed retailers are required to run a background check through the FBI's National Instant Criminal Background Check System (NICS) when transferring a firearm to an individual. Firearms retailers rely on NICS to ensure the lawful transfer of firearms to law-abiding citizens. Over 160 million NICS background checks have been conducted from Nov. 30, 1998 through Dec. 30, 2012; more than 19.5 million were conducted in 2012 alone.

However, a background check is only as good as the records in the database. That is why the firearms industry supports improving the current NICS system by increasing the number of prohibiting records states submit to the FBI databases, helping to prevent illegal transfers of firearms to those who are prohibited from owning firearms under current law. Including these missing records will help ensure more accurate and complete background checks.

States must improve the NICS database by submitting any and all records establishing an individual is a prohibited person, such as mental health records showing someone is an "adjudicated mental defective" or involuntarily committed to a mental institute, as well as records showing someone is the subject of a domestic violence protective order, a drug addict or subject to another prohibited category.<sup>ii</sup>

The firearms industry has a long record of supporting background checks.<sup>iii</sup> The NSSF supported background checks prior to the



- **FBI NICS databases are incomplete because many states have not provided all records that establish someone is prohibited from owning a firearm under current law, especially including mental health adjudications and involuntary commitments orders.**
- **The firearms industry is launching a campaign, Fix NICSSM to encourage states to report to NICS all records that establish someone is prohibited from owning a firearm under current law.**
- **Congress should condition federal grants to states on submitting prohibiting records. States that fail to provide records to NICS should face grant penalties, just as states that fail to meet certain drunk-driving law thresholds may lose federal highway funds.**

passage in 1993 of the Brady Act that created a background check system and NICS in 1998. The existing background check system must be fixed, however, before Congress even considers whether to expand background checks, otherwise we'll just have more incomplete and inaccurate checks.

### The Problem

The federal government cannot mandate state participation due to the 10th Amendment of the U.S. Constitution.<sup>iv</sup> Unfortunately, far too

many states fall short on submitting prohibiting mental health and other records. Twelve states and 5 territories had made fewer than 10 records available and sixteen states had made fewer than 100 records available as of March 31, 2013, according to FBI data.<sup>v</sup>

While some progress has been made over the last few years, much of it is concentrated in just a few states.<sup>vi</sup> The failure of states

*continued on back* →



to submit prohibiting records is simply unacceptable and limits the effectiveness of NICS.

### Industry Working Toward Solution

The firearms industry is launching a campaign to encourage states to report to NICS all records that establish someone is prohibited from owning a firearm under current law. Through a multi-state effort focused on forming coalitions in the states with the fewest submitted records, the industry is dedicating significant resources to helping states overcome the legal, technological, and intrastate coordination challenges preventing effective record sharing.

“Fix NICS” is about keeping firearms out of the hands of prohibited persons, like the shooter in the Virginia Tech tragedy who was able to purchase a firearm from a federally licensed firearms retailer because his prohibiting mental health records were not in the NICS system.

### Carrot & Stick Approach Needed

Our industry isn't calling on Congress to appropriate new federal funds to fix the NICS system. In these tough fiscal times, the tools are already in place to encourage states to submit more records. Just as states that fail to meet certain drunk-driving law thresholds may lose federal highway funds, states that fail to provide records to NICS should face grant penalties. Congress simply needs to do a better job conditioning current federal monies going to the states to incentivize record sharing.

The NSSF supported the NICS Improvement Amendments Act of 2007, which was enacted to encourage states to submit more records on prohibited individuals to the NICS database.<sup>vii</sup> However, the law has never been fully implemented due to problems in quantifying records.

One incentive not yet implemented would allow a state to obtain a waiver of the matching requirement for

National Criminal History Record Improvement Program's (NCHIP) grants, if a state submits at least 90 percent of its records identifying prohibited individuals. There were also Byrne grant penalties included in the 2007 law that have not yet been implemented.

Congress must rework such a “carrot and stick” approach in a way that can be fully implemented to encourage states to fully participate in NICS. Increasing the number of prohibiting records is the best way to keep prohibited individuals from purchasing firearms, without punishing law-abiding retailers and firearms owners.

*The National Shooting Sports Foundation represents over 8,000 firearms and ammunition manufacturers, retailers and ranges. Our members are committed to following the law and promoting safe, legal transfer of firearms. For more information about the FixNICS campaign, visit FixNICS.org.*

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- i There are 21 full or partial Point of Contact states, which have a state-designated agency responsible for processing some or all NICS background checks on behalf of the federal firearm licensees (FFLs) within the state.
  - ii Note: Fix NICS does not seek to require all mental health records be submitted to NICS, only those that establish an individual falls into one of the current federal categories of persons prohibited from receiving firearms. The categories are available here in full: <http://www.fbi.gov/about-us/cjis/nics/general-information/fact-sheet>
  - iii NSSF press release, “At NICS User Conference, NSSF Supports Virginia Governor’s Call to Add Mental Health and Other Records to Background Check System,” May 2012, <http://www.nssf.org/newsroom/releases/2012/050112.cfm> (Last accessed Feb. 5, 2013).
  - iv *Printz v. United States* - 521 U.S. 898 (1996)
  - v The National Shooting Sports Foundation obtained data on the number of active adjudicated mental health records in the NICS Index from the Federal Bureau of Investigation.
  - vi U.S. Government Accountability Office, “Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks,” GAO-12-684, July 2012.
  - vii The NICS Improvement Amendments Act of 2007 (NIAA), Pub. L. 110-180



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PROMOTE

PROTECT

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# WHERE DOES YOUR STATE STAND?

## Number of Mental Health Records Provided to NICS





# LEGISLATIVE RESEARCH SERVICES

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Division of Legal and Research Services  
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## Research Brief

TO: Representative Lance Pruitt  
FROM: Chuck Burnham, Legislative Analyst  
DATE: March 6, 2014  
RE: Firearms: Mental Health Denials and Associated Issues Related to the National Instant Criminal Background Check System  
*LRS Report 14.284*

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***You asked a number of question related to firearms and the National Instant Criminal Background Check System (NICS). Specifically, you wanted the following information:***

***The reasons under federal law that an individual can be prevented from owning a firearm;***

***An account of the states that have laws in place requiring certain records of individuals adjudicated to be "mentally deficient" or a danger to themselves or others to be transmitted to the NICS;***

***The volume of firearms transactions by federally licensed firearms dealers in Alaska compared to the states accounted for above;***

***The number of firearms transactions in Alaska denied by NICS;***

***A summary of NICS denials of firearms transactions that are appealed; and***

***Examples of firearm-related murders, the perpetrators of which were subject to prohibitions against firearm ownership under federal law.***

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The National Instant Criminal Background Check System (NICS) is mandated by the Brady Handgun Violence Prevention Act of 1993 (P.L. 105-159, 18 USC § 921, et seq.) and administered by the Federal Bureau of Investigation (FBI). The system is intended to provide determinations to Federal Firearms Licensees (FFLs) regarding the eligibility of prospective buyers to purchase firearms or explosives.<sup>1,2</sup> Federal law requires FFLs to interface with the NICS system via telephone or electronic means prior to executing a transaction involving firearms. Typical checks are processed within 30 seconds, with the NICS instructing the FFL to either "proceed," "deny" the transaction, or to "delay" and await instructions. Delayed transactions must be resolved by NICS staff within three business days or the FFL has the discretion to complete the transaction without approval where state law allows. Denials may be appealed to the FBI.

State governments vary on their degrees of involvement with the NICS system. Thirteen states have established agencies that serve as the point of contact (POC) for FFLs and have implemented their own background records collections systems, some information from which is shared with the NICS. In thirty-six states, including Alaska, firearms dealers contact the NICS directly. In some states, FFLs contact state agencies for background checks related to handgun transactions and/or to confirm a valid handgun permit, but contact the NICS for background checks for long gun (rifle, shotgun, etc.) purchases.<sup>3</sup>

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<sup>1</sup> More information on the NICS is available at <http://www.fbi.gov/about-us/cjis/nics/nics>. Each firearm transaction by an FFL requires the submission of a federal Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473, a copy of which can be accessed online at <http://www.atf.gov/files/forms/download/atf-f-4473-1.pdf>.

<sup>2</sup> Federal Firearms Licenses were first implemented by the National Firearms Act of 1934 (P.L. 72-474); however, FFLs in their current iteration were implemented by the Gun Control Act of 1968 (P.L. 90-618), which requires anyone involved in the business of manufacturing, selling, or importing firearms, explosives or ammunition to obtain a license. There are at least eleven classes of FLL covering various aspects of the firearms trade. More information on the FLL system is available in the *National Firearms Act Handbook* at <https://www.atf.gov/content/firearms/firearms-industry/guides/publications-firearms-national-firearms-act-handbook>.

<sup>3</sup> In Iowa, Nebraska, and North Carolina the possession of a valid hand gun permit is considered proof of having met state and federal eligibility requirements for purchasing those weapons. More information on state points of contact and participation in the NICS program is available at <http://www.fbi.gov/about-us/cjis/nics/general-information/participation-map>.

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## Federal Prohibitions on Firearm Ownership

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Pursuant to 18 USC § 922(g)(1-9), certain individuals are prohibited from possessing, shipping, transporting, or receiving firearms or ammunition. Specifically, those prohibitions include a person who is or has been

- ◆ convicted of a crime punishable by imprisonment exceeding one year;
- ◆ a fugitive from justice;
- ◆ an unlawful user of, or someone who is addicted to, a controlled substance;
- ◆ adjudicated as a mental defective or who has been admitted to a mental institution;
- ◆ an alien who is unlawfully in the United States or who has been admitted to the United States under a nonimmigrant visa;
- ◆ discharged from the Armed Forces under dishonorable conditions;
- ◆ a citizen of the United States who renounces citizenship;
- ◆ subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or partner's child, and which includes a finding that the person remains a credible threat; or
- ◆ convicted of a misdemeanor crime of domestic violence.<sup>4</sup>

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## States with Laws Requiring Reporting of Mental Health Adjudications to NICS

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Currently at least 25 states have laws that require state courts and/or agencies to report to the NICS and/or a state agency mental health adjudications and other actions that make the subjects of those actions ineligible to own firearms under federal law.<sup>5</sup> State laws vary on their requirements on such factors as the types of records that must be supplied, who is required to supply them, the agency to which those records are sent, and the time period in which reporting must occur, among other issues. With regard to mental health adjudications, most often court clerks are tasked with supplying records of persons being confined to treatment facilities, findings of incompetence to stand trial, "insanity," lack of fitness to proceed with trial, and similar judgments either directly to the NICS or, in states with agencies that serve as the point of contact (POC) for the NICS system, to the appropriate state agency. Below, we briefly summarize the mental health reporting requirements in seven states that are generally representative of the approaches typically employed.<sup>6</sup> Further, the attached table provides, for each of the 25 states requiring the reporting of mental health adjudications, relevant statutory citations, points of contact for NICS reporting, the types of firearms covered by those POCs, and the reporting deadlines for each, where specified.<sup>7</sup>

**Indiana**—Courts that involuntarily commit offenders for treatment of a mental illness, order outpatient treatment for mental illness of "dangerous or gravely disabled" individuals, find defendants not guilty by reason of insanity, find a defendant guilty but mentally ill, or find that an individual lacks the ability to assist in his or her own defense must report that information to the Division of State Court Administration. The Division must then transmit that information to the NICS.

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<sup>4</sup> Further, pursuant to 18 USC § 922(n), it is unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition.

<sup>5</sup> To be clear, federal law requires all licensed firearms dealers in all states to conduct background checks through the NICS. The state laws we discuss are those that operate in parallel to federal law and/or place additional requirements on firearms sales with regard to the NICS and background checks. In addition to the 25 states that *require* reporting to the NICS, at least nine states—Arizona, Colorado, Delaware, Florida, Louisiana, Missouri, Nebraska, Pennsylvania, and West Virginia—*authorize* reporting to the NICS. Seven others—Arkansas, California, Hawaii, Massachusetts, Michigan, Ohio, and Utah—authorize or require collection of mental health records in state databases for purposes of firearms background checks.

<sup>6</sup> We include copies of relevant statutes from these seven states as Attachment A.

<sup>7</sup> In addition to searches of state statutes, we used information published by the Center to Prevent Gun Violence to compile state laws on mental health adjudication records reporting, <http://smartgunlaws.org/mental-health-reporting-policy-summary/>.

**Iowa**—When a court issues an order or judgment that finds a person to be mentally defective or orders confinement to a mental health institution, the clerk of the district court must forward “only such information as is necessary” to identify the person to the Department of Public Safety. The Department, in turn, forwards the information to the NICS.

**Maryland**—The Department of Public Safety and Correctional Services maintains the Criminal Justice Information System Central Repository, information from which is forwarded to the NICS. Courts must report to the Repository the name and identifying information of persons found “not criminally responsible” or “incompetent to stand trial” as the result of mental illness or a developmental disorder. Healthcare facilities are required to report within 10 days such information for individuals committed to a psychiatric facility for 30 consecutive days or more and those involuntarily committed.

**Oregon**—The Department of State Police (DSP) is required to maintain information on people who have been found to be a danger to themselves or others and therefore committed by a court for psychiatric treatment under the state Department of Human Services or placed under the jurisdiction of the Psychiatric Security Review Board. Also required to be included in that information system are individuals found by courts to “lack fitness to proceed” in legal proceedings, found “guilty except for insanity,” and those found “responsible except for insanity.”

Courts and applicable behavioral health agencies are required to report to the DSP the “minimum information necessary” to accurately identify a person on which reports are to be submitted. These data include the person’s name, date of birth, and gender, but does not include medical, psychiatric, or psychological case histories. The DPS is then required to transmit such information on a daily basis to the NICS. Every three months the DPS is required to reconcile its data system with the data in the NICS to identify discrepancies.

**Texas**—The clerk of the court must provide to the Department of Public Safety (DPS) within 30 days orders or other court actions designating individuals to receive inpatient mental health services, acquitting a defendant by reason of insanity or lack of mental responsibility, determining a person to have mental retardation and committing that person to long-term placement in a residential care facility, appointing a guardian for an incapacitated person, or determining a person incompetent to stand trial. The DPS then prepares and forwards to the NICS the names, race, gender, date of birth, and identifying numbers (social security, driver’s license, and identification card, as applicable).

**Virginia**—Among the information maintained in the state’s Central Criminal Records Exchange are court orders related to behavioral health. Specifically, orders of temporary detention, involuntary commitment, and voluntary commitment as a result of mental illness, and being found incompetent to stand trial, must be reported to the Exchange by the appropriate court clerk. Persons found by the courts to be incapacitated and/or under guardianship must likewise be reported by the clerk. The Department of State Police must then report to the NICS only the impacted person’s eligibility to possess, purchase, or transfer a firearm.

**Washington**—Within three days of a court committing a person to a mental health treatment facility, the committing court must forward to the NICS a copy of the person’s driver’s license or comparable information along with the date of confinement. This provision extends to those found not guilty by reason of insanity.

