

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 13-0043.01 Richard Sweetman x4333

HOUSE BILL 13-1229

HOUSE SPONSORSHIP

Fields and McCann,

SENATE SPONSORSHIP

Carroll,

House Committees

Judiciary
Appropriations

Senate Committees

State, Veterans, & Military Affairs
Appropriations

SENATE
Amended 3rd Reading
March 11, 2013

A BILL FOR AN ACT

101 **CONCERNING CRIMINAL BACKGROUND CHECKS PERFORMED PURSUANT**
102 **TO THE TRANSFER OF A FIREARM, AND, IN CONNECTION**
103 **THEREWITH, MAKING AN APPROPRIATION.**

SENATE
Amended 2nd Reading
March 8, 2013

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

HOUSE
3rd Reading Unamended
February 18, 2013

Unless a specified exception applies, before any person who is not a licensed gun dealer transfers or attempts to transfer possession of a firearm, he or she shall:

! Require that a background check be conducted of the

HOUSE
Amended 2nd Reading
February 15, 2013

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

prospective transferee; and

- ! Obtain approval of the transfer from the Colorado bureau of investigation (bureau) after a background check has been requested by a licensed gun dealer.

A prospective firearm transferor shall arrange for the services of one or more licensed gun dealers to obtain a background check. A prospective firearm transferee shall not accept possession of a firearm unless the prospective firearm transferor has obtained approval of the transfer from the bureau after a background check has been requested by a licensed gun dealer.

A prospective firearm transferee shall not knowingly provide false information to a prospective firearm transferor or to a licensed gun dealer for the purpose of acquiring a firearm.

A person who violates the new provisions commits a class 1 misdemeanor.

Under current law, the clerk of the court of every judicial district and probate court in the state must periodically report to the national instant criminal background check system subject to specified court orders relating to mental health or substance abuse.

The bill requires the clerk of the court to also report this information to the Colorado bureau of investigation.

A court, upon becoming aware that the basis upon which a record of a mentally ill person reported by the clerk of the court does not apply or no longer applies, shall:

- ! Update, correct, modify, or remove the record from any database that the federal or state government maintains and makes available to the national instant criminal background check system, consistent with the rules pertaining to the database; and
- ! Notify the attorney general that such basis does not apply or no longer applies.

The bill sets forth a judicial process whereby a person who has been prohibited from possessing a firearm may apply or petition for relief from federal firearms prohibitions, as permitted by federal law.

In granting relief to a petitioner, the court shall issue findings that:

- ! The petitioner is not likely to act in a manner that is dangerous to public safety; and
- ! Granting relief to the petitioner is not contrary to the public interest.

If the court denies relief to a petitioner, the petitioner may petition the court of appeals to review the denial, including the record of the denying court. A review of a denial shall be de novo in that the court of appeals may, but is not required to, give deference to the decision of the denying court. In reviewing a denial, the court of appeals may receive additional evidence necessary to conduct an adequate review.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 18-12-112 as
3 follows:

4 **18-12-112. Private firearms transfers - background check**
5 **required - penalty - definitions.** (1) (a) ON AND AFTER JULY 1, 2013,
6 EXCEPT AS DESCRIBED IN SUBSECTION (6) OF THIS SECTION, BEFORE ANY
7 PERSON WHO IS NOT A LICENSED GUN DEALER, AS DEFINED IN SECTION
8 12-26.1-106 (6), C.R.S., TRANSFERS OR ATTEMPTS TO TRANSFER
9 POSSESSION OF A FIREARM, HE OR SHE SHALL:

10 (I) REQUIRE THAT A BACKGROUND CHECK, IN ACCORDANCE WITH
11 SECTION 24-33.5-424, C.R.S., BE CONDUCTED OF THE PROSPECTIVE
12 TRANSFEREE; AND

13 (II) OBTAIN APPROVAL OF A TRANSFER FROM THE BUREAU AFTER
14 A BACKGROUND CHECK HAS BEEN REQUESTED BY A LICENSED GUN
15 DEALER, IN ACCORDANCE WITH SECTION 24-33.5-424, C.R.S.

16 (b) AS USED IN THIS SECTION, UNLESS THE CONTEXT REQUIRES
17 OTHERWISE, "TRANSFEREE" MEANS A PERSON WHO DESIRES TO RECEIVE OR
18 ACQUIRE A FIREARM FROM A TRANSFEROR. IF A TRANSFEREE IS NOT A
19 NATURAL PERSON BUT A CORPORATION, ASSOCIATION, PARTNERSHIP, OR
20 LIMITED LIABILITY COMPANY OR TRUST, THE REQUIREMENT DESCRIBED IN
21 THIS SUBSECTION (1) SHALL BE INTERPRETED TO REQUIRE A BACKGROUND
22 CHECK OF EACH MEMBER, PARTNER, OFFICER, OR OTHER PERSON WHO
23 HOLDS A BENEFICIAL INTEREST IN THE CORPORATION, ASSOCIATION,
24 PARTNERSHIP, OR LIMITED LIABILITY COMPANY OR TRUST.

25 (2) (a) A PROSPECTIVE FIREARM TRANSFEROR WHO IS NOT A
26 LICENSED GUN DEALER SHALL ARRANGE FOR A LICENSED GUN DEALER TO

1 OBTAIN THE BACKGROUND CHECK REQUIRED BY THIS SECTION.

2 (b) A LICENSED GUN DEALER WHO OBTAINS A BACKGROUND CHECK
3 ON A PROSPECTIVE TRANSFEREE SHALL RECORD THE TRANSFER, AS
4 PROVIDED IN SECTION 12-26-102, C.R.S., AND RETAIN THE RECORDS, AS
5 PROVIDED IN SECTION 12-26-103, C.R.S., IN THE SAME MANNER AS WHEN
6 CONDUCTING A SALE, RENTAL, OR EXCHANGE AT RETAIL. THE LICENSED
7 GUN DEALER SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS,
8 INCLUDING 18 U.S.C. SEC. 922, AS IF HE OR SHE WERE TRANSFERRING THE
9 FIREARM FROM HIS OR HER INVENTORY TO THE PROSPECTIVE TRANSFEREE.

10 (c) A LICENSED GUN DEALER WHO OBTAINS A BACKGROUND CHECK
11 FOR A PROSPECTIVE FIREARM TRANSFEROR PURSUANT TO THIS SECTION
12 SHALL PROVIDE THE FIREARM TRANSFEROR AND TRANSFEREE A COPY OF
13 THE RESULTS OF THE BACKGROUND CHECK, INCLUDING THE BUREAU'S
14 APPROVAL OR DISAPPROVAL OF THE TRANSFER.

15 (d) A LICENSED GUN DEALER MAY CHARGE A FEE FOR SERVICES
16 RENDERED PURSUANT TO THIS SECTION, WHICH FEE SHALL NOT EXCEED
17 TEN DOLLARS.

18 (3) (a) A PROSPECTIVE FIREARM TRANSFEREE UNDER THIS SECTION
19 SHALL NOT ACCEPT POSSESSION OF THE FIREARM UNLESS THE PROSPECTIVE
20 FIREARM TRANSFEROR HAS OBTAINED APPROVAL OF THE TRANSFER FROM
21 THE BUREAU AFTER A BACKGROUND CHECK HAS BEEN REQUESTED BY A
22 LICENSED GUN DEALER, AS DESCRIBED IN PARAGRAPH (b) OF SUBSECTION
23 (1) OF THIS SECTION.

24 (b) A PROSPECTIVE FIREARM TRANSFEREE SHALL NOT KNOWINGLY
25 PROVIDE FALSE INFORMATION TO A PROSPECTIVE FIREARM TRANSFEROR
26 OR TO A LICENSED GUN DEALER FOR THE PURPOSE OF ACQUIRING A
27 FIREARM.

1 (4) IF THE BUREAU APPROVES A TRANSFER OF A FIREARM
2 PURSUANT TO THIS SECTION, THE APPROVAL SHALL BE VALID FOR THIRTY
3 CALENDAR DAYS, DURING WHICH TIME THE TRANSFEROR AND TRANSFEREE
4 MAY COMPLETE THE TRANSFER.

5 (5) A PERSON WHO TRANSFERS A FIREARM IN VIOLATION OF THE
6 PROVISIONS OF THIS SECTION MAY BE JOINTLY AND SEVERALLY LIABLE FOR
7 ANY CIVIL DAMAGES PROXIMATELY CAUSED BY THE TRANSFEREE'S
8 SUBSEQUENT USE OF THE FIREARM.

9 (6) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

10 (a) A TRANSFER OF AN ANTIQUE FIREARM, AS DEFINED IN 18 U.S.C.
11 SEC. 921(a) (16), AS AMENDED, OR A CURIO OR RELIC, AS DEFINED IN 27
12 CFR 478.11, AS AMENDED;

13 (b) A TRANSFER THAT IS A BONA FIDE GIFT BETWEEN IMMEDIATE
14 FAMILY MEMBERS, WHICH ARE LIMITED TO SPOUSES, PARENTS, CHILDREN,
15 SIBLINGS, GRANDPARENTS, GRANDCHILDREN, NIECES, NEPHEWS, FIRST
16 COUSINS, AUNTS, AND UNCLES;

17 (c) A TRANSFER THAT OCCURS BY OPERATION OF LAW OR BECAUSE
18 OF THE DEATH OF A PERSON FOR WHOM THE PROSPECTIVE TRANSFEROR IS
19 AN EXECUTOR OR ADMINISTRATOR OF AN ESTATE OR A TRUSTEE OF A
20 TRUST CREATED IN A WILL;

21 (d) A TRANSFER THAT IS TEMPORARY AND OCCURS WHILE IN THE
22 HOME OF THE UNLICENSED TRANSFEREE IF:

23 (I) THE UNLICENSED TRANSFEREE IS NOT PROHIBITED FROM
24 POSSESSING FIREARMS; AND

25 (II) THE UNLICENSED TRANSFEREE REASONABLY BELIEVES THAT
26 POSSESSION OF THE FIREARM IS NECESSARY TO PREVENT IMMINENT DEATH
27 OR SERIOUS BODILY INJURY TO THE UNLICENSED TRANSFEREE; ■

1 (e) A TEMPORARY TRANSFER OF POSSESSION WITHOUT TRANSFER
2 OF OWNERSHIP OR A TITLE TO OWNERSHIP, WHICH TRANSFER TAKES PLACE:

3 (I) AT A SHOOTING RANGE LOCATED IN OR ON PREMISES OWNED OR
4 OCCUPIED BY A DULY INCORPORATED ORGANIZATION ORGANIZED FOR
5 CONSERVATION PURPOSES OR TO FOSTER PROFICIENCY IN FIREARMS;

6 (II) AT A TARGET FIREARM SHOOTING COMPETITION UNDER THE
7 AUSPICES OF, OR APPROVED BY, A STATE AGENCY OR A NONPROFIT
8 ORGANIZATION; OR

9 (III) WHILE HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING
10 IF:

11 (A) THE HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING IS
12 LEGAL IN ALL PLACES WHERE THE UNLICENSED TRANSFEREE POSSESSES
13 THE FIREARM; AND

14 (B) THE UNLICENSED TRANSFEREE HOLDS ANY LICENSE OR PERMIT
15 THAT IS REQUIRED FOR SUCH HUNTING, FISHING, TARGET SHOOTING, OR
16 TRAPPING; ==

17 (f) A TRANSFER OF A FIREARM THAT IS MADE TO FACILITATE THE
18 REPAIR OR MAINTENANCE OF THE FIREARM; EXCEPT THAT THIS PARAGRAPH
19 (f) DOES NOT APPLY UNLESS ALL PARTIES WHO POSSESS THE FIREARM AS
20 A RESULT OF THE TRANSFER MAY LEGALLY POSSESS A FIREARM;

21 (g) ANY TEMPORARY TRANSFER THAT OCCURS WHILE IN THE
22 CONTINUOUS PRESENCE OF THE OWNER OF THE FIREARM;

23 (h) A TEMPORARY TRANSFER FOR NOT MORE THAN SEVENTY-TWO
24 HOURS. A PERSON WHO TRANSFERS A FIREARM PURSUANT TO THIS
25 PARAGRAPH (h) MAY BE JOINTLY AND SEVERALLY LIABLE FOR DAMAGES
26 PROXIMATELY CAUSED BY THE TRANSFEREE'S SUBSEQUENT UNLAWFUL
27 USE OF THE FIREARM; OR

1 (i) A TRANSFER OF A FIREARM FROM A PERSON SERVING IN THE
2 ARMED FORCES OF THE UNITED STATES WHO WILL BE DEPLOYED OUTSIDE
3 OF THE UNITED STATES WITHIN THE NEXT THIRTY DAYS TO ANY
4 IMMEDIATE FAMILY MEMBER, WHICH IS LIMITED TO A SPOUSE, PARENT,
5 CHILD, SIBLING, GRANDPARENT, GRANDCHILD, NIECE, NEPHEW, FIRST
6 COUSIN, AUNT, AND UNCLE, OF THE PERSON.

7 (7) FOR PURPOSES OF PARAGRAPH (f) OF SUBSECTION (6) OF THIS
8 SECTION:

9 (a) AN OWNER, MANAGER, OR EMPLOYEE OF A BUSINESS THAT
10 REPAIRS OR MAINTAINS FIREARMS MAY RELY UPON A TRANSFEROR'S
11 STATEMENT THAT HE OR SHE MAY LEGALLY POSSESS A FIREARM UNLESS
12 THE OWNER, MANAGER, OR EMPLOYEE HAS ACTUAL KNOWLEDGE TO THE
13 CONTRARY AND MAY RETURN POSSESSION OF THE FIREARM TO THE
14 TRANSFEROR UPON COMPLETION OF THE REPAIRS OR MAINTENANCE
15 WITHOUT A BACKGROUND CHECK;

16 (b) UNLESS A TRANSFEROR OF A FIREARM HAS ACTUAL
17 KNOWLEDGE TO THE CONTRARY, THE TRANSFEROR MAY RELY UPON THE
18 STATEMENT OF AN OWNER, MANAGER, OR EMPLOYEE OF A BUSINESS THAT
19 REPAIRS OR MAINTAINS FIREARMS THAT NO OWNER, MANAGER, OR
20 EMPLOYEE OF THE BUSINESS IS PROHIBITED FROM POSSESSING A FIREARM.

21 (8) NOTHING IN SUBSECTION (6) OF THIS SECTION SHALL BE
22 INTERPRETED TO LIMIT OR OTHERWISE ALTER THE APPLICABILITY OF
23 SECTION 18-12-111 CONCERNING THE UNLAWFUL PURCHASE OR TRANSFER
24 OF FIREARMS.

25 (9) (a) A PERSON WHO VIOLATES A PROVISION OF THIS SECTION
26 COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED IN
27 ACCORDANCE WITH SECTION 18-1.3-501. THE PERSON SHALL ALSO BE

1 PROHIBITED FROM POSSESSING A FIREARM FOR TWO YEARS, BEGINNING ON
2 THE DATE OF HIS OR HER CONVICTION.

3 (b) WHEN A PERSON IS CONVICTED OF VIOLATING A PROVISION OF
4 THIS SECTION, THE STATE COURT ADMINISTRATOR SHALL REPORT THE
5 CONVICTION TO THE BUREAU AND TO THE NATIONAL INSTANT CRIMINAL
6 BACKGROUND CHECK SYSTEM CREATED BY THE FEDERAL "BRADY
7 HANDGUN VIOLENCE PREVENTION ACT" (PUB.L. 103-159), THE
8 RELEVANT PORTION OF WHICH IS CODIFIED AT 18 U.S.C. SEC. 922 (t). THE
9 REPORT SHALL INCLUDE INFORMATION INDICATING THAT THE PERSON IS
10 PROHIBITED FROM POSSESSING A FIREARM FOR TWO YEARS, BEGINNING ON
11 THE DATE OF HIS OR HER CONVICTION.

12 **SECTION 2.** In Colorado Revised Statutes, 13-5-142, amend (1)
13 introductory portion, (2), (3) introductory portion, (3) (a), and (3) (b) (II);
14 and add (1.5) and (4) as follows:

15 **13-5-142. National instant criminal background check system**
16 **- reporting.** (1) Beginning July 1, 2002 ON AND AFTER THE EFFECTIVE
17 DATE OF THIS SECTION, the clerk of the court of every judicial district in
18 the state COURT ADMINISTRATOR shall periodically report SEND
19 ELECTRONICALLY the following information to the national instant
20 criminal background check system created by the federal "Brady
21 Handgun Violence Prevention Act" (Pub.L. 103-159), the relevant portion
22 of which is codified at 18 U.S.C. sec. 922 (t) COLORADO BUREAU OF
23 INVESTIGATION CREATED PURSUANT TO SECTION 24-33.5-401, C.R.S.,
24 REFERRED TO WITHIN THIS SECTION AS THE "BUREAU":

25 (1.5) NOT MORE THAN FORTY-EIGHT HOURS AFTER RECEIVING
26 NOTIFICATION OF A PERSON WHO SATISFIES THE DESCRIPTION IN
27 PARAGRAPH (a), (b), OR (c) OF SUBSECTION (1) OF THIS SECTION, THE

1 STATE COURT ADMINISTRATOR SHALL REPORT SUCH FACT TO THE BUREAU.

2 (2) Any report made by the clerk of the court of every judicial
3 district in the state COURT ADMINISTRATOR pursuant to this section shall
4 describe the reason for the report and indicate that the report is made in
5 accordance with 18 U.S.C. sec. 922 (g) (4).

6 (3) The clerk of the court of every judicial district in the state
7 COURT ADMINISTRATOR shall take all necessary steps to cancel a record
8 made by that clerk THE STATE COURT ADMINISTRATOR in the national
9 instant criminal background check system if:

10 (a) The person to whom the record pertains makes a written
11 request to the clerk STATE COURT ADMINISTRATOR; and

12 (b) No less than three years before the date of the written request:

13 (II) The period of commitment of the most recent order of
14 commitment or recommitment expired, or the A court entered an order
15 terminating the person's incapacity or discharging the person from
16 commitment in the nature of habeas corpus, if the record in the national
17 instant criminal background check system is based on an order of
18 commitment to the custody of the unit in the department of human
19 services that administers behavioral health programs and services,
20 including those related to mental health and substance abuse; except that
21 the clerk STATE COURT ADMINISTRATOR shall not cancel any record
22 pertaining to a person with respect to whom two recommitment orders
23 have been entered under section 27-81-112 (7) and (8), C.R.S., or who
24 was discharged from treatment under section 27-81-112 (11), C.R.S., on
25 the grounds that further treatment will not be likely to bring about
26 significant improvement in the person's condition; or

27 ==

1 (4) PURSUANT TO SECTION 102 (c) OF THE FEDERAL "NICS
2 IMPROVEMENT AMENDMENTS ACT OF 2007" (PUB.L. 110-180), A COURT,
3 UPON BECOMING AWARE THAT THE BASIS UPON WHICH A RECORD
4 REPORTED BY THE STATE COURT ADMINISTRATOR PURSUANT TO
5 SUBSECTION (1) OF THIS SECTION DOES NOT APPLY OR NO LONGER APPLIES,
6 SHALL:

7 (a) UPDATE, CORRECT, MODIFY, OR REMOVE THE RECORD FROM
8 ANY DATABASE THAT THE FEDERAL OