

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO. [BILL NUMBER]

Reporting mental illness adjudications to firearm dealers.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to public safety; providing specified
2 mental health information, evidencing federal firearms
3 disqualification may be disclosed as specified; creating
4 procedure for persons disqualified for mental health
5 reasons to challenge their disqualification; requiring the
6 division of criminal investigation to collect and disclose
7 specified mental health information; imposing a duty upon
8 state and local agencies to report specified mental health
9 information and designate persons to receive notice;
10 providing for limited liability as specified; and providing
11 for an effective date.

12

13 *Be It Enacted by the Legislature of the State of Wyoming:*

1

2 **Section 1.** W.S. 1-23-108 is created to read:

3

4 **1-23-108. Right of action; mental health prohibitor**
5 **information.**

6

7 (a) As used in this section, "mental health
8 prohibitor information" shall mean as defined by W.S. 9-1-
9 611(b)(iv).

10

11 (b) A person who is prohibited from purchasing and
12 possessing firearms under the provisions of 18 U.S.C. §
13 922(d)(4) and (g)(4) because of a commitment, finding or
14 adjudication that occurred in this state may petition the
15 court to remove, pursuant to Section 105(a) of Pub. L. No.
16 110-180, the disabilities imposed under 18 U.S.C. §
17 922(d)(4) and (g)(4).

18

19 (c) The petition shall be filed in the court in which
20 the commitment, finding or adjudication occurred. Copies
21 of the petition must be served on the district attorney who
22 represented the state in the underlying case, or that
23 district attorney's successor, the division of criminal

1 investigation and the district attorney in the petitioner's
2 current county of residence.

3
4 (d) The petition must state with specificity:

5
6 (i) The commitment, adjudication or other
7 finding that subjects the petitioner to the disabilities
8 imposed under 18 U.S.C. § 922(d)(4) and (g)(4);

9
10 (ii) The circumstances surrounding the
11 petitioner's commitment, adjudication or other finding;

12
13 (iii) Changes in the petitioner's condition and
14 other circumstances relevant to the relief sought;

15
16 (iv) The petitioner's reputation as it relates
17 to the relief sought;

18
19 (v) The petitioner's mental health and criminal
20 history.

21
22 (e) The court upon receipt of the petition shall
23 schedule a hearing within one hundred twenty days (120)

1 after proof of service to all parties required under
2 subsection (c) of this section. The court shall provide
3 notice of the hearing to the petitioner and the district
4 attorney who represented the State in the underlying case,
5 or that attorney's successor and any other parties served
6 with the petition.

7

8 (f) Upon service of the petition, the division of
9 criminal investigation shall immediately deliver a copy of
10 the petition to all entities that supplied the mental
11 health prohibitor information at issue in the petition by
12 delivering a copy of the petition to the person designated
13 to receive notice under W.S. 9-1-624(h).

14

15 (g) The burden is on the petitioner to establish by a
16 preponderance of the evidence that the circumstances
17 regarding the disabilities referred to in subsection (d)(i)
18 of this section and the petitioner's record and reputation
19 are such that the petitioner will not be likely to act in a
20 manner dangerous to public safety and that the granting of
21 the relief would not be contrary to the public interest.
22 The district attorney shall present any relevant
23 information to the contrary. For these purposes, the

1 district attorney may access and use any and all mental
2 health records, juvenile records, and criminal history of
3 the petitioner wherever maintained. The applicant shall
4 sign a release for the district attorney to receive any
5 mental health records of the applicant.

6
7 (h) The hearing on the petition shall be closed to
8 the public, unless the court finds that the public interest
9 would be better served by conducting the hearing in public.
10 If the court determines the hearing should be open to the
11 public, upon motion by either party, the court may allow
12 for the in camera inspection of any mental health records.
13 The court may allow the use of any mental record but shall
14 restrict the record from public disclosure, unless it finds
15 that the public interest would be better served by making
16 the record public.

17
18 (j) In determining the petition, the court shall
19 consider the circumstances regarding the firearm
20 disabilities from which relief is sought, the petitioner's
21 mental health and criminal history records, any properly
22 admitted expert testimony, the petitioner's reputation,
23 developed at a minimum through character witness

1 statements, testimony, or other character evidence, and any
2 changes in the petitioner's condition or circumstances
3 since the original commitment, adjudication or finding
4 relevant to the relief sought.

5
6 (k) The court shall grant the petition for relief if
7 it finds by a preponderance of the evidence that the
8 petitioner is not likely to act in a manner dangerous to
9 public safety and that granting of the relief would not be
10 contrary to the public interest.

11
12 (m) When the court issues an order granting a
13 petition under this section, the clerk of court shall
14 immediately forward a copy of the order to the division of
15 criminal investigation, which shall in turn immediately
16 forward a copy to the federal bureau of investigation, or
17 its successor agency, for updating of the national instant
18 criminal background check system.

19
20 (n) If a petition is granted under this section, the
21 commitment, adjudication or finding for which relief is
22 granted shall, pursuant to Section 105(a) of Pub. L. NO.

1 110-180, be deemed not to have occurred for purposes of 18
2 U.S.C. § 922(d)(4) and (g)(4).

3
4 (o) The petitioner may appeal a denial of the
5 requested relief and the review on appeal shall be de novo.

6
7 *****
8 *****
9 **STAFF COMMENT**
10 To be eligible for federal relief from disabilities and to
11 qualify for grant assistance to implement this section,
12 Section 105(a) of Pub. L. NO. 110-180 requires the
13 petitioner have the right to "de novo judicial review of
14 [a] denial." The committee may wish to consider whether to
15 specifically authorize the state to appeal. The subsection
16 could read:

17
18 An order granting or denying a petition filed
19 under this section may be appealed by a party in
20 accordance with the Wyoming Rules of Appellate
21 Procedure. The review on appeal shall be de
22 novo.

23
24 *****
25 *****
26

27 **Section 2.** W.S. 9-1-611(b) by creating new paragraph
28 (iv), 9-1-624(a) by creating a new paragraph (v) and by
29 creating new subsections (c) through (h), 25-10-122(a) by
30 creating a new paragraph (v); 25-5-132(a) by creating a new
31 paragraph (v) and 25-10-121 are amended to read:

1 9-1-611. Division of criminal investigation; created;
2 definitions; director; appointment; qualifications.

3
4 (b) As used in this act:

5
6 (iv) "Mental health prohibitor information"
7 means a court commitment, finding or adjudication which
8 establishes that a person is prohibited from purchasing and
9 possessing firearms under the provisions of 18 U.S.C. §
10 922(d)(4) and (g)(4) and includes an involuntarily
11 commitment to a mental institution, a finding of
12 incompetence to stand trial, a verdict of not guilty by
13 reason of insanity, an adjudication of having a mental
14 illness that presents a danger to self or others.

15
16 9-1-624. Division of criminal investigation; uniform
17 procedures and forms for collecting and disseminating
18 identification data; collection and dissemination of mental
19 health prohibitor information; agencies to cooperate.

20
21 (a) The division shall:
22

1 (v) Provide a system for collecting and
2 reporting mental health prohibitor information to the
3 federal bureau of investigation for use with the national
4 instant criminal background check system to the extent
5 necessary to allow the federal bureau of investigation to
6 collect and maintain a list of persons who are prohibited
7 by federal law from engaging in a sale or transfer of
8 firearms.

9
10 (c) A court that orders a commitment, finding or
11 adjudication which establishes that a person is subject to
12 the provisions of 18 U.S.C. § 922(d)(4) and (g)(4) shall
13 order the clerk of court to immediately forward the
14 person's name and nonclinical identifying information,
15 including the person's social security number and date of
16 birth, along with a copy of the order to the division in a
17 format required by the division. No information submitted
18 to the division shall include any underlying diagnoses or
19 treatment detail not used by the federal bureau of
20 investigation, or its successor agency, for the national
21 instant criminal background check system.

22

1 (d) Upon written request by a person whose
2 information has been disclosed, the division shall identify
3 to the requestor all mental health prohibitor information
4 submitted to the federal bureau of investigation about the
5 requestor.

6
7 (e) All information collected by the division under
8 paragraph (a)(v) of this section shall be confidential
9 information and, except as otherwise provided by this
10 section or other state law, shall not constitute a public
11 record and shall not be disseminated.

12
13 (f) The division shall establish by rules a procedure
14 to correct mental health prohibitor information collected
15 by the division and transmit the corrected information to
16 the federal bureau of investigation when any person submits
17 to the division a judicial order or other proof which
18 establishes that a record previously submitted to the
19 federal bureau of investigation is not correct, that a
20 person is no longer subject to a mental health prohibitor
21 or that a person has otherwise been granted relief from a
22 mental health prohibitor. The rules shall include
23 provisions for the correction or removal of any mental

1 health prohibitor information within ten (10) days of
2 receiving an order issued pursuant to W.S. 1-23-108.

3
4 (g) A person authorized by this section and by W.S.
5 25-10-122(a)(v) to disseminate mental health prohibitor
6 information, including information which indicates that a
7 person is not subject to a mental health prohibitor, is not
8 civilly or criminally liable for contributing or for
9 disseminating the information to authorized persons.

10
11 (h) All agencies, departments and subdivisions of the
12 state and all counties, municipalities and political
13 subdivisions thereof, including all courts and all district
14 and county attorneys, to the extent they provide mental
15 health prohibitor information to the division, shall
16 designate to the division a person who shall be responsible
17 for receiving notice that a petition has been filed under
18 W.S. 1-23-108.

19
20 **25-10-122. Records to be kept confidential;**
21 **exceptions.**

1 (a) Records and reports made under this act which
2 directly or indirectly identify a patient, a former patient
3 or an individual for whom an application for directed
4 outpatient commitment or involuntary hospitalization has
5 been filed, shall be confidential and shall not be
6 disclosed by any person unless:

7
8 (v) The disclosure is necessary for purposes of
9 reporting to the national instant criminal background check
10 system the identity of a person who is prohibited from
11 possessing a firearm under 18 U.S.C. § 922(d)(4) and (g)(4)
12 provided:

13
14 (A) The disclosure is made by the court or
15 other lawful authority that makes the commitment or
16 adjudication that causes an individual to become a
17 prohibited person under 18 U.S.C. § 922(d)(4) and (g)(4);

18
19 (B) The disclosure is made to the division
20 of criminal investigation as provided in W.S. 9-1-624(c) or
21 directly to the national instant background check system;

22

1 (C) The disclosure is made by the division
2 of criminal investigation to the federal bureau of
3 investigation, or its successor agency, to update the
4 national instant background check system;

5
6 (D) The disclosure is limited to
7 information necessary to identify the prohibited person and
8 does not disclose diagnostic or clinical information.

9
10 **25-5-132. No determination of incompetency;**
11 **notification of rights; deniable rights and conditions**
12 **therefor; undeniable rights.**

13
14 (a) Other than for the purpose of collecting and
15 disseminating information as required by W.S. 9-1-624, if
16 relevant to the operation of the Gun Control Act of 1968,
17 title 18, U.S.C., chapter 44 and the Brady Handgun Violence
18 Prevention Act of 1993, P.L. 103-159, and their
19 implementing regulations, the determination that a person
20 is eligible for admission to the center is not a
21 determination or adjudication that the person is
22 incompetent.

23

25-10-121. Admission not to create presumption as to competency nor ground for guardianship.

Admission to a hospital under this act shall not create any presumption with respect to the patient's mental or legal competency to exercise civil, contractual or other rights for which a legal standard of competency exists. Admission to a hospital under this act is not sufficient cause for guardianship of the person or estate of any patient.

Nothing in this section shall prevent the submission and disclosure of mental health prohibitor information as required by W.S. 9-1-624.

Section 3. This act is effective July 1, 2020.

(END)