#### **Firearms Transactions by FFLs, and NICS Denials and Appeals, in Alaska and States with Mental Health Adjudication Reporting Laws**

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We requested firearm transaction data from the FBI but have not yet received a response. As a result, we are forced to rely upon published data for firearms transactions, NICS denials, and appeals of those denials, for state-specific information. Some of those data are somewhat dated.<sup>8</sup> When reviewing the data below, please note the time period those data represent.

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<sup>8</sup> We will continue to pursue recent transaction and NICS data, and will provide this information as an addendum to this report when it becomes available.

### Firearms Transactions by FFLs

We located no definitive source for the numbers of firearms transactions by FFLs in each state; however, because licensed dealers are required to submit a background request to the NICS for each transaction, we believe that the number of such requests submitted represents a rough approximation of the total number of transactions by FFLs.<sup>9</sup>

As the attached table shows, in 2013 Alaska FFLs submitted 93,405 transactions to the NICS. This represents an increase over 2012 and 2011 when there were 85,342 and 65,909 transactions, respectively, and is substantially higher than the 17-year average between 1998 and 2014 of roughly 49,000 transactions annually.<sup>10</sup> Although the aggregate number of transactions in Alaska for 2013 is low compared to most of the 25 states we identified with laws on NICS reporting of mental health adjudications, that relationship is largely a product of Alaska having fewer residents. When we control for population differences, our calculation shows that Alaska's 127 transactions per 1,000 residents is second to Kentucky (359 transactions per 1,000 residents) among the states we reviewed.<sup>11</sup>

### NICS Denials and Appeals

Between November 1998 and February 2014, the NICS issued just over one million transaction denials, or about 1.3 percent of all transactions over that period.<sup>12</sup> An account of the reasons for these denials follows. As you can see, mental health adjudications are a relatively rare factor in the issuance of firearm transaction denials.

	Percent of Denials
Conviction for a crime punishable by more than one year imprisonment	56.99
Fugitive from Justice	10.43
Misdemeanor Crime of Domestic Violence Conviction	9.86
Unlawful User/Addicted to a Controlled Substance	8.43
State Prohibition	4.74
Protection/Restraining Order for Domestic Violence	4.19
Under Indictment/Information	2.30
<b>Adjudicated Mental Health</b>	<b>1.25</b>
Illegal/Unlawful Alien	1.21
Federally Denied Persons File	0.52
Dishonorable Discharge	0.07
Renounced U.S. Citizenship	0.01

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<sup>9</sup> Individual transactions may include the sale or transfer of more than one firearm. Therefore, transaction figures do not necessarily represent the total number of firearms sold or transferred.

<sup>10</sup> These data are available on the NICS website at <http://www.fbi.gov/about-us/cjis/nics/general-information/participation-map>.

<sup>11</sup> As of 2012, Alaska had 998 Federal Firearms Licensees. A list of FFLs by state is available at <https://www.atf.gov/sites/default/files/assets/pdf-files/052013-firearms-commerce-in-the-us-annual-update.pdf>.

<sup>12</sup> Additional denials have been issued by state agencies where those organizations act as the points of contact for the NICS system. More information on state denials is available in the 2012 NICS operations report at <http://www.fbi.gov/about-us/cjis/nics/reports/2012-operations-report>.

According to the FBI, of the nearly 19.6 million transaction requests processed in 2012, roughly 198,000, or 1.01 percent, were denied. In that year, 4,020 transaction denials were overturned on appeal. This equates to a rate of overturn of just about two percent of denials in that year; however, appeals are addressed in the order they are received and not all successful appeals that occurred in 2012 are for denials issued in that same year. We therefore urge caution when interpreting these figures.

### **NICS Denials Reported by State of Transaction Origination**

We were unable to locate comprehensive information for recent years on NICS denials and appeals disaggregated by state. We did review a study funded by the U.S. Department of Justice that included denial information on states in which FFLs contacted the NICS directly for all firearms transactions for the years 1999-2008, including Alaska and nine of the 25 states with laws on reporting mental health adjudication to the NICS.<sup>13</sup> According to the report, Alaska's rate of transaction denial was, at 2.2 percent, the highest among the states studied. Denial rates in the nine states with reporting laws that were studied ranged from 0.6 percent in Kentucky and Maine to 1.9 percent in Idaho.<sup>14</sup>

### **Examples of Murders by Individuals Subject to Federal Prohibitions on Firearm Ownership**

In a 2011 report, the organization Mayors Against Illegal Guns summarize a number of prominent instances of murders committed with firearms by individuals who were ineligible to own guns based on federal law, as follows:<sup>15</sup>

On January 8, 2011, Jared Loughner went on a shooting spree that killed six and wounded 13, including Congresswoman Gabrielle Giffords. Loughner had been rejected by the U.S. Army after admitting to habitual drug use. Despite drug use being a disqualification for possessing firearms under existing law, Loughner's records were never reported to NICS.

At Virginia Tech on April 16, 2007, Seung Hui Cho killed 32 people, injured 17, and then turned the gun on himself. Cho carried out the massacre with two guns – a Walther P22 .22 caliber pistol, which he purchased online from TGSCOM, Inc., a store in Green Bay, WI, and retrieved at a pawnshop in Virginia (where the background check was conducted), and a Glock 19 9mm pistol, which he purchased at a store in Virginia. The Virginia Tech Review Panel found that although Cho was a prohibited firearm purchaser under federal law, he passed background checks because his disqualifying mental health history had not been entered into the background check system. In 2005, a Montgomery County, Virginia, General District Court special justice had found that Cho was a danger to himself. But in spite of this, the panel said, "Cho, a person disqualified from purchasing firearms, was readily able to obtain them."

On January 2, 2004, Farron Barksdale was able to pass a background check and purchase a rifle even though he had been involuntarily committed to a mental hospital at least twice. Two days after purchasing the firearm, he shot and killed two Alabama police officers.

On July 24, 1998, Russell Weston shot and killed two police officers in the U.S. Capitol with a .38-caliber handgun he purchased after passing a background check. Weston should have been flagged

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<sup>13</sup> The nine states are Alabama, Idaho, Kansas, Kentucky, Maine, Minnesota, Mississippi, North Dakota, and Texas.

<sup>14</sup> Ronald J Frandsen, Michael Bowling, Ph.D., and Gene A Lauver, "Trends for Background Checks for Firearm Transfers, 1999-2008," Regional Justice Information Service, Table 3: Transactions and Denials for Selected FBI States, 1999-2008, Table Index p. 4, <https://www.ncjrs.gov/pdffiles1/bjs/grants/231187.pdf>.

<sup>15</sup> "Fatal Gaps: How Missing Records in the Federal Background Check System Put Guns in the Hands of Killers," Mayors Against Illegal Guns, 2011. The full report, which contains substantial information on the strengths and weaknesses of the NICS, is available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/maig\\_mimeo\\_revb.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_mimeo_revb.pdf). Mayors Against Illegal Guns maintains a website at <http://www.mayorsagainstillegalguns.org/html/home/home.shtml>.

as a prohibited purchaser because he “had an extensive history of mental illness and had been involuntarily committed to a Montana mental hospital in 1996.”<sup>16</sup>

We hope this is helpful. If you have questions or need additional information, please let us know.

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<sup>16</sup> Omitted from this list is the murder of 20 children and six adults by Adam Lanza in Newtown, Connecticut, in December 2012. Although the perpetrator had an extensive history of mental health issues, he had not been adjudicated as such or committed for treatment. In addition, the weapons he used were purchased by his mother. For these reasons, this incident does not fit the parameters of your request.

Selected Information on States with Laws Requiring the Reporting of Individuals Adjudicated to Have Mental Illnesses to the National Instant Background Check System (NICS)						
State	2013 NICS Transactions <sup>1</sup>		Mental Health Adjudication Statutes and Selected Requirements <sup>3</sup>			
	Total	Per 1,000 Residents <sup>2</sup>	Reporting Requirement Citation	Point of Contact <sup>4</sup>		Adjudication Reporting Deadline
				Background Check	Firearm Type	
Alaska	93,405	127	No Statute in Place			
Alabama	563,880	117	Ala. Code § 22-52-10.8	NICS	All	Not specified
Connecticut	294,338	82	Conn. Gen. Stat. §§ 17a-500(b), (c)(2), 29-36f(b)(8), 29-36l, 29-38b	State	All	Not specified
Georgia	527,885	53	Ga. Code Ann. §§ 16-11-172(b), 35-3-34(e); Ga. Comp. Regs. 140-2-17	NICS	All	Not specified
Idaho	147,494	91	Idaho Code Ann. §§ 67-3003(1)(i), 66-356, 9-340A(2), 9-340C(6), (13)	NICS	All	Not specified
Illinois	1,280,613	99	405 Ill. Comp. Stat. 5/6-103.1, 5/6-103.2, 5/6-103.3; 430 Ill. Comp. Stat. 65/3.1, 65/4(a)(3), 65/8.1; 740 Ill. Comp. Stat. 110/12(b)	State	All	7 days
Indiana	597,124	91	Ind. Code Ann. §§ 11-10-4-3(e), 12-26-6-8(g), 12-26-7-5(c), 33-24-6-3(a)(8), 35-36-2-4(e), 35-36-2-5(f), 35-36-3-1(c)	NICS	All	Not specified
Iowa	160,062	52	Iowa Code §§ 690.4, 692.17, 724.17, 724.31	State/NICS	Handgun/ Long gun	Not specified
Kansas	228,105	79	Kan. Stat. Ann. §§ 59-2946, 59-2966, 75-7c25	NICS	All	5 days
Kentucky	1,578,331	359	Ky. Rev. Stat. § 237.108	NICS	All	Not specified
Maine	96,760	73	Me. Rev. Stat. tit. 25, § 1541(3)(c), tit. 34-B, § 3864(12)	NICS	All	Not specified
Maryland	231,182	39	Md. Code, Pub. Safety § 5-133.2; Md. Code, Health-Gen. § 10-605; Md. Code, Crim. Proc. §§ 3-106(h), 3-112(d)	State/NICS	Handgun/ Long gun	"Promptly"
Minnesota	525,774	97	Minn. Stat. §§ 245.041, 253B.09, 253B.24, 624.713	NICS	All	3 business days
Mississippi	231,711	77	Miss. Code Ann. §§ 9-1-49, 45-9-103	NICS	All	30 days
Nevada	146,892	53	Nev. Rev. Stat. Ann. §§ 159.0593(1), 174.035(8), 175.533(3), 175.539(4), 178.425(6), 179A.163(1), 179A.165(1), 433A.310(4), (5)	State	All	Not specified
New Jersey	120,071	13	N.J. Stat. Ann. §§ 2C:58-3, 30:4-24.3, 30:4-24.3a; N.J. Admin. Code §§ 10:7-7.1, 13:54-1.4 – 13:54-1.6	State	All	Not specified
New York	353,064	18	N.Y. Penal Law §§ 400.00(4), 400.03(5)-(6); N.Y. Crim. Proc. Law §§ 330.20, 730.60; N.Y. Mental Hyg. Law §§ 7.09(j), 9.11, 9.46, 13.09(g), 31.11(5), 33.13(b), (c); N.Y. Exec. Law § 837(19); N.Y. Jud. Law § 212(2)(q)	NICS	All	Not specified
North Carolina	574,622	58	N.C. Gen. Stat. §§ 122C-54(d1-d2), 122C-54.1, 14-404(c1)	State/NICS	Handgun/ Long gun	48 business day hours

**Selected Information on States with Laws Requiring the Reporting of Individuals Adjudicated to Have Mental Illnesses to the National Instant Background Check System (NICS) - continued**

State	2013 NICS Transactions <sup>1</sup>		Mental Health Adjudication Statutes and Selected Requirements <sup>3</sup>			
	Total	Per 1,000 Residents <sup>2</sup>	Reporting Requirement Citation	Point of Contact <sup>4</sup>		Adjudication Reporting Deadline
				Background Check	Firearm Type	
North Dakota	85,812	119	N.D. Cent. Code § 62.1-02-01.2	NICS	All	Not specified
Oregon	274,302	70	Or. Rev. Stat. §§ 166.412, 166.432, 181.740, 426.130, 426.160, 427.293; Or. Admin. R. 257-010-0060	State	All	Not specified
South Carolina	335,695	70	S.C. Code Ann. §§ 23-31-1010, 23-31-1020	NICS	All	5 days
Tennessee	600,869	92	Tenn. Code Ann. §§ 16-1-117(a), 16-3-812, 16-10-213(b), (c), 16-11-206(b), (c), 16-15-303(g), 16-16-120(b), 33-3-115, 33-3-117	State	All	3 business days
Texas	1,633,278	62	Tex. Gov't Code §§ 411.052, 411.0521	NICS	All	30 days
Virginia	498,426	60	Va. Code Ann. §§ 19.2-169.2, 19.2-389, 19.2-390, 37.2-819, 64.2-2014	State	All	End of next business day
Washington	561,122	80	Wash. Rev. Code Ann. §§ 9.41.047, 9.41.090, 9.41.094, 9.41.097, 10.97.030(4), 10.97.045, 71.05.390(17), 71.34.340(16)	State/NICS	Handgun/ Long gun	3 judicial days
Wisconsin	434,688	76	Wis. Stat. §§ 51.20(13)(cv)(4), 175.35(2g)(d)(1)	State/NICS	Handgun/ Long gun	"In a timely manner"

**Notes and Sources:** This table includes only states that have laws requiring the identity of individuals adjudicated to be mentally ill to be reported to the NICS, which is the federal system for performing background checks on individuals seeking to purchase or transfer firearms. Alaska is included for comparative purposes.

1) A "transaction" in this context is initiated by the submittal of a form jointly completed by the seller and purchaser of a firearm to the NICS for a background check on the purchaser. More than one firearm can be purchased through a single transaction. Transaction data are from <http://www.fbi.gov/about-us/cjis/nics/nics>.

2) Transactions per 1,000 residents are Legislative Research calculations based on NICS transactions reporting and population data from the U.S. Census Bureau for 2013, available online at <http://www.census.gov/popest/data/state/totals/2013/index.html>.

3) Citations and reporting deadlines are from our searches of state laws using as a reference information from the Law Center to Prevent Gun Violence, available at <http://smartgunlaws.org/mental-health-reporting-policy-summary/>.

4) Points of Contact (POC) refer to the agency responsible for executing background checks and issuing approval, delays, or denials of transactions. Where the POC reads State/NICS and the Firearm Type reads Handgun/Long gun, a state agency is responsible for handgun transactions, while the NICS handles long guns (rifles, shotguns, etc.).

