

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO.

Reporting of and relief from firearm disqualification.

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:

8

9 (i) "Mental health prohibitor information" shall
10 mean as defined by W.S. 9-1-611(b)(iv);

11

12 (ii) "18 U.S.C. § 922(d)(4) and (g)(4)" means as
13 these provisions exist on January 1, 2020.

14

15 (b) A person who is prohibited from purchasing and
16 possessing firearms under the provisions of 18 U.S.C. §
17 922(d)(4) and (g)(4) because of a commitment, finding or
18 adjudication that occurred in this state may petition the
19 court to remove, pursuant to Section 105(a) of Pub. L. No.
20 110-180, the disabilities imposed under 18 U.S.C. §
21 922(d)(4) and (g)(4).

22

1 (c) The petition shall be filed in the court in which
2 the commitment, finding or adjudication occurred. Copies
3 of the petition shall be served on the office of the
4 district attorney who represented the state in the
5 underlying case, the division of criminal investigation and
6 the office of the district attorney in the petitioner's
7 current county of residence.

8

9 (d) The petition shall state with specificity:

10

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

14

15 (ii) The circumstances surrounding the
16 petitioner's commitment, adjudication or other finding;

17

18 (iii) Changes in the petitioner's condition and
19 other circumstances relevant to the relief sought;

20

21 (iv) The petitioner's reputation as it relates
22 to the relief sought;

23

1 (v) The petitioner's mental health and criminal
2 history.

3
4 (e) The court upon receipt of the petition shall
5 schedule a hearing within one hundred twenty days (120)
6 after proof of service to all parties required under
7 subsection (c) of this section. The court shall provide
8 notice of the hearing to the petitioner and the office of
9 the district attorney who represented the State in the
10 underlying case and any other parties served with the
11 petition.

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

19
20 (g) The burden is on the petitioner to establish by a
21 preponderance of the evidence that the circumstances
22 regarding the disabilities referred to in paragraph (d)(i)
23 of this section and the petitioner's record and reputation

1 are such that the petitioner will not be likely to act in a
2 manner dangerous to public safety and that the granting of
3 the relief would not be contrary to the public interest.
4 The district attorney shall present any relevant
5 information to the contrary. For these purposes, the
6 district attorney may access and use any and all mental
7 health records, juvenile records, and criminal history of
8 the petitioner wherever maintained. The applicant shall
9 sign a release for the district attorney to receive any
10 mental health records of the applicant.

11

12 (h) The hearing on the petition and the court file
13 shall be closed to the public.

14

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

1 since the original commitment, adjudication or finding
2 relevant to the relief sought.

3

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

9

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

17

18 (n) If a petition is granted under this section, the
19 commitment, adjudication or finding for which relief is
20 granted shall, pursuant to Section 105(a) of Pub. L. NO.
21 110-180, be deemed not to have occurred for purposes of 18
22 U.S.C. § 922(d)(4) and (g)(4) and the petitioner's firearms
23 rights, including the right to receive or possess a firearm

1 and ammunition and the right to be eligible to a carry a
2 firearm pursuant to a permit to carry a concealed firearm,
3 where it is otherwise permitted by state law, are restored.
4

5 (o) The petitioner may appeal a denial of the
6 requested relief and the review on appeal shall be de novo.
7

8 **Section 2.** W.S. 9-1-611(b) by creating new paragraph
9 (iv), 9-1-624(a) by creating a new paragraph (v) and by
10 creating new subsections (c) through (h), 25-10-122(a) by
11 creating a new paragraph (v), 25-5-132(a) by creating a new
12 paragraph (v) and 25-10-121 are amended to read:
13

14 **9-1-611. Division of criminal investigation; created;**
15 **definitions; director; appointment; qualifications.**
16

17 (b) As used in this act:
18

19 (iv) "Mental health prohibitor information"
20 means a court commitment, finding or adjudication which
21 establishes that a person is prohibited from purchasing and
22 possessing firearms under the provisions of 18 U.S.C. §
23 922(d)(4) and (g)(4) as these provisions exist on January

1 1, 2020 and includes an involuntarily commitment to a
2 mental institution, a finding of incompetence to stand
3 trial, a verdict of not guilty by reason of insanity, an
4 adjudication of having a mental illness that presents a
5 danger to self or others under title 25 of the Wyoming
6 statutes.

7
8 **9-1-624. Division of criminal investigation; uniform**
9 **procedures and forms for collecting and disseminating**
10 **identification data; collection and dissemination of mental**
11 **health prohibitor information; agencies to cooperate.**

12
13 (a) The division shall:

14
15 (v) Provide a system for collecting and
16 reporting mental health prohibitor information to the
17 federal bureau of investigation for use with the national
18 instant criminal background check system to the extent
19 necessary to allow the federal bureau of investigation to
20 collect and maintain a list of persons who are prohibited
21 by federal law from engaging in a sale or transfer of
22 firearms.

1 (c) A court that orders a commitment, finding or
2 adjudication which establishes that a person is subject to
3 the provisions of 18 U.S.C. § 922(d)(4) and (g)(4) as these
4 provisions exist on January 1, 2020 shall order the clerk
5 of court to immediately forward the person's name and
6 nonclinical identifying information, including the person's
7 social security number and date of birth, along with a copy
8 of the order to the division in a format required by the
9 division. No information submitted to the division shall
10 include any underlying diagnoses or treatment detail not
11 used by the federal bureau of investigation, or its
12 successor agency, for the national instant criminal
13 background check system.

14
15 (d) Upon written request by a person whose
16 information has been disclosed, the division shall identify
17 to the requestor all mental health prohibitor information
18 submitted to the federal bureau of investigation about the
19 requestor.

20
21 (e) All information collected by the division under
22 paragraph (a)(v) of this section shall be confidential
23 information and, except as otherwise provided by this

1 section or other state law, shall not constitute a public
2 record and shall not be disseminated.

3
4 (f) The division shall establish by rule a procedure
5 to grant a petitioning individual or their representative
6 the ability to obtain, inspect and correct mental health
7 prohibitor information collected by the division and for
8 the transmission of the corrected information to the
9 federal bureau of investigation when any person submits to
10 the division a judicial order or other proof which
11 establishes that a record previously submitted to the
12 federal bureau of investigation is not correct, that a
13 person is no longer subject to a mental health prohibitor
14 or that a person has otherwise been granted relief from a
15 mental health prohibitor. The rules shall include
16 provisions for the correction or removal of any mental
17 health prohibitor information within ten (10) days of
18 receiving an order issued pursuant to W.S. 1-23-108.

19
20 (g) A person authorized by this section and by W.S.
21 25-10-122(a)(v) to disseminate mental health prohibitor
22 information, including information which indicates that a
23 person is not subject to a mental health prohibitor, is not

1 civilly or criminally liable for contributing or for
2 disseminating the information to authorized persons.

3
4 (h) All agencies, departments and subdivisions of the
5 state and all counties, municipalities and political
6 subdivisions thereof, including all courts and all district
7 and county attorneys, to the extent they provide mental
8 health prohibitor information to the division, shall
9 designate to the division a person who shall be responsible
10 for receiving notice that a petition has been filed under
11 W.S. 1-23-108.

12
13 **25-10-122. Records to be kept confidential;**
14 **exceptions.**

15
16 (a) Records and reports made under this act which
17 directly or indirectly identify a patient, a former patient
18 or an individual for whom an application for directed
19 outpatient commitment or involuntary hospitalization has
20 been filed, shall be confidential and shall not be
21 disclosed by any person unless:

1 (v) The disclosure is necessary for purposes of
2 reporting to the national instant criminal background check
3 system the identity of a person who is prohibited from
4 possessing a firearm under 18 U.S.C. § 922(d)(4) and (g)(4)
5 as these provisions exist on January 1, 2020 provided:

6
7 (A) The disclosure is made by the court or
8 other lawful authority that makes the commitment or
9 adjudication that causes an individual to become a
10 prohibited person under 18 U.S.C. § 922(d)(4) and (g)(4) as
11 these provisions exist on January 1, 2020;

12
13 (B) The disclosure is made to the division
14 of criminal investigation as provided in W.S. 9-1-624(c) or
15 directly to the national criminal instant background check
16 system;

17
18 (C) The disclosure is made by the division
19 of criminal investigation to the federal bureau of
20 investigation, or its successor agency, to update the
21 national criminal instant background check system;

22

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

STAFF COMMENT

The committee voted to delete the following provision from the bill draft, but requested that the provision remain in the draft with the proposed language stricken so that the committee may further consider the issue:

25-5-132. No determination of incompetency; notification of rights; deniable rights and conditions therefor; undeniable rights.

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

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

1 for which a legal standard of competency exists. Admission
2 to a hospital under this act is not sufficient cause for
3 guardianship of the person or estate of any patient.
4 Nothing in this section shall prevent the submission and
5 disclosure of mental health prohibitor information as
6 required by W.S. 9-1-624.

7

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

9

10 (END)