## **Attachment A**

Ind. Code Ann. §§ 11-10-4-3(e), 12-26-6-8(g), 12-26-7-5(c), 33-24-6-3(a)(8), 35-36-2-4(e), 35-36-2-5(f), 35-36-3-1(c)

Iowa Code §§ 690.4, 692.17, 724.17, 724.31

Md. Code, Pub. Safety § 5-133.2; Md. Code, Health-Gen. § 10-605; Md. Code, Crim. Proc. §§ 3-106(h), 3-112(d)

Or. Rev. Stat. §§ 166.412, 166.432, 181.740, 426.130, 426.160, 427.293; Or. Admin. R. 257-010-0060

Tex. Gov't Code §§ 411.052, 411.0521

Va. Code Ann. §§ 19.2-169.2, 19.2-389, 19.2-390, 37.2-819, 64.2-2014

Wash. Rev. Code Ann. §§ 9.41.047, 9.41.090, 9.41.094, 9.41.097, 10.97.030(4), 10.97.045, 71.05.390(17), 71.34.340(16)

BURNS INDIANA STATUTES

Title 11 Corrections  
Article 10 Correctional Services and Programs  
Chapter 4 Care and Treatment of Mentally Ill Offenders

*Burns Ind. Code Ann. § 11-10-4-3 (2013)*

**11-10-4-3. Involuntary transfer to division of mental health and addiction or mental health facility.**

(a) A committed offender may be involuntarily transferred to the division of mental health and addiction or to a mental health facility only if:

(1) the offender has been examined by a psychiatrist employed or retained by the department and the psychiatrist reports to the department in writing that, in the psychiatrist's opinion, the offender has a mental illness and is in need of care and treatment by the division of mental health and addiction or in a mental health facility;

(2) the director of mental health approves of the transfer if the offender is to be transferred to the division of mental health and addiction; and

(3) the department affords the offender a hearing to determine the need for the transfer, which hearing must comply with the following minimum standards:

(A) The offender shall be given at least ten (10) days advance written and verbal notice of the date, time, and place of the hearing and the reason for the contemplated transfer. This notice must advise the offender of the rights enumerated in clauses (C) and (D). Notice must also be given to one (1) of the following:

(i) The offender's spouse.

(ii) The offender's parent.

(iii) The offender's attorney.

(iv) The offender's guardian.

(v) The offender's custodian.

(vi) The offender's relative.

(B) A copy of the psychiatrist's report must be given to the offender not later than at the time notice of the hearing is given.

(C) The offender is entitled to appear in person, speak in the offender's own behalf, call witnesses, present documentary evidence, and confront and cross-examine witnesses.

(D) The offender is entitled to be represented by counsel or other representative.

(E) The offender must be given a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken.

(F) A finding that the offender is in need of mental health care and treatment in the division of mental health and addiction or a mental health facility must be based upon clear and convincing evidence.

(b) If the official in charge of the facility or program to which the offender is assigned determines that emergency care and treatment in the division of mental health and addiction or a mental health facility is necessary to control a mentally ill offender who is either gravely disabled or dangerous, that offender may be involuntarily transferred, subject to the approval of the director of the division of mental health and addiction, before holding the hearing described in subsection (a)(3). However, this subsection does not deprive the offender of the offender's right to a hearing.

## Burns Ind. Code Ann. § 11-10-4-3

(c) The official in charge of the division of mental health and addiction or facility to which an offender is transferred under this section must give the offender a semiannual written report, based on a psychiatrist's examination, concerning the offender's mental condition and the need for continued care and treatment in the division of mental health and addiction or facility. If the report states that the offender is still in need of care and treatment in the division of mental health and addiction or a mental health facility, the division of mental health and addiction or facility shall, upon request of the offender or a representative in the offender's behalf, conduct a hearing to review the need for that continued care and treatment. The hearing must comply with the minimum standards established by subsection (a)(3). The division of mental health and addiction or facility to which the offender is transferred under this section may conduct a hearing under this subsection upon its initiative.

(d) If the division of mental health and addiction or facility to which an offender is transferred under this section determines that the offender no longer needs care and treatment in the division of mental health and addiction or facility, the division of mental health and addiction or facility shall return the offender to the custody of the department of correction, and the department of correction shall reassign the offender to another facility or program.

(e) After an offender has been involuntarily transferred to and accepted by the division of mental health and addiction, the department shall transmit any information required by the division of state court administration for transmission to the NICS (as defined in *IC 35-47-2.5-2.5*) in accordance with *IC 33-24-6-3*.

**HISTORY:** *IC 11-10-4-3*, as added by Acts 1979, P.L.120, § 3; 1980, P.L.87, § 2; P.L.2-1992, § 105; P.L.215-2001, § 20; P.L.99-2007, § 39, emergency eff. May 2, 2007; P.L.110-2009, § 6, emergency eff. July 1, 2009.

Title 12 Human Services  
Article 26 Voluntary and Involuntary Treatment of Mentally Ill Individuals  
Chapter 6 Temporary Commitment

*Burns Ind. Code Ann. § 12-26-6-8 (2013)*

**12-26-6-8. Order of commitment to facility or outpatient treatment program -- Treatment plan -- Reports required.**

(a) If, upon the completion of the hearing and consideration of the record, the court finds that the individual is mentally ill and either dangerous or gravely disabled, the court may order the individual to:

- (1) be committed to an appropriate facility; or
- (2) enter an outpatient treatment program under IC 12-26-14 for a period of not more than ninety (90) days.

(b) The court's order must require that the superintendent of the facility or the attending physician file a treatment plan with the court within fifteen (15) days of the individual's admission to the facility under a commitment order.

(c) If the commitment ordered under subsection (a) is to a state institution administered by the division of mental health and addiction, the record of commitment proceedings must include a report from a community mental health center stating both of the following:

- (1) That the community mental health center has evaluated the individual.
- (2) That commitment to a state institution administered by the division of mental health and addiction under this chapter is appropriate.

(d) The physician who makes the statement required by section 2(c) [*IC 12-26-6-2(c)*] of this chapter may be affiliated with the community mental health center that submits to the court the report required by subsection (c).

(e) If the commitment is of an adult to a research bed at Larue D. Carter Memorial Hospital as set forth in *IC 12-21-2-3*, the report from a community mental health center is not required.

(f) If a commitment ordered under subsection (a) is to a state institution administered by the division of disability and rehabilitative services, the record of commitment proceedings must include a report from a service coordinator employed by the division of disability and rehabilitative services stating that, based on a diagnostic assessment of the individual, commitment to a state institution administered by the division of disability and rehabilitative services under this chapter is appropriate.

(g) If the court makes a finding under subsection (a) (including a finding in reference to a child under *IC 31-37-18-3*), the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in *IC 35-47-2.5-2.5*) in accordance with *IC 33-24-6-3*.

**HISTORY:** P.L.2-1992, § 20; P.L.40-1994, § 57; P.L.6-1995, § 24; P.L.24-1997, § 57; P.L.215-2001, § 72; P.L.141-2006, § 67; P.L.110-2009, § 7, emergency eff. July 1, 2009.

*Burns Ind. Code Ann. § 12-26-7-5 (2013)*

**12-26-7-5. Court order for commitment to facility or outpatient program -- Term of order.**

(a) If at the completion of the hearing and the consideration of the record an individual is found to be mentally ill and either dangerous or gravely disabled, the court may enter either of the following orders:

(1) For the individual's custody, care, or treatment, or continued custody, care, or treatment in an appropriate facility.

(2) For the individual to enter an outpatient therapy program under IC 12-26-14.

(b) An order entered under subsection (a) continues until any of the following occurs:

(1) The individual has been:

(A) discharged from the facility; or

(B) released from the therapy program.

(2) The court enters an order:

(A) terminating the commitment; or

(B) releasing the individual from the therapy program.

(c) If the court makes a finding under subsection (a), the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in *IC 35-47-2.5-2.5*) in accordance with *IC 33-24-6-3*.

**HISTORY:** P.L.2-1992, § 20; P.L.110-2009, § 8, emergency eff. July 1, 2009.

Title 33 Courts and Court Officers  
 Article 24 Supreme Court  
 Chapter 6 Office of Judicial Administration

*Burns Ind. Code Ann. § 33-24-6-3 (2013)*

**33-24-6-3. Powers and duties of state court administration division -- Forms.**

(a) The division of state court administration shall do the following:

(1) Examine the administrative and business methods and systems employed in the offices of the clerks of court and other offices related to and serving the courts and make recommendations for necessary improvement.

(2) Collect and compile statistical data and other information on the judicial work of the courts in Indiana. All justices of the supreme court, judges of the court of appeals, judges of all trial courts, and any city or town courts, whether having general or special jurisdiction, court clerks, court reporters, and other officers and employees of the courts shall, upon notice by the executive director and in compliance with procedures prescribed by the executive director, furnish the executive director the information as is requested concerning the nature and volume of judicial business. The information must include the following:

(A) The volume, condition, and type of business conducted by the courts.

(B) The methods of procedure in the courts.

(C) The work accomplished by the courts.

(D) The receipt and expenditure of public money by and for the operation of the courts.

(E) The methods of disposition or termination of cases.

(3) Prepare and publish reports, not less than one (1) or more than two (2) times per year, on the nature and volume of judicial work performed by the courts as determined by the information required in subdivision (2).

(4) Serve the judicial nominating commission and the judicial qualifications commission in the performance by the commissions of their statutory and constitutional functions.

(5) Administer the civil legal aid fund as required by IC 33-24-12.

(6) Administer the judicial technology and automation project fund established by section 12 [IC 33-24-6-12] of this chapter.

(7) By December 31, 2013, develop and implement a standard protocol for sending and receiving court data:

(A) between the protective order registry, established by IC 5-2-9-5.5, and county court case management systems;

(B) at the option of the county prosecuting attorney, for:

(i) a prosecuting attorney's case management system;

(ii) a county court case management system; and

(iii) a county court case management system developed and operated by the division of state court administration;

to interface with the electronic traffic tickets, as defined by IC 9-30-3-2.5; and

(C) between county court case management systems and the case management system developed and operated by the division of state court administration.

The standard protocol developed and implemented under this subdivision shall permit private sector vendors, including vendors providing service to a local system and vendors accessing the system for information, to send and receive court information on an equitable basis and at an equitable cost.

(8) Establish and administer an electronic system for receiving information that relates to certain individuals who may be prohibited from possessing a firearm and transmitting this information to the Federal Bureau of Investigation for inclusion in the NICS.

(9) Staff the judicial technology oversight committee established by *IC 33-23-17-2*.

(b) All forms to be used in gathering data must be approved by the supreme court and shall be distributed to all judges and clerks before the start of each period for which reports are required.

(c) The division may adopt rules to implement this section.

**HISTORY:** P.L.98-2004, § 3; P.L.110-2009, § 12, emergency eff. July 1, 2009; P.L.130-2009, § 19, eff. July 1, 2009; P.L.1-2010, § 132, emergency eff. March 12, 2010; P.L.284-2013, § 2, eff. July 1, 2013.

Title 35 Criminal Law and Procedure  
Article 36 Pretrial Notices, Motions, and Procedures  
Chapter 2 Notice of Insanity Defense; Procedures

*Burns Ind. Code Ann. § 35-36-2-4 (2013)*

**35-36-2-4. Commitment proceedings.**

(a) Whenever a defendant is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition with the court under *IC 12-26-6-2(a)(3)* or under *IC 12-26-7*. If a petition is filed under *IC 12-26-6-2(a)(3)*, the court shall hold a commitment hearing under *IC 12-26-6*. If a petition is filed under *IC 12-26-7*, the court shall hold a commitment hearing under *IC 12-26-7*.

(b) The hearing shall be conducted at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, and the defendant shall be detained in custody until the completion of the hearing. The court may take judicial notice of evidence introduced during the trial of the defendant and may call the physicians appointed by the court to testify concerning whether the defendant is currently mentally ill and dangerous or currently mentally ill and gravely disabled, as those terms are defined by *IC 12-7-2-96* and *IC 12-7-2-130(1)*. The court may subpoena any other persons with knowledge concerning the issues presented at the hearing.

(c) The defendant has all the rights provided by the provisions of *IC 12-26* under which the petition against the defendant was filed. The prosecuting attorney may cross-examine the witnesses and present relevant evidence concerning the issues presented at the hearing.

(d) If a court orders an individual to be committed under *IC 12-26-6* or *IC 12-26-7* following a verdict of not responsible by reason of insanity at the time of the crime, the superintendent of the facility to which the individual is committed and the attending physician are subject to the requirements of *IC 12-26-15-1*.

(e) If a defendant is found not responsible by reason of insanity, the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in *IC 35-47-2.5-2.5*) in accordance with *IC 33-24-6-3*.

**HISTORY:** *IC 35-36-2-4*, as added by Acts 1981, P.L.298, § 5; P.L.200-1983, § 4; P.L.2-1992, § 869; P.L.77-2004, § 4; P.L.110-2009, § 13, emergency eff. July 1, 2009.

Title 35 Criminal Law and Procedure  
Article 36 Pretrial Notices, Motions, and Procedures  
Chapter 2 Notice of Insanity Defense; Procedures

*Burns Ind. Code Ann. § 35-36-2-5 (2013)*

**35-36-2-5. Sentencing of defendant found guilty but mentally ill -- Exception for mentally retarded individuals.**

(a) Except as provided by subsection (e), whenever a defendant is found guilty but mentally ill at the time of the crime or enters a plea to that effect that is accepted by the court, the court shall sentence the defendant in the same manner as a defendant found guilty of the offense.

(b) Before sentencing the defendant under subsection (a), the court shall require the defendant to be evaluated by a physician licensed under IC 25-22.5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center (as defined in IC 12-7-2-38). However, the court may waive this requirement if the defendant was evaluated by a physician licensed under IC 25-22.5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center and the evaluation is contained in the record of the defendant's trial or plea agreement hearing.

(c) If a defendant who is found guilty but mentally ill at the time of the crime is committed to the department of correction, the defendant shall be further evaluated and then treated in such a manner as is psychiatrically indicated for the defendant's mental illness. Treatment may be provided by:

- (1) the department of correction; or
- (2) the division of mental health and addiction after transfer under IC 11-10-4.

(d) If a defendant who is found guilty but mentally ill at the time of the crime is placed on probation, the court may, in accordance with IC 35-38-2-2.3, require that the defendant undergo treatment.

(e) As used in this subsection, "individual with mental retardation" means an individual who, before becoming twenty-two (22) years of age, manifests:

- (1) significantly subaverage intellectual functioning; and
- (2) substantial impairment of adaptive behavior;

that is documented in a court ordered evaluative report. If a court determines under IC 35-36-9 that a defendant who is charged with a murder for which the state seeks a death sentence is an individual with mental retardation, the court shall sentence the defendant under IC 35-50-2-3(a).

(f) If a defendant is found guilty but mentally ill, the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

**HISTORY:** IC 35-36-2-5, as added by Acts 1981, P.L.298, § 5; P.L.320-1983, § 21; P.L.1-1991, § 191; P.L.2-1992, § 870; P.L.1-1993, § 239; P.L.158-1994, § 2; P.L.121-1996, § 3; P.L.215-2001, § 108; P.L.99-2007, § 200, emergency eff. May 2, 2007; P.L.110-2009, § 14, emergency eff. July 1, 2009; P.L.114-2012, § 75, eff. July 1, 2012.

Title 35 Criminal Law and Procedure  
 Article 36 Pretrial Notices, Motions, and Procedures  
 Chapter 3 Comprehension to Stand Trial

*Burns Ind. Code Ann. § 35-36-3-1 (2013)*

**35-36-3-1. Ability to understand and assist in proceedings -- Hearing -- Appointment of medical experts -- Admission of other evidence -- Procedure on finding of inability.**

(a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

(1) psychiatrists;

(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology; or

(3) physicians;

who have expertise in determining competency. At least one (1) of the individuals appointed under this subsection must be a psychiatrist or psychologist. However, none may be an employee or a contractor of a state institution (as defined in *IC 12-7-2-184*). The individuals who are appointed shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:

(1) location where the defendant currently resides; or

(2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

(c) If the court makes a finding under subsection (b), the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in *IC 35-47-2.5-2.5*) in accordance with *IC 33-24-6-3*.

**HISTORY:** *IC 35-36-3-1*, as added by Acts 1981, P.L.298, § 5; P.L.321-1983, § 3; P.L.19-1986, § 60; P.L.2-1992, § 871; P.L.215-2001, § 109; P.L.77-2004, § 5; P.L.110-2009, § 15, emergency eff. July 1, 2009; P.L.151-2011, § 1, eff. July 1, 2011.

LEXIS NEXIS (R) IOWA ANNOTATED STATUTES

TITLE XVI CRIMINAL LAW AND PROCEDURE  
SUBTITLE 1 CRIME CONTROL AND CRIMINAL ACTS  
CHAPTER 690 CRIMINAL IDENTIFICATION

*Iowa Code § 690.4 (2013)*

690.4 Fingerprints and photographs at institutions.

1. The warden of the Iowa medical and classification center and superintendent of the state training school shall take or procure the taking of the fingerprints, and, in the case of the Iowa medical and classification center only, Bertillon photographs of any person received on commitment to their respective institutions, and shall forward such fingerprint records and photographs within ten days after they are taken to the department of public safety. Information obtained from fingerprint cards submitted pursuant to this section may be retained by the department of public safety as criminal history records. If a charge for a serious misdemeanor, aggravated misdemeanor, or felony is brought against a person already in the custody of a law enforcement or correctional agency and the charge is filed in a case separate from the case for which the person was previously arrested or confined, the agency shall take the fingerprints of the person in connection with the new case and submit them to the department of public safety.

2. The wardens and superintendents of all department of corrections facilities shall procure the taking of a photograph showing the facial features of each inmate of a state correctional institution prior to the inmate's discharge. The photograph shall be placed in the inmate's file and shall be made available to the Iowa department of public safety upon request.

**HISTORY:** [C50, 54, 58, 62, 66, 71, 73, 75, 77, § 749.4; C79, 81, § 690.4; 82 Acts, ch 1260, § 37]

83 Acts, ch 96, § 116, 159; 84 Acts, ch 1184, § 18; 86 Acts, ch 1075, § 4; 93 Acts, ch 115, § 2; 2011 Acts, ch 95, § 6

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LEXIS NEXIS (R) IOWA ANNOTATED STATUTES

TITLE XVI CRIMINAL LAW AND PROCEDURE  
SUBTITLE 1 CRIME CONTROL AND CRIMINAL ACTS  
CHAPTER 692 CRIMINAL HISTORY AND INTELLIGENCE DATA

*Iowa Code § 692.17 (2013)*

692.17 Exclusions -- purposes.

1. Criminal history data in a computer data storage system shall not include arrest or disposition data or custody or adjudication data after the person has been acquitted or the charges dismissed, except that records of acquittals or dismissals by reason of insanity and records of adjudications of mental incompetence to stand trial in cases in which physical or mental injury or an attempt to commit physical or mental injury to another was alleged may be included. Criminal history data shall not include custody or adjudication data, except as necessary for the purpose of administering chapter 692A, after the juvenile has reached twenty-one years of age, unless the juvenile was convicted of or pled guilty to a serious or aggravated misdemeanor or felony between age eighteen and age twenty-one.

2. For the purposes of this section, "criminal history data" includes the following:

a. In the case of an adult, information maintained by any criminal justice agency if the information otherwise meets the definition of criminal history data in section 692.1, except that source documents shall be retained.

b. In the case of a juvenile, information maintained by any criminal or juvenile justice agency if the information otherwise meets the definition of criminal history data in section 692.1. In the case of a juvenile, criminal history data and source documents, other than fingerprint records, shall not be retained.

3. Fingerprint cards received that are used to establish a criminal history data record shall be retained in the automated fingerprint identification system when the criminal history data record is expunged.

4. Criminal history data may be collected for management or research purposes.

**HISTORY:** [C75, 77, § 749B.17; C79, 81, § 692.17]

90 Acts, ch 1053, § 1; 91 Acts, ch 116, § 20; 93 Acts, ch 115, § 8; 95 Acts, ch 191, § 46; 98 Acts, ch 1021, § 2; 2009 Acts, ch 24, § 4

LEXIS NEXIS (R) IOWA ANNOTATED STATUTES  
TITLE XVI CRIMINAL LAW AND PROCEDURE  
SUBTITLE 1 CRIME CONTROL AND CRIMINAL ACTS  
CHAPTER 724 WEAPONS

*Iowa Code § 724.17 (2013)*

**Legislative Alert:** LEXSEE 2013 Ia. HF 417 -- See section 167.

724.17 Application for annual permit to acquire -- criminal history check required.

The application for an annual permit to acquire pistols or revolvers may be made to the sheriff of the county of the applicant's residence and shall be on a form prescribed and published by the commissioner of public safety. The application shall require only the full name of the applicant, the driver's license or nonoperator's identification card number of the applicant, the residence of the applicant, and the date and place of birth of the applicant. The applicant shall also display an identification card that bears a distinguishing number assigned to the cardholder, the full name, date of birth, sex, residence address, and brief description and colored photograph of the cardholder, or other identification as specified by rule of the department of public safety. The sheriff shall conduct a criminal history check concerning each applicant by obtaining criminal history data from the department of public safety which shall include an inquiry of the national instant criminal background system maintained by the federal bureau of investigation or any successor agency. A person who makes what the person knows to be a false statement of material fact on an application submitted under this section or who submits what the person knows to be any materially falsified or forged documentation in connection with such an application commits a class "D" felony.

**HISTORY:** [C79, 81, § 724.17]

90 Acts, ch 1147, § 5; 2002 Acts, ch 1055, § 2; 2010 Acts, ch 1178, § 13, 19

TITLE XVI CRIMINAL LAW AND PROCEDURE  
SUBTITLE 1 CRIME CONTROL AND CRIMINAL ACTS  
CHAPTER 724 WEAPONS

*Iowa Code § 724.31 (2013)*

724.31 Persons subject to firearm disabilities due to mental health commitments or adjudications -- relief from disabilities -- reports.

1. When a court issues an order or judgment under the laws of this state by which a person becomes subject to the provisions of *18 U.S.C. § 922(d)(4)* and *(g)(4)*, the clerk of the district court shall forward only such information as is necessary to identify the person to the department of public safety, which in turn shall forward the information to the federal bureau of investigation or its successor agency for the sole purpose of inclusion in the national instant criminal background check system database. The clerk of the district court shall also notify the person of the prohibitions imposed under *18 U.S.C. § 922(d)(4)* and *(g)(4)*.

2. A person who is subject to the disabilities imposed by *18 U.S.C. § 922(d)(4)* and *(g)(4)* because of an order or judgment that occurred under the laws of this state may petition the court that issued the order or judgment or the court in the county where the person resides for relief from the disabilities imposed under *18 U.S.C. § 922(d)(4)* and *(g)(4)*. A copy of the petition shall also be served on the director of human services and the county attorney at the county attorney's office of the county in which the original order occurred, and the director or the county attorney may appear, support, object to, and present evidence relevant to the relief sought by the petitioner.

3. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner, concerning all of the following:

a. The circumstances surrounding the original issuance of the order or judgment that resulted in the firearm disabilities imposed by *18 U.S.C. § 922(d)(4)* and *(g)(4)*.

b. The petitioner's record, which shall include, at a minimum, the petitioner's mental health records and criminal history records, if any.

c. The petitioner's reputation, developed, at a minimum, through character witness statements, testimony, and other character evidence.

d. Any changes in the petitioner's condition or circumstances since the issuance of the original order or judgment that are relevant to the relief sought.

4. The court shall grant a petition for relief filed pursuant to subsection 2 if the court finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to the public safety and that the granting of the relief would not be contrary to the public interest. A record shall be kept of the proceedings, but the record shall remain confidential and shall be disclosed only to a court in the event of an appeal. The petitioner may appeal a denial of the requested relief, and review on appeal shall be *de novo*. A person may file a petition for relief under subsection 2 not more than once every two years.

5. If a court issues an order granting a petition for relief filed pursuant to subsection 2, the clerk of the court shall immediately notify the department of public safety of the order granting relief under this section. The department of public safety shall, as soon thereafter as is practicable but not later than ten business days thereafter, update, correct, modify, or remove the petitioner's record in any database that the department of public safety makes available to the national instant criminal background check system and shall notify the United States department of justice that the basis for such record being made available no longer applies.

**HISTORY:** 2010 Acts, ch 1178, § 17, 19; 2011 Acts, ch 72, § 1 -- 3

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\*\*\* Statutes current through the 2013 General Assembly Regular Session \*\*\*  
\*\*\* Annotations through November 20, 2013 \*\*\*

PUBLIC SAFETY  
TITLE 5. FIREARMS  
SUBTITLE 1. REGULATED FIREARMS

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. PUBLIC SAFETY Code Ann. § 5-133.2 (2013)*

§ 5-133.2. Reporting by courts or health facilities.

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Facility" has the meaning stated in § 10-101 of the Health - General Article.

(3) "NICS Index" means the Federal Bureau of Investigation's National Instant Criminal Background Check System.

(b) Reporting by courts. --

(1) A court shall promptly report information required in paragraph (2) of this subsection through a secure data portal approved by the Department of Public Safety and Correctional Services if a court:

(i) determines that a person is not criminally responsible under § 3-110 of the Criminal Procedure Article;

(ii) finds that a person is incompetent to stand trial under § 3-106 of the Criminal Procedure Article; or

(iii) finds under § 13-201(c) or § 13-705 of the Estates and Trust Article that a person should be under the protection of a guardian, except for cases in which the appointment of a guardian is solely a result of a physical disability.

(2) On a finding or determination under paragraph (1) of this subsection, the following information shall be reported to the NICS Index:

(i) the name and identifying information of the person; and

(ii) the date of the determination or finding.

(c) Reports of admissions to health facilities. --

(1) A facility shall report information required in paragraph (2) of this subsection regarding a person admitted to the facility under § 10-609 of the Health - General Article or committed to the facility under Title 10, Subtitle 6, Part III

of the Health - General Article to the NICS Index through a secure data portal approved by the Department of Public Safety and Correctional Services, if:

- (i) the person has been admitted to a facility for 30 consecutive days or more; or
- (ii) the person has been involuntarily committed to a facility.

(2) On admission to a facility the following information shall be reported to the NICS Index:

- (i) the name and identifying information of the person admitted or committed;
- (ii) the date the person was admitted or committed to the facility; and
- (iii) the name of the facility to which the person was admitted or committed.

**HISTORY:** 2013, ch. 427.



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\*\*\* Annotations through November 20, 2013 \*\*\*

HEALTH - GENERAL  
TITLE 10. MENTAL HYGIENE LAW  
SUBTITLE 6. ADMISSION PROVISIONS  
PART I. DEFINITIONS; GENERAL PROVISIONS

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. HEALTH-GENERAL Code Ann. § 10-605 (2013)*

§ 10-605. Report on admission

(a) Report required. -- Within 10 days after admission of an individual to a facility under this title, the facility shall submit to the Department an admission report on the individual.

(b) Form and contents. -- The report shall:

- (1) Be on the form that the Department requires; and
- (2) Contain the information that the Department requires.

**HISTORY:** An. Code 1957, art. 59, § 20; 1982, ch. 21, § 2.

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\*\*\* Annotations through November 20, 2013 \*\*\*

CRIMINAL PROCEDURE  
TITLE 3. INCOMPETENCY AND CRIMINAL RESPONSIBILITY IN CRIMINAL CASES

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. CRIMINAL PROCEDURE Code Ann. § 3-106 (2013)*

§ 3-106. Finding of incompetency

(a) Release. -- If, after a hearing, the court finds that the defendant is incompetent to stand trial but is not dangerous, as a result of a mental disorder or mental retardation, to self or the person or property of others, the court may set bail for the defendant or authorize release of the defendant on recognizance.

(b) Commitment. --

(1) If, after a hearing, the court finds that the defendant is incompetent to stand trial and, because of mental retardation or a mental disorder, is a danger to self or the person or property of another, the court may order the defendant committed to the facility that the Health Department designates until the court finds that:

(i) the defendant no longer is incompetent to stand trial;

(ii) the defendant no longer is, because of mental retardation or a mental disorder, a danger to self or the person or property of others; or

(iii) there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future.

(2) If a court commits the defendant because of mental retardation, the Health Department shall require the Developmental Disabilities Administration to provide the care or treatment that the defendant needs.

(c) Reconsideration. --

(1) To determine whether the defendant continues to meet the criteria for commitment set forth in subsection (b) of this section, the court shall hold a hearing:

(i) every year from the date of commitment;

(ii) within 30 days after the filing of a motion by the State's Attorney or counsel for the defendant setting forth new facts or circumstances relevant to the determination; and

(iii) within 30 days after receiving a report from the Health Department stating opinions, facts, or circumstances that have not been previously presented to the court and are relevant to the determination.

## Md. CRIMINAL PROCEDURE Code Ann. § 3-106

(2) At any time, and on its own initiative, the court may hold a conference or a hearing on the record with the State's Attorney and the counsel of record for the defendant to review the status of the case.

(d) Reconsideration -- Finding defendant not likely to become competent. -- At a competency hearing under subsection (c) of this section, if the court finds that the defendant is incompetent and is not likely to become competent in the foreseeable future, the court shall:

(1) civilly commit the defendant as an inpatient in a medical facility that the Health Department designates provided the court finds by clear and convincing evidence that:

(i) the defendant has a mental disorder;

(ii) inpatient care is necessary for the defendant;

(iii) the defendant presents a danger to the life or safety of self or others;

(iv) the defendant is unable or unwilling to be voluntarily committed to a medical facility; and

(v) there is no less restrictive form of intervention that is consistent with the welfare and safety of the defendant; or

(2) order the confinement of the defendant for 21 days as a resident in a Developmental Disabilities Administration facility for the initiation of admission proceedings under § 7-503 of the Health - General Article provided the court finds that the defendant, because of mental retardation, is a danger to self or others.

(e) Applicability of Title 10 of the Health - General Article to civil commitment. -- The provisions under Title 10 of the Health - General Article shall apply to the continued retention of a defendant civilly committed under subsection (d) of this section.

(f) Periodic hearings where defendant found incompetent to stand trial but not dangerous. --

(1) For a defendant who has been found incompetent to stand trial but not dangerous, as a result of a mental disorder or mental retardation, to self or the person or property of others, and released on bail or on recognizance, the court:

(i) shall hold a hearing annually from the date of release;

(ii) may hold a hearing, at any time, on its own initiative; or

(iii) shall hold a hearing, at any time, upon motion of the State's Attorney or the counsel for the defendant.

(2) At a hearing under paragraph (1) of this subsection, the court shall reconsider whether the defendant remains incompetent to stand trial or a danger to self or the person or property of another because of mental retardation or a mental disorder.

(3) At a hearing under paragraph (1) of this subsection, the court may modify or impose additional conditions of release on the defendant.

(4) If the court finds, at a hearing under paragraph (1) of this subsection, that the defendant is incompetent and is not likely to become competent in the foreseeable future and is a danger to self or the person or property of another because of mental retardation or a mental disorder, the court shall revoke the pretrial release of the defendant and:

(i) civilly commit the defendant in accordance with paragraph (1) of subsection (d) of this section; or

(ii) order confinement of the defendant in accordance with subsection (d)(2) of this section.

(g) Other legal questions. -- If the defendant is found incompetent to stand trial, defense counsel may make any legal objection to the prosecution that may be determined fairly before trial and without the personal participation of the defendant.

(h) Inclusion in Central Repository. -- The court shall notify the Criminal Justice Information System Central Repository of any commitment ordered or release authorized under this section and of any determination that a defendant is no longer incompetent to stand trial.

**HISTORY:** HG § 12-105(a), (b)(1), (2), (c), (d), (e); 2001, ch. 10, § 2; 2006, ch. 353; 2013, ch. 156, § 3.

Annotated Code of Maryland  
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\*\*\* Statutes current through the 2013 General Assembly Regular Session \*\*\*  
\*\*\* Annotations through November 20, 2013 \*\*\*

CRIMINAL PROCEDURE  
TITLE 3. INCOMPETENCY AND CRIMINAL RESPONSIBILITY IN CRIMINAL CASES

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. CRIMINAL PROCEDURE Code Ann. § 3-112 (2013)*

§ 3-112. Not criminally responsible -- Commitment

(a) In general. -- Except as provided in subsection (c) of this section, after a verdict of not criminally responsible, the court immediately shall commit the defendant to the Health Department for institutional inpatient care or treatment.

(b) Defendant with mental retardation. -- If the court commits a defendant who was found not criminally responsible primarily because of mental retardation, the Health Department shall designate a facility for mentally retarded persons for care and treatment of the committed person.

(c) Release. -- After a verdict of not criminally responsible, a court may order that a person be released, with or without conditions, instead of committed to the Health Department, but only if:

(1) the court has available an evaluation report within 90 days preceding the verdict made by an evaluating facility designated by the Health Department;

(2) the report indicates that the person would not be a danger, as a result of mental retardation or mental disorder, to self or to the person or property of others if released, with or without conditions; and

(3) the person and the State's Attorney agree to the release and to any conditions for release that the court imposes.

(d) Notification of Central Repository. -- The court shall notify the Criminal Justice Information System Central Repository of each person it orders committed under this section.

**HISTORY:** HG § 12-111; 2001, ch. 10, § 2; 2008, ch. 36, § 6.

## LexisNexis(R) Oregon Annotated Statutes

Title 16 Crimes and Punishments  
Chapter 166- Offenses Against Public Order; Firearms and Other Weapons; Racketeering  
Sale or Transfer of Firearms

ORS § 166.412 (2012)

**166.412 Definitions; firearms transaction record; criminal record check; rules.**

(1) As used in this section:

- (a) "Antique firearm" has the meaning given that term in *18 U.S.C. 921*;
- (b) "Department" means the Department of State Police;
- (c) "Firearm" has the meaning given that term in *ORS 166.210*, except that it does not include an antique firearm;
- (d) "Firearms transaction record" means the firearms transaction record required by *18 U.S.C. 921* to 929;
- (e) "Firearms transaction thumbprint form" means a form provided by the department under subsection (11) of this section;
- (f) "Gun dealer" means a person engaged in the business, as defined in *18 U.S.C. 921*, of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise;
- (g) "Handgun" has the meaning given that term in *ORS 166.210*; and
- (h) "Purchaser" means a person who buys, leases or otherwise receives a firearm from a gun dealer.

(2) Except as provided in subsections (3)(c) and (12) of this section, a gun dealer shall comply with the following before a handgun is delivered to a purchaser:

- (a) The purchaser shall present to the dealer current identification meeting the requirements of subsection (4) of this section.
- (b) The gun dealer shall complete the firearms transaction record and obtain the signature of the purchaser on the record.
- (c) The gun dealer shall obtain the thumbprints of the purchaser on the firearms transaction thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to be filed with that copy.
- (d) The gun dealer shall request by telephone that the department conduct a criminal history record check on the purchaser and shall provide the following information to the department:
  - (A) The federal firearms license number of the gun dealer;
  - (B) The business name of the gun dealer;
  - (C) The place of transfer;
  - (D) The name of the person making the transfer;
  - (E) The make, model, caliber and manufacturer's number of the handgun being transferred;
  - (F) The name and date of birth of the purchaser;
  - (G) The Social Security number of the purchaser if the purchaser voluntarily provides this number to the gun dealer; and
  - (H) The type, issuer and identification number of the identification presented by the purchaser.

## ORS § 166.412

(e) The gun dealer shall receive a unique approval number for the transfer from the department and record the approval number on the firearms transaction record and on the firearms transaction thumbprint form.

(f) The gun dealer may destroy the firearms transaction thumbprint form five years after the completion of the firearms transaction thumbprint form.

(3) (a) Upon receipt of a request of the gun dealer for a criminal history record check, the department shall immediately, during the gun dealer's telephone call or by return call:

(A) Determine, from criminal records and other information available to it, whether the purchaser is disqualified under *ORS 166.470* from completing the purchase; and

(B) Notify the dealer when a purchaser is disqualified from completing the transfer or provide the dealer with a unique approval number indicating that the purchaser is qualified to complete the transfer.

(b) If the department is unable to determine if the purchaser is qualified or disqualified from completing the transfer within 30 minutes, the department shall notify the dealer and provide the dealer with an estimate of the time when the department will provide the requested information.

(c) If the department fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close of the gun dealer's next business day following the request by the dealer for a criminal history record check, the dealer may deliver the handgun to the purchaser.

(4) (a) Identification required of the purchaser under subsection (2) of this section shall include one piece of current identification bearing a photograph and the date of birth of the purchaser that:

(A) Is issued under the authority of the United States Government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization; and

(B) Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(b) If the identification presented by the purchaser under paragraph (a) of this subsection does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser. The Superintendent of State Police may specify by rule the type of identification that may be presented under this paragraph.

(c) The department may require that the dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the department.

(5) The department shall establish a telephone number that shall be operational seven days a week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from dealers for a criminal history record check under this section.

(6) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section provided the employee, official or agency acts in good faith and without malice.

(7) (a) The department may retain a record of the information obtained during a request for a criminal records check for no more than five years.

(b) The record of the information obtained during a request for a criminal records check by a gun dealer is exempt from disclosure under public records law.

(8) A law enforcement agency may inspect the records of a gun dealer relating to transfers of handguns with the consent of a gun dealer in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant.

(9) When a handgun is delivered, it shall be unloaded.

(10) In accordance with applicable provisions of ORS chapter 183, the Superintendent of State Police may adopt rules necessary for:

- (a) The design of the firearms transaction thumbprint form;
- (b) The maintenance of a procedure to correct errors in the criminal records of the department;
- (c) The provision of a security system to identify dealers who request a criminal history record check under subsection (2) of this section; and
- (d) The creation and maintenance of a database of the business hours of gun dealers.

(11) The department shall publish the firearms transaction thumbprint form and shall furnish the form to gun dealers on application at cost.

(12) This section does not apply to transactions between persons licensed as dealers under *18 U.S.C. 923*.

**HISTORY:** 1995 c.729 § 1; 2001 c.900 § 25; 2009 c.595 § 114; 2009 c.826 § 17.

Title 16 Crimes and Punishments  
Chapter 166- Offenses Against Public Order; Firearms and Other Weapons; Racketeering  
Sale or Transfer of Firearms

*ORS § 166.432 (2012)*

**166.432 Definitions for ORS 166.412 and 166.433 to 166.441.**

(1) As used in *ORS 166.412, 166.433, 166.434, 166.436 and 166.438*, "criminal background check" or "criminal history record check" means determining the eligibility of a person to purchase or possess a firearm by reviewing state and federal databases including, but not limited to, the:

- (a) Oregon computerized criminal history system;
- (b) Oregon mental health data system;
- (c) Law Enforcement Data System;
- (d) National Instant Criminal Background Check System; and
- (e) Stolen guns system.

(2) As used in *ORS 166.433, 166.434, 166.436, 166.438 and 166.441*:

- (a) "Gun dealer" has the meaning given that term in *ORS 166.412*.
- (b) "Gun show" means an event at which more than 25 firearms are on site and available for transfer.

**HISTORY:** 2001 c.1 § 3.

Title 18 Executive Branch; Organization  
 Chapter 181- State Police; Crime Reporting and Records; Sex Offender Reporting; Public Safety Standards and  
 Training; Private Security Services  
 Criminal Justice Information Standards

*ORS § 181.740 (2012)*

**181.740 Certain information required from agencies; rules.**

(1) The Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department shall provide the Department of State Police with the minimum information necessary to identify persons who:

- (a) Have been committed by a court to the Oregon Health Authority under *ORS 426.130*, based on a finding that the person is dangerous to self or others;
- (b) Are subject to a court order under *ORS 426.130* prohibiting the person from purchasing or possessing a firearm;
- (c) Have been committed by a court to the Department of Human Services under *ORS 427.290*, based on a finding that the person is dangerous to self or others;
- (d) Have been found by a court to lack fitness to proceed under *ORS 161.370*;
- (e) Have been found guilty except for insanity of a crime under *ORS 161.295* to *161.370*;
- (f) Have been found responsible except for insanity for an act under *ORS 419C.411*;
- (g) Have been placed under the jurisdiction of the Psychiatric Security Review Board or the Oregon Health Authority under *ORS 161.315* to *161.351*; or
- (h) Have been committed to a state hospital or facility under *ORS 161.315* to *161.351* or *419C.529* to *419C.544*.

(2) Upon receipt of the information described in this section, the Department of State Police shall access and maintain the information and transmit the information to the federal government as required under federal law.

(3) The Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department shall enter into agreements with the Department of State Police describing the access to information provided under this section.

(4) The Department of State Police shall adopt rules:

- (a) After consulting with the Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department, describing the type of information provided to the Department of State Police under this section; and
- (b) Describing the method and manner of maintaining the information described in this section and transmitting the information to the federal government.

(5) As used in this section, "minimum information necessary" means data elements or nominal information that is necessary or required under federal law to accurately identify a person described in this section and includes the person's name, date of birth, gender and reference information that identifies the originating agency or court and enables the originating agency or court to locate an underlying record or file of a person described in this section. "Minimum information necessary" does not include any medical, psychiatric or psychological information, case histories or files of a person described in this section or any record or file of an originating agency or court.

**HISTORY:** 2009 c.826 § 1; 2009 c.826 § 16; 2011 c.708 § 23.

Title 35 Mental Health and Developmental Disabilities; Alcohol and Drug Treatment  
 Chapter 426- Persons with Mental Illness; Sexually Dangerous Persons  
 Persons with Mental Illness  
 (Commitment Procedure)

*ORS* § 426.130 (2012)

**426.130 Court determination of mental illness; discharge; release for voluntary treatment; conditional release; commitment; prohibition relating to firearms; period of commitment.**

(1) After hearing all of the evidence, and reviewing the findings of the examining persons, the court shall determine whether the person is mentally ill. If, in the opinion of the court, the person is:

(a) Not mentally ill, the person shall be discharged forthwith.

(b) Mentally ill based upon clear and convincing evidence, the court:

(A) Shall order the release of the individual and dismiss the case if:

(i) The mentally ill person is willing and able to participate in treatment on a voluntary basis; and

(ii) The court finds that the person will probably do so.

(B) May order conditional release under this subparagraph subject to the qualifications and requirements under *ORS* 426.125. If the court orders conditional release under this subparagraph, the court shall establish a period of commitment for the conditional release.

(C) May order commitment of the individual to the Oregon Health Authority for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of the mentally ill person. If the court orders commitment under this subparagraph:

(i) The court shall establish a period of commitment.

(ii) The authority may place the committed person in outpatient commitment under *ORS* 426.127.

(D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person's mental or psychological state as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court makes an order under this subparagraph, the court shall cause a copy of the order to be delivered to the sheriff of the county who will enter the information into the Law Enforcement Data System.

(2) A court that orders a conditional release or a commitment under this section shall establish a period of commitment for the person subject to the order. Any period of commitment ordered for commitment or conditional release under this section shall be for a period of time not to exceed 180 days.

(3) If the commitment proceeding was initiated under *ORS* 426.070 (1)(a) and if the notice included a request under *ORS* 426.070 (2)(d)(B), the court shall notify the two persons of the court's determination under subsection (1) of this section.

**HISTORY:** Amended by 1973 c.838 § 12; 1975 c.690 § 8; 1979 c.408 § 3; 1987 c.903 § 17; 1989 c.839 § 36; 1993 c.735 § 9; 1995 c.498 § 2; 2009 c.595 § 393.

Title 35 Mental Health and Developmental Disabilities; Alcohol and Drug Treatment  
Chapter 426- Persons with Mental Illness; Sexually Dangerous Persons  
Persons with Mental Illness  
(Commitment Procedure)

*ORS* § 426.160 (2012)

**Legislative Alert:** LEXSEE 2013 Ore. ALS 737 -- See section 1.  
LEXSEE 2013 Ore. ALS 715 -- See sections 1 and 7.  
LEXSEE 2013 Ore. ALS 360 -- See section 35.

**426.160 Disclosure of record of proceeding.**

(1) The court having jurisdiction over any proceeding conducted pursuant to *ORS* 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385 and 426.395 may not disclose any part of the record of the proceeding to any person except:

(a) The court shall, pursuant to rules adopted by the Department of State Police, transmit the minimum information necessary, as defined in *ORS* 181.740, to the Department of State Police for persons described in *ORS* 181.740 (1)(a) or (b) to enable the department to access and maintain the information and transmit the information to the federal government as required under federal law;

(b) As provided in *ORS* 426.070 (5)(c), 426.130 (3) or 426.170;

(c) On request of the person subject to the proceeding;

(d) On request of the person's legal representative or the attorney for the person or the state; or

(e) Pursuant to court order.

(2) In any proceeding described in subsection (1) of this section that is before the Supreme Court or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate court record and to the trial court record while it is in the appellate court's custody. The appellate court may disclose information from the trial or appellate court record in a decision, as defined in *ORS* 19.450, provided that the court uses initials, an alias or some other convention for protecting against public disclosure the identity of the allegedly mentally ill person.

**HISTORY:** Amended by 1965 c.420 § 1; 1969 c.148 § 1; 1973 c.838 § 21; 1993 c.223 § 11; 1993 c.484 § 19; 1995 c.498 § 3; 2009 c.826 § 2; 2011 c.332 §§ 1,6a; 2011 c.547 § 45.

Title 35 Mental Health and Developmental Disabilities; Alcohol and Drug Treatment  
Chapter 427- Persons with Intellectual or Developmental Disabilities  
Involuntary Commitments of Persons with Intellectual Disabilities

ORS § 427.293 (2012)

**427.293 Disclosure of record of proceeding.**

(1) In any proceeding conducted under *ORS 427.235* to *427.290*, the court may not disclose any part of the record, including any report submitted to the court under *ORS 427.270* to any person except:

(a) The court shall, pursuant to rules adopted by the Department of State Police, transmit the minimum information necessary, as defined in *ORS 181.740*, to the Department of State Police for persons described in *ORS 181.740 (1)(c)* to enable the department to maintain the information and transmit the information to the federal government as required under federal law;

(b) On request of the person subject to the proceeding;

(c) On request of the person's legal representative or the attorney for the person or the state; or

(d) Pursuant to court order.

(2) In any proceeding described in subsection (1) of this section that is before the Supreme Court or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate court record and to the trial court record while it is in the appellate court's custody. The appellate court may disclose information from the trial or appellate court record in a decision, as defined in *ORS 19.450*, provided that the court uses initials, an alias or some other convention for protecting against public disclosure the identity of the person who is alleged to have mental retardation.

**HISTORY:** 1999 c.82 § 2; 2009 c.826 § 3; 2011 c.332 §§ 3,6b; 2011 c.547 § 46.

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CHAPTER 257 DEPARTMENT OF OREGON STATE POLICE  
DIVISION 10 OREGON CRIMINAL OFFENDER INFORMATION SYSTEM

*Or. Admin. R. 257-010-0060 (2014)*

257-010-0060 Mental Health Information Reporting to NICS

(1) Definitions. As used in this administrative rule:

(a) "Designated Agencies" means the Oregon Department of Human Services (DHS), the Oregon Health Authority (OHA), the Psychiatric Review Board (PSRB), and the Oregon Judicial Department (OJD).

(b) "Minimum Information" means only those data elements or identifying information that is minimally or nominally necessary to accurately identify a person listed under *ORS 181.740(1)* and who is prohibited under either 18 U.S.C. § 922(d)(4) and (g)(4) from purchasing, possessing, transporting or receiving a firearm, *ORS 166.250 (1)(c)(D)* or (E) from possessing a firearm, or *ORS 166.470 (1)(e)* or (f) from receiving a firearm. "Minimum information" includes at least the person's name, date of birth, gender and ORI number of the designated agency or originating court that originally created the underlying record or file of the person. "Minimum information" does not include any medical, psychiatric or psychological information, case histories or files of a person, or any record or file of a designated agency or originating court.

(c) "NICS" means the National Instant Criminal Background Check System mandated by the Brady Handgun Violence Prevention Act of 1993 (Pub. L. 103-159, *107 Stat. 1536*).

(d) "ORI" means the Law Enforcement Data System (LEDS) and FBI National Crime Information Center (NCIC) originating agency identifier code.

(e) "Originating court" means the Oregon county circuit court that transmits a mental health record to OSP as required under either *ORS 426.160* or *427.293*.

(f) "Prohibited Persons File" (PPF) means a data table created by OSP that contains minimum information, as reported to OSP by the designated agencies or originating courts responsible for maintaining Oregon mental health records, for individuals that are prohibited under either 18 U.S.C. § 922(d)(4) and (g)(4) from purchasing, possessing, transporting or receiving a firearm, *ORS 166.250 (1)(c)(D)* or (E) from possessing a firearm, or *ORS 166.470 (1)(e)* or (f) from receiving a firearm. This file will be maintained by OSP in LEDS. The agencies contributing to the file will be responsible for ensuring the data is accurate. Information in this file is confidential and not to be accessed for any purpose other than:

- (A) Maintaining the minimum information in the PPF;
- (B) Reporting minimum information to NICS as required by federal and state law; or
- (C) Conducting instant firearm criminal history checks as defined under *ORS 166.432*.

(2) Transmission of Existing Minimum Information to OSP and NICS.

(a) As soon as a designated agency is capable of electronically transmitting existing minimum information to OSP, the designated agency shall provide OSP with all current and former client minimum information as required under *ORS 181.740*.

(b) Each designated agency shall provide all of its current and former client information to OSP in one single electronic file. The single electronic file shall contain all minimum information data elements in an electronic format that is capable of being individually searched and copied.

(c) Notwithstanding subsection (2)(b) of this rule, designated agencies may provide minimum information to OSP in a non-electronic format, on a client-by-client basis and only as approved by OSP.

## ORS § 427.293

(d) Given the current limitations of the Oregon Judicial Department's information systems, OJD shall continue working with OSP and designated agencies to accomplish reconciliation of its records to those records of the other designated agencies. OJD shall continue its efforts to upgrade its information systems in order for OJD to provide minimum information to OSP as required under *ORS 181.740*. Upon OJD having the capability of providing minimum information to OSP from its information systems, OJD shall provide all of its current and former minimum information to OSP in one single electronic file, as provided in section (2)(b) of this rule.

(e) Upon receipt of any designated agency's minimum information, OSP may search, use, copy, and maintain that minimum information. OSP shall enter the minimum information into the PPF and electronically transmit it from the PPF to NICS.

(3) Transmission of Subsequent Minimum Information to OSP and NICS.

(a) Upon providing OSP with minimum information as provided under subsection 2 of this rule, designated agencies shall thereafter provide subsequent client information to OSP in electronic format, in a format approved by OSP. Designated agencies and originating courts shall electronically transmit subsequent minimum information to OSP as soon as such client minimum information becomes available for transmission and inclusion into the PPF. Designated agencies shall not delay in transmitting minimum information to OSP and shall transmit minimum information to OSP immediately upon such information becoming available to the designated agency.

(b) Designated agencies shall provide minimum information data elements to OSP in an electronic format that is capable of being individually searched and copied.

(c) Upon OJD having the capability of providing minimum information to OSP from its information systems, OJD shall thereafter provide subsequent minimum information to OSP, including information from originating courts, as provided in section (3)(a) of this rule.

(d) Upon receipt of any designated agency's minimum information, OSP may search, use, copy, and maintain that minimum information. OSP shall enter the minimum information into the PPF and electronically transmit it from the PPF to NICS on a daily basis through a secure electronic message via the Law Enforcement Message Switch (LEMS).

(e) Notwithstanding subsection (3)(b) of this rule, designated agencies may provide minimum information to OSP in a non-electronic format, on a client-by-client basis and only as approved by OSP. In the event that OSP accepts minimum information from a designated agency in a non-electronic format, OSP shall electronically enter the minimum information for that particular person into the PPF, and return the non-electronically formatted minimum information to the designated agency.

(4) PPF and Minimum Information Maintenance. OSP shall request a report from NICS every 3 months that details Oregon's mental health prohibited person record data located in NICS for comparison with the data in the PPF. OSP shall send data discrepancies to the submitting designated agency for resolution. Based on ORI number, designated agencies may further re-direct challenges to the court of original jurisdiction for resolution. Designated agencies shall include any changes or amendments to previously submitted minimum information in their subsequent electronic transmissions of minimum information to OSP.

(5) Challenges to Minimum Information. All minimum information and data elements maintained by OSP in the PPF is the minimum information and data elements directly submitted to OSP by designated agencies. Any and all challenges to minimum information data elements submitted to OSP by a designated agency and that are contained or maintained by OSP in the PPF and transmitted to NICS will be re-directed to the submitting designated agency for resolution. Based on ORI number, designated agencies may further re-direct challenges to the court of original jurisdiction for resolution.

(6) Relief Maintenance.

(a) When the PSRB grants relief from the prohibitions under 18 U.S.C. §922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm, or grants additional or alternative relief from either the prohibition on possessing a firearm under *ORS 166.250 (1)(c)(D)* or (E), or the prohibition on receiving a firearm under *ORS 166.470 (1)(e)* or (f), the PSRB shall send the minimum information of the person for whom relief is granted electronically to OSP. Upon receipt of the minimum information from the PSRB, OSP shall update the PPF and transmit the minimum information and notification of relief to NICS on the same day OSP receives the minimum information from the PSRB.

## ORS § 427.293

(b) When a person files a petition for judicial review with an appellate court following a final order of the PSRB that denies relief, and the appellate court subsequently grants the person relief from the prohibitions under 18 U.S.C. § 922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm, or grants additional or alternative relief from either the prohibition on possessing a firearm under *ORS 166.250 (1)(c)(D)* or (E), or the prohibition on receiving a firearm under *ORS 166.470 (1)(e)* or (f), OJD shall send the minimum information of the person for whom relief is granted electronically to OSP as provided in subsection 3(b) of this rule. Upon receipt of the minimum information from OJD, OSP shall update the PPF and transmit the minimum information and notification of relief to NICS on the same day OSP receives the minimum information from OJD.

(c) In addition to the requirements set forth in 6 (a), whenever the PSRB or an appellate court grants relief under the following circumstances, the person granted relief shall provide a certified copy of either the PSRB written final order or appellate judgment and the person's fingerprint card to OSP for the purposes of updating the petitioner's Computerized Criminal History:

(A) The person granted relief was found responsible except for insanity for an act under *ORS 419C.411*;

(B) The person granted relief was found guilty except for insanity of a crime under *ORS 161.295* to *161.370* and the person has an existing criminal history; or

(C) The person granted relief was found by a court to lack fitness to proceed under *ORS 161.370* and the person has an existing criminal history.

Statutory Authority: *ORS 181.740, 426.130, 426.160, 427.290, 427.293, 161.370, 161.295--161.370, 419C.411, 161.327, 161.336--161.351, & 419C.529--419C.544 & 192.440*

Statutes Implemented: *ORS 181.740, OL 2009 Ch 826*

History: OSP 5-2011(Temp), f. 12-13-11, cert. ef. 12-15-11 thru 6-12-12; OSP 2-2012, f. & cert. ef. 5-22-12

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GOVERNMENT CODE  
TITLE 4. EXECUTIVE BRANCH  
SUBTITLE B. LAW ENFORCEMENT AND PUBLIC PROTECTION  
CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS  
SUBCHAPTER D. ADMINISTRATIVE DIVISION

**GO TO TEXAS CODE ARCHIVE DIRECTORY**

*Tex. Gov't Code § 411.052 (2013)*

§ 411.052. Federal Firearm Reporting

(a) In this section, "federal prohibited person information" means information that identifies an individual as:

(1) a person ordered by a court to receive inpatient mental health services under Chapter 574, Health and Safety Code;

(2) a person acquitted in a criminal case by reason of insanity or lack of mental responsibility, regardless of whether the person is ordered by a court to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure;

(3) a person determined to have mental retardation and committed by a court for long-term placement in a residential care facility under Chapter 593, Health and Safety Code;

(4) an incapacitated adult individual for whom a court has appointed a guardian of the individual under Chapter XIII, Probate Code, based on the determination that the person lacks the mental capacity to manage the person's affairs; or

(5) a person determined to be incompetent to stand trial under Chapter 46B, Code of Criminal Procedure.

(b) The department by rule shall establish a procedure to provide federal prohibited person information to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System. Except as otherwise provided by state law, the department may disseminate federal prohibited person information under this subsection only to the extent necessary to allow the Federal Bureau of Investigation to collect and maintain a list of persons who are prohibited under federal law from engaging in certain activities with respect to a firearm.

(c) The department shall grant access to federal prohibited person information to the person who is the subject of the information.

(d) Federal prohibited person information maintained by the department is confidential information for the use of

the department and, except as otherwise provided by this section and other state law, may not be disseminated by the department.

(e) The department by rule shall establish a procedure to correct department records and transmit those corrected records to the Federal Bureau of Investigation when a person provides:

(1) a copy of a judicial order or finding that a person is no longer an incapacitated adult or is entitled to relief from disabilities under *Section 574.088, Health and Safety Code*; or

(2) proof that the person has obtained notice of relief from disabilities under *18 U.S.C. Section 925*.

**HISTORY:** Enacted by Acts 2009, 81st Leg., ch. 950 (H.B. 3352), § 1, effective September 1, 2009.

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GOVERNMENT CODE  
TITLE 4. EXECUTIVE BRANCH  
SUBTITLE B. LAW ENFORCEMENT AND PUBLIC PROTECTION  
CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS  
SUBCHAPTER D. ADMINISTRATIVE DIVISION

**GO TO TEXAS CODE ARCHIVE DIRECTORY**

*Tex. Gov't Code § 411.0521 (2013)*

§ 411.0521. Report to Department Concerning Certain Persons' Access to Firearms

(a) The clerk of the court shall prepare and forward to the department the information described by Subsection (b) not later than the 30th day after the date the court:

(1) orders a person to receive inpatient mental health services under Chapter 574, Health and Safety Code;

(2) acquits a person in a criminal case by reason of insanity or lack of mental responsibility, regardless of whether the person is ordered to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure;

(3) commits a person determined to have mental retardation for long-term placement in a residential care facility under Chapter 593, Health and Safety Code;

(4) appoints a guardian of the incapacitated adult individual under Chapter XIII, Probate Code, based on the determination that the person lacks the mental capacity to manage the person's affairs;

(5) determines a person is incompetent to stand trial under Chapter 46B, Code of Criminal Procedure; or

(6) finds a person is entitled to relief from disabilities under *Section 574.088, Health and Safety Code*.

(b) The clerk of the court shall prepare and forward the following information under Subsection (a):

(1) the complete name, race, and sex of the person;

(2) any known identifying number of the person, including social security number, driver's license number, or state identification number;

(3) the person's date of birth; and

(4) the federal prohibited person information that is the basis of the report required by this section.

(c) If practicable, the clerk of the court shall forward to the department the information described by Subsection (b) in an electronic format prescribed by the department.

(d) If an order previously reported to the department under Subsection (a) is reversed by order of any court, the clerk shall notify the department of the reversal not later than 30 days after the clerk receives the mandate from the appellate court.

(e) The duty of a clerk to prepare and forward information under this section is not affected by:

- (1) any subsequent appeal of the court order;
- (2) any subsequent modification of the court order; or
- (3) the expiration of the court order.

**HISTORY:** Enacted by Acts 2009, 81st Leg., ch. 950 (H.B. 3352), § 1, effective September 1, 2009.

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TITLE 19.2. CRIMINAL PROCEDURE  
CHAPTER 11. PROCEEDINGS ON QUESTION OF INSANITY

**GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY**

*Va. Code Ann. § 19.2-169.2 (2014)*

§ 19.2-169.2. Disposition when defendant found incompetent

A. Upon finding pursuant to subsection E of § 19.2-169.1 that the defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge. Any reports submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community services board or behavioral health authority or his designee or to the director of the treating inpatient facility or his designee.

B. If, at any time after the defendant is ordered to undergo treatment under subsection A of this section, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

C. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of an order for treatment issued pursuant to subsection A.

**HISTORY:** 1982, c. 653; 2003, c. 735; 2007, c. 781; 2008, cc. 751, 788; 2009, cc. 813, 840.

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TITLE 19.2. CRIMINAL PROCEDURE  
CHAPTER 23. CENTRAL CRIMINAL RECORDS EXCHANGE

**GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY**

*Va. Code Ann. § 19.2-389 (2014)*

§ 19.2-389. Dissemination of criminal history record information

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated

or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day care homes or homes approved by family day care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants

for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided; and

44. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

**HISTORY:** Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1977, c. 626; 1978, c. 350; 1979, c. 480; 1981, c. 207; 1985, c. 360; 1987, cc. 130, 131; 1988, c. 851; 1989, c. 544; 1990, c. 766; 1991, c. 342; 1992, cc. 422, 641, 718, 746, 791, 844; 1993, cc. 48, 313, 348; 1994, cc. 34, 670, 700, 830; 1995, cc. 409, 645, 731, 781, 809; 1996, cc. 428, 432, 747, 881, 927, 944; 1997, cc. 169, 177, 606, 691, 721, 743, 796, 895; 1998, cc. 113, 405, 445, 882; 1999, cc. 383, 685; 2001, cc. 552, 582; 2002, cc. 370, 587, 606; 2003, c. 731; 2005, cc. 149, 914, 928; 2006, cc. 257, 277, 644; 2007, cc. 12, 361, 495, 572; 2008, cc. 387, 689, 863; 2009, cc. 667, 813, 840; 2010, cc. 189, 340, 406, 456, 524, 563, 862; 2011, cc. 432, 449; 2012, cc. 40, 189, 386, 476, 507, 803, 835; 2013, cc. 165, 176, 261, 407, 491, 582.

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TITLE 37.2. BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES  
SUBTITLE 3. ADMISSIONS AND DISPOSITIONS  
CHAPTER 8. EMERGENCY CUSTODY AND VOLUNTARY AND INVOLUNTARY CIVIL ADMISSIONS  
ARTICLE 5. INVOLUNTARY ADMISSIONS

**GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY**

*Va. Code Ann. § 37.2-819 (2014)*

§ 37.2-819. Order of involuntary admission or involuntary outpatient treatment forwarded to CCRE; certain voluntary admissions forwarded to CCRE; firearm background check

A. Upon receipt of any order from a commitment hearing issued pursuant to this chapter for involuntary admission to a facility, the clerk of court shall, as soon as practicable but not later than the close of business on the next following business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order. Upon receipt of any order from a commitment hearing issued pursuant to this chapter for mandatory outpatient treatment, the clerk of court shall, prior to the close of that business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the exchange, a copy of the order.

B. The clerk of court shall also, as soon as practicable but no later than the close of business on the next following business day, forward upon receipt to the Central Criminal Records Exchange, on a form provided by the Exchange, certification of any person who has been the subject of a temporary detention order pursuant to § 37.2-809, and who, after being advised by the judge or special justice that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 37.2-805.

C. The copy of the forms and orders sent to the Central Criminal Records Exchange pursuant to subsection A, and the forms and certifications sent to the Central Criminal Records Exchange regarding voluntary admission pursuant to subsection B, shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange with any form, order, or certification required by subsection A or B. The Department of State Police shall forward only a person's eligibility to possess, purchase, or transfer a firearm to the National Instant Criminal Background Check System.

**HISTORY:** 1976, c. 671, § 37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752; 1994, cc. 736, 907; 1995, cc. 489, 668, 844; 1996, cc. 343, 893; 1997, cc. 558, 921; 1998, c. 446; 2001, cc. 478, 479, 507, 658, 837; 2004, cc. 66, 1014; 2005, c. 716; 2008, cc. 751, 788; 2009, cc. 21, 838.

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TITLE 64.2. WILLS, TRUSTS, AND FIDUCIARIES  
SUBTITLE IV. FIDUCIARIES AND GUARDIANS  
PART D. GUARDIANSHIP OF INCAPACITATED PERSONS  
CHAPTER 20. GUARDIANSHIP AND CONSERVATORSHIP  
ARTICLE 1. APPOINTMENT.

**GO TO CODE OF VIRGINIA ARCHIVE DIRECTORY**

*Va. Code Ann. § 64.2-2014 (2014)*

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ 64.2-2014. (Effective July 1, 2014) Clerk to index findings of incapacity or restoration; notice of findings

A. A copy of the court's findings that a person is incapacitated or has been restored to capacity, or a copy of any order appointing a conservator or guardian pursuant to § 64.2-2115, shall be filed by the judge with the clerk of the circuit court. The clerk shall properly index the findings in the index to deed books by reference to the order book and page whereon the order is spread and shall immediately notify the Commissioner of Behavioral Health and Developmental Services in accordance with § 64.2-2028, the commissioner of accounts in order to ensure compliance by a conservator with the duties imposed pursuant to §§ 64.2-2021, 64.2-2022, 64.2-2023, and 64.2-2026, and the Commissioner of Elections with the information required by § 24.2-410. If a guardian is appointed, the clerk shall forward a copy of the court order to the local department of social services of the jurisdiction where the person then resides. If a guardianship is terminated or otherwise modified, the clerk shall forward a copy of the court order to the local department of social services to which the original order of appointment was forwarded and, if different, to the local department of social services in the jurisdiction where the person then resides.

B. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person incapacitated under this article, any order appointing a conservator or guardian pursuant to § 64.2-2115, and any order of restoration of capacity under § 64.2-2012. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.

**HISTORY:** 1997, c. 921, § 37.1-134.18; 1998, c. 582; 2001, cc. 478, 479, 507; 2005, c. 716, § 37.2-1014; 2011, c. 518; 2012, c. 614; 2013, c. 542.

## ANNOTATED REVISED CODE OF WASHINGTON

TITLE 9. CRIMES AND PUNISHMENTS  
CHAPTER 9.41. FIREARMS AND DANGEROUS WEAPONS

*Rev. Code Wash. (ARCW) § 9.41.047 (2013)*

## § 9.41.047. Restoration of possession rights

(1) (a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under *RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750*, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The convicting or committing court shall forward within three judicial days after conviction or entry of the commitment order a copy of the person's driver's license or identicard, or comparable information, along with the date of conviction or commitment, to the department of licensing. When a person is committed by court order under *RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750*, or chapter 10.77 RCW, for mental health treatment, the committing court also shall forward, within three judicial days after entry of the commitment order, a copy of the person's driver's license, or comparable information, along with the date of commitment, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159).

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3) (a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under *RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750*, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

- (i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;
- (ii) The petitioner has successfully managed the condition related to the commitment;
- (iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and
- (iv) The symptoms related to the commitment are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under *RCW 9.41.040(4)*.

**HISTORY:** 2011 c 193 § 2; 2009 c 293 § 2; 2005 c 453 § 2; 1996 c 295 § 3. Prior: 1994 sp.s. c 7 § 404.

*Rev. Code Wash. (ARCW) § 9.41.090 (2013)*

§ 9.41.090. Dealer deliveries regulated -- Hold on delivery

(1) In addition to the other requirements of this chapter, no dealer may deliver a pistol to the purchaser thereof until:

(a) The purchaser produces a valid concealed pistol license and the dealer has recorded the purchaser's name, license number, and issuing agency, such record to be made in triplicate and processed as provided in subsection (5) of this section. For purposes of this subsection (1)(a), a "valid concealed pistol license" does not include a temporary emergency license, and does not include any license issued before July 1, 1996, unless the issuing agency conducted a records search for disqualifying crimes under *RCW 9.41.070* at the time of issuance;

(b) The dealer is notified in writing by the chief of police or the sheriff of the jurisdiction in which the purchaser resides that the purchaser is eligible to possess a pistol under *RCW 9.41.040* and that the application to purchase is approved by the chief of police or sheriff; or

(c) Five business days, meaning days on which state offices are open, have elapsed from the time of receipt of the application for the purchase thereof as provided herein by the chief of police or sheriff designated in subsection (5) of this section, and, when delivered, the pistol shall be securely wrapped and shall be unloaded. However, if the purchaser does not have a valid permanent Washington driver's license or state identification card or has not been a resident of the state for the previous consecutive ninety days, the waiting period under this subsection (1)(c) shall be up to sixty days.

(2) (a) Except as provided in (b) of this subsection, in determining whether the purchaser meets the requirements of *RCW 9.41.040*, the chief of police or sheriff, or the designee of either, shall check with the national crime information center, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under *RCW 9.41.040* to possess a firearm.

(b) Once the system is established, a dealer shall use the state system and national instant criminal background check system, provided for by the Brady Handgun Violence Prevention Act (*18 U.S.C. Sec. 921 et seq.*), to make criminal background checks of applicants to purchase firearms. However, a chief of police or sheriff, or a designee of either, shall continue to check the department of social and health services' electronic database and with other agencies or resources as appropriate, to determine whether applicants are ineligible under *RCW 9.41.040* to possess a firearm.

(3) In any case under subsection (1)(c) of this section where the applicant has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor, the dealer shall hold the delivery of the pistol until the warrant for arrest is served and satisfied by appropriate court appearance. The local jurisdiction for purposes of the sale shall confirm the existence of outstanding warrants within seventy-two hours after notification of the application to purchase a pistol is received. The local jurisdiction shall also immediately confirm the satisfaction of the warrant on request of the dealer so that the hold may be released if the warrant was for an offense other than an offense making a person ineligible under *RCW 9.41.040* to possess a pistol.

(4) In any case where the chief or sheriff of the local jurisdiction has reasonable grounds based on the following circumstances: (a) Open criminal charges, (b) pending criminal proceedings, (c) pending commitment proceedings, (d) an outstanding warrant for an offense making a person ineligible under *RCW 9.41.040* to possess a pistol, or (e) an arrest for an offense making a person ineligible under *RCW 9.41.040* to possess a pistol, if the records of disposition have not yet been reported or entered sufficiently to determine eligibility to purchase a pistol, the local jurisdiction may hold the sale and delivery of the pistol beyond five days up to thirty days in order to confirm existing records in this state or elsewhere. After thirty days, the hold will be lifted unless an extension of the thirty days is approved by a local district court or municipal court for good cause shown. A dealer shall be notified of each hold placed on the sale by local law

enforcement and of any application to the court for additional hold period to confirm records or confirm the identity of the applicant.

(5) At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the dealer an application containing his or her full name, residential address, date and place of birth, race, and gender; the date and hour of the application; the applicant's driver's license number or state identification card number; a description of the pistol including the make, model, caliber and manufacturer's number if available at the time of applying for the purchase of a pistol. If the manufacturer's number is not available, the application may be processed, but delivery of the pistol to the purchaser may not occur unless the manufacturer's number is recorded on the application by the dealer and transmitted to the chief of police of the municipality or the sheriff of the county in which the purchaser resides; and a statement that the purchaser is eligible to possess a pistol under *RCW 9.41.040*.

The application shall contain a warning substantially as follows:

**CAUTION:** Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. State permission to purchase a firearm is not a defense to a federal prosecution.

The purchaser shall be given a copy of the department of fish and wildlife pamphlet on the legal limits of the use of firearms, firearms safety, and the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law.

The dealer shall, by the end of the business day, sign and attach his or her address and deliver a copy of the application and such other documentation as required under subsection (1) of this section to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident. The triplicate shall be retained by the dealer for six years. The dealer shall deliver the pistol to the purchaser following the period of time specified in this section unless the dealer is notified of an investigative hold under subsection (4) of this section in writing by the chief of police of the municipality or the sheriff of the county, whichever is applicable, denying the purchaser's application to purchase and the grounds thereof. The application shall not be denied unless the purchaser is not eligible to possess a pistol under *RCW 9.41.040* or *9.41.045*, or federal law.

The chief of police of the municipality or the sheriff of the county shall retain or destroy applications to purchase a pistol in accordance with the requirements of *18 U.S.C. Sec. 922*.

(6) A person who knowingly makes a false statement regarding identity or eligibility requirements on the application to purchase a pistol is guilty of false swearing under *RCW 9A.72.040*.

(7) This section does not apply to sales to licensed dealers for resale or to the sale of antique firearms.

**HISTORY:** 1996 c 295 § 8. Prior: 1994 sp.s. c 7 § 410; 1994 c 264 § 1; 1988 c 36 § 2; 1985 c 428 § 4; 1983 c 232 § 4; 1969 ex.s. c 227 § 1; 1961 c 124 § 7; 1935 c 172 § 9; RRS § 2516-9.

TITLE 9. CRIMES AND PUNISHMENTS  
CHAPTER 9.41. FIREARMS AND DANGEROUS WEAPONS

*Rev. Code Wash. (ARCW) § 9.41.094 (2013)*

§ 9.41.094. Waiver of confidentiality

A signed application to purchase a pistol shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release, to an inquiring court or law enforcement agency, information relevant to the applicant's eligibility to purchase a pistol to an inquiring court or law enforcement agency.

**HISTORY:** 1994 sp.s. c 7 § 411.

TITLE 9. CRIMES AND PUNISHMENTS  
CHAPTER 9.41. FIREARMS AND DANGEROUS WEAPONS

*Rev. Code Wash. (ARCW) § 9.41.097 (2013)*

§ 9.41.097. Supplying information on persons purchasing pistols or applying for concealed pistol licenses

(1) The department of social and health services, mental health institutions, and other health care facilities shall, upon request of a court or law enforcement agency, supply such relevant information as is necessary to determine the eligibility of a person to possess a pistol or to be issued a concealed pistol license under *RCW 9.41.070* or to purchase a pistol under *RCW 9.41.090*.

(2) Mental health information received by: (a) The department of licensing pursuant to *RCW 9.41.047* or *9.41.173*; (b) an issuing authority pursuant to *RCW 9.41.047* or *9.41.070*; (c) a chief of police or sheriff pursuant to *RCW 9.41.090* or *9.41.173*; (d) a court or law enforcement agency pursuant to subsection (1) of this section, shall not be disclosed except as provided in *RCW 42.56.240(4)*.

**HISTORY:** 2009 c 216 § 6; 2005 c 274 § 202; 1994 sp.s. c 7 § 412; 1983 c 232 § 5.

TITLE 10. CRIMINAL PROCEDURE  
CHAPTER 10.97. WASHINGTON STATE CRIMINAL RECORDS PRIVACY ACT

**GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY**

*Rev. Code Wash. (ARCW) § 10.97.030 (2013)*

§ 10.97.030. Definitions

For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

- (a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;
- (b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;
- (c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;
- (d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;
- (e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to *RCW 46.52.130*;
- (f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to *RCW 47.68.330*;
- (g) Announcements of executive clemency;
- (h) Intelligence, analytical, or investigative reports and files.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges other than: (a) A decision not to prosecute; (b) a dismissal; or (c) acquittal; with the following exceptions, which shall be considered dispositions adverse to the subject: An acquittal due to a finding of not guilty by reason of insanity and a dismissal by reason of incompetency, pursuant to chapter 10.77 RCW; and a dismissal entered after a period of probation, suspension, or deferral of sentence.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

## Rev. Code Wash. (ARCW) § 10.97.030

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single recordkeeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a recordkeeping agency for the purpose of maintaining the record is not a dissemination.

**HISTORY:** 2012 c 125 § 1; 1999 c 49 § 1; 1998 c 297 § 49; 1990 c 3 § 128; 1979 ex.s. c 36 § 1; 1979 c 158 § 5; 1977 ex.s. c 314 § 3.

TITLE 10. CRIMINAL PROCEDURE  
CHAPTER 10.97. WASHINGTON STATE CRIMINAL RECORDS PRIVACY ACT

*Rev. Code Wash. (ARCW) § 10.97.045 (2013)*

§ 10.97.045. Disposition data to initiating agency and state patrol

Whenever a court or other criminal justice agency reaches a disposition of a criminal proceeding, the court or other criminal justice agency shall furnish the disposition data to the agency initiating the criminal history record for that charge and to the identification section of the Washington state patrol as required under *RCW 43.43.745*.

**HISTORY:** 1979 ex.s. c 36 § 6.

TITLE 71. MENTAL ILLNESS  
CHAPTER 71.05. MENTAL ILLNESS

*Rev. Code Wash. (ARCW) § 71.05.390 (2013)*

§ 71.05.390. Confidential information and records -- Disclosure. (Effective until July 1, 2014.)

Except as provided in this section, *RCW 71.05.445, 71.05.630, 70.96A.150, 71.05.385, 74.09.295*, or pursuant to a valid release under *RCW 70.02.030*, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

....

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce *RCW 9.41.040(2)(a)(ii)*. The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to *RCW 9.41.047(1)*, shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating *RCW 9.41.040(2)(a)(ii)*;

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

**HISTORY:** 2011 c 305 § 4. Prior: 2009 c 320 § 3; 2009 c 217 § 6; 2007 c 375 § 15; prior: 2005 c 504 § 109; 2005 c 453 § 5; 2005 c 274 § 346; prior: 2004 c 166 § 6; 2004 c 157 § 5; 2004 c 33 § 2; prior: 2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.

TITLE 71. MENTAL ILLNESS  
CHAPTER 71.34. MENTAL HEALTH SERVICES FOR MINORS  
GENERAL

*Rev. Code Wash. (ARCW) § 71.34.340 (2013)*

§ 71.34.340. Information concerning treatment of minors confidential -- Disclosure -- Admissible as evidence with written consent. (Effective until July 1, 2014.)

The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

(16) To law enforcement officers and to prosecuting attorneys as are necessary to enforce *RCW 9.41.040(2)(a)(ii)*. The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to *RCW 9.41.047(1)*, shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating *RCW 9.41.040(2)(a)(ii)*;

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pursuant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent;

# LEGAL SERVICES

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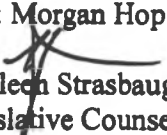
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## MEMORANDUM

February 24, 2014

**SUBJECT:** Reporting mental health commitments to NICS and compliance with the NICS Improvement Amendments Act of 2007 (NIAA) (Work Order No. 28-LS1172\C)

**TO:** Representative Lance Pruitt  
Attn: Morgan Hopson

**FROM:**   
Kathleen Strasbaugh  
Legislative Counsel

Please find enclosed another draft of the above bill. I have eliminated a section that made special mention of the handling of cases where a person seeking relief from a legal disability under the bill has been convicted of a crime against the person, because it was arguably duplicative. I have also attempted to address a concern that the bill does not contain a "de novo" review. I think the concern is unfounded, but I have included the language requiring a de novo review in the Alaska Supreme Court.

As I discussed with Ms. Hopson, there has been some concern about whether the current draft, version "N" is in compliance with the federal NICS<sup>1</sup> Improvement Amendments of 2007 (NIAA), which, among other things, offers incentives to the states to improve the provision of records to NCIS, as well as to provide to persons prohibited from obtaining firearms on account of mental health adjudications an opportunity to remove the prohibition. I understand that there is some question about whether the bill adequately addresses the due process requirements that the law sets out. In my opinion it does.

As I understand it, the primary concern is whether there is a de novo review process. Section 105(a) of the NIAA provides:

PARTICIPATION IN GRANT PROGRAMS. (a) Program Described.  
-- A relief from disabilities program is implemented by a State in accordance with this section if the program --  
(1) permits a person who, pursuant to State law, has been adjudicated as described in subsection (g)(4) of section 922 of title 18, United States Code, or has been committed to a mental institution, to apply to the State for relief from the disabilities imposed by subsections (d)(4) and (g)(4) of such section by reason of the adjudication or commitment;

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<sup>1</sup> NICS is the acronym for National Instant Criminal Background Check System.

- (2) provides that a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities referred to in paragraph (1), and the person's record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest; and
- (3) permits a person whose application for the relief is denied to file a petition with the State court of appropriate jurisdiction for a de novo judicial review of the denial.

The proposed procedure in the draft bill is a court proceeding in a court of record, like the commitment procedure and all of the other procedures that result in legal disabilities with respect to the possession of firearms. Some states provide that a person petitioning for relief from such legal disabilities must first apply to an administrative agency. *See, e.g.*, Md. Code Ann. Public Safety sec. 5.133.3. In such cases, the federal law suggests that the person seeking relief should be able to obtain a de novo proceeding before the court. Similarly, as used in the Alaska Statutes, a de novo proceeding is generally prescribed when the legislature has determined that a party who has had a proceeding before an administrative agency should have a second chance to present evidence.<sup>2</sup>

In my opinion, the federal statute does not require a de novo hearing where there is a full court proceeding,<sup>3</sup> nor does it mandate a "de novo review" by the appellate courts. Only the federal agency administering the grant program can answer the question with certainty. But the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the United States Department of Justice (ATF) checklist outlining the considerations the Bureau undertakes supports the conclusion that the law does not require a new hearing when a court has already conducted a hearing.<sup>4</sup>

4. **Due Process:** The petition for relief is considered by the lawful authority in accordance with principles of due process, as follows:

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<sup>2</sup> *See, e.g.*, AS 10.06.633 (corporation dissolved after certain determinations by the commissioner of the Department of Commerce and Community and Economic Development entitled to de novo proceeding in superior court); AS 25.27.220 (court may hold de novo hearing in whole or in part in child support case -- child support initially set by the child support services agency); AS 36.30.685 (certain contract claims decided by the commissioner of the Department of Transportation and Public Facilities subject to trial de novo). *See also*, AS 44.62.570.

<sup>3</sup> Adding a hearing process to appellate court procedure would involve a radical restructuring of the judiciary and the amendment of court rules.

<sup>4</sup> A copy of the complete form is attached.

a. The applicant has the opportunity to submit his or her own evidence to the lawful authority considering the relief application.

b. An independent decision maker someone other than the individual who gathered the evidence for the lawful authority acting on the application reviews the evidence.

c. A record of the matter is created and maintained for review.

5. **Proper Record**: In determining whether to grant relief, the lawful authority receives evidence concerning and considers the:

a. Circumstances regarding the firearms disabilities imposed by 18 U.S.C. § 922(g)(4);

b. Applicant's record, which must include, at a minimum, the applicant's mental health and criminal history records; and

c. Applicant's reputation, developed, at a minimum, through character witness statements, testimony, or other character evidence.

6. **Proper Findings**: In granting relief, the lawful authority issues findings that:

a. The applicant will not be likely to act in a manner dangerous to public safety; and

b. Granting the relief will not be contrary to the public interest.

7. **De Novo Judicial Review of a Denial**: The State provides for de novo judicial review of relief application denials that includes the following principles:

a. If relief is denied, the applicant may petition the State court of appropriate jurisdiction to review the denial, *including the record of the denying court, board, commission or other lawful authority.*

b. *In cases of denial by a lawful authority other than a State court, the reviewing court has discretion to receive additional evidence necessary to conduct an adequate review.*

c. *Judicial review is de novo in that the reviewing court may, but is not required to, give deference to the decision of the lawful authority that denied the application for relief.*

ATF Form 3210.12. (*Emphasis supplied.*) Notably, the checklist also suggests that for the purpose of the grant program, a de novo review may in fact allow a reviewing court to give deference to the authority, which may included an administrative agency, that denies an application for relief. Clearly the de novo review referred to is from a decision by "a lawful authority other than a State court." Thus, it does not require "de novo" appellate review.

In Alaska, a person appealing from the superior court has a right of appeal under AS 22.05.010. In general, the appellate courts apply the following standard of review:<sup>5</sup>

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<sup>5</sup> The quotation is from a case reviewing a mental health commitment, but it is the standard generally employed in appellate proceedings.

We apply our independent judgment to the interpretation of the Alaska Constitution and statutes, adopting "the rule of law that is most persuasive in light of precedent, reason, and policy." Factual findings in involuntary commitment or medication proceedings are reviewed for clear error, and we reverse only if our review of the record leaves us with a definite and firm conviction that a mistake has been made. The question whether factual findings comport with the requirements of AS 47.30 presents a legal issue, which we review *de novo*. The superior court's decisions regarding the admissibility of evidence, including expert testimony, are generally reviewed for abuse of discretion. If admissibility of evidence turns on a question of law, we apply our independent judgment.

*Wetherhorn v. Alaska Psychiatric Inst.*, 156 P.3d 371, 375 (Alaska 2007) (footnotes omitted.) In my opinion, this standard of review on appeal is also consistent with the federal law.

It is my understanding that some other states that have a court proceeding to provide relief from disability have added an appellate review standard to their statutes to respond to the concern conveyed to you. *See, e.g.*, La. Rev. Stat. sec. 28:57(G): "The district court order may be reviewed on appeal to the court of appeal under a *de novo* standard." The Alaska appellate courts sometimes refer to their consideration of the law as "de novo" rather than as exercising independent judgment. For example:

Whether DFYS complied with the "active efforts" requirement of the Indian Child Welfare Act (ICWA) is a mixed question of fact and law. Likewise, whether substantial evidence supports the court's conclusion that an Indian child is likely to be seriously harmed if returned to his parent is a mixed question of fact and law. Whether expert testimony satisfies ICWA requirements is a pure legal question. We review the court's factual findings under the clearly erroneous standard, and its legal conclusions *de novo*.

*E.A. v. State, Division of Family and Youth Services*, 46 P.3d 986, 989 (Alaska 2002). I have added an appellate review standard of "independent judgment" to the bill. I did not use the term "de novo" because it might suggest to some that there would be a new hearing in the appeals court. However, I want to alert you that telling the court how to interpret the law, in this case by directing a standard of review, can be problematic from a separation of powers point of view, as it is the court's exclusive province. *State v. Planned Parenthood of Alaska*, 28 P.3d 904, 915 (Alaska 2001). I have attempted to avoid this by indicating that the court "may" exercise independent judgment as to the law and the facts, but I believe that the provision is constitutionally troublesome. The Alaska Supreme Court as the final appellate court in Alaska and as head of the judicial branch of government may view this change as an intrusion into its sole powers under art. IV, sec. 1, Constitution of the State of Alaska.

Representative Lance Pruitt  
February 24, 2014  
Page 5

In summary, version "N", with the change noted at the beginning of this memo, is a version that complies with the NIAA, but this version is offered to address the concerns that have been conveyed to you.

Finally, if it is important to you that the words "de novo review" appear in the bill, or otherwise in the process that is being created, you should consider having the decision concerning whether to grant relief from these disabilities by an executive branch official, such as the commissioner of public safety, as an administrative hearing. Then the administrative Procedure Act (AS 44.62) would apply to the process and judicial review of the agency decision would be in the superior court (AS 44.62.560) and de novo review would be available (AS 44.62.570).

If I may be of further assistance, please advise.

KJS:lem  
14-090.lem

Enclosure

## Morgan Hopson

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**From:** Howell, Kelly A (DPS) <kelly.howell@alaska.gov>  
**Sent:** Friday, March 21, 2014 2:55 PM  
**To:** Morgan Hopson  
**Subject:** Fwd: AK legislation

### **Kelly Howell**

Special Assistant to the Commissioner  
Legislative Liaison  
Department of Public Safety  
269-5591 – Anchorage (*interim*)  
465-4336 – Juneau (*session*)  
952-5118 – cell

Sent from my iPad

Begin forwarded message:

---

**From:** [Jeanne.E.Miller@usdoj.gov](mailto:Jeanne.E.Miller@usdoj.gov) [mailto:[Jeanne.E.Miller@usdoj.gov](mailto:Jeanne.E.Miller@usdoj.gov)]  
**Sent:** Thursday, March 20, 2014 6:09 AM  
**To:** Monfreda, Kathryn M (DPS)  
**Subject:** RE: AK legislation

Thank you Kathy. Per our discussion....

Page 3, lines 20-26: Sec. 47.30.851 (a) Any person who is prohibited from possessing a firearm or ammunition under 18 U.S.C. 922(g)(4) as a result of an adjudication or commitment that occurred in this state may, at any time, move to be relieved from the disabilities resulting from the adjudication or commitment.

Page 4, line 9: "may" must be changed to "shall"

Please let me know if you have any questions or want to discuss further. I look forward to working with you as this legislation moves forward. Have a great day.

Jeanne

---

**From:** Monfreda, Kathryn M (DPS) [<mailto:kathryn.monfreda@alaska.gov>]  
**Sent:** Wednesday, March 19, 2014 6:55 PM  
**To:** Miller, Jeanne E.  
**Subject:** RE: AK legislation

Thanks much. Here is the most recent version (P).

Thanks,  
Kathy

Kathryn Monfreda

Chief, Criminal Records and Identification Bureau

CJIS Officer

Alaska Department of Public Safety

Phone: (907)269-5581 Fax: (907)269-0363

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**From:** [Jeanne.E.Miller@usdoj.gov](mailto:Jeanne.E.Miller@usdoj.gov) [<mailto:Jeanne.E.Miller@usdoj.gov>]  
**Sent:** Wednesday, March 19, 2014 12:29 PM  
**To:** Monfreda, Kathryn M (DPS)  
**Subject:** RE: AK legislation

Kathy,

I left you a message including my cell in case you want to try to reach me after I leave the office this afternoon. If we don't connect this afternoon, can we plan to talk tomorrow at noon my time tomorrow?

Jeanne

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**From:** Monfreda, Kathryn M (DPS) [<mailto:kathryn.monfreda@alaska.gov>]  
**Sent:** Wednesday, March 19, 2014 3:44 PM  
**To:** Miller, Jeanne E.  
**Subject:** RE: AK legislation

I am available any time from right now until close of business today, if that would work for you. (The sooner the better, if you have issues....)

I am available at noon your time tomorrow (we are four hours earlier than you), but not from 1:00-2:00 PM your time. I'm currently free anytime after that tomorrow.

If you have specifics that you'd like to send to me via e-mail, that would be great. The 4 hour time zone difference is quite a problem!  
Thanks for your assistance,

Kathy

Kathryn Monfreda

Chief, Criminal Records and Identification Bureau

CJIS Officer

Alaska Department of Public Safety

Phone: (907)269-5581 Fax: (907)269-0363

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**Sent:** Wednesday, March 19, 2014 11:34 AM  
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Kathy,

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## Morgan Hopson

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**Sent:** Friday, March 21, 2014 2:55 PM  
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**Subject:** Fwd: AK legislation

### **Kelly Howell**

Special Assistant to the Commissioner  
Legislative Liaison  
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Kathryn Monfreda

Chief, Criminal Records and Identification Bureau

CJIS Officer

Alaska Department of Public Safety

Phone: (907)269-5581 Fax: (907)269-0363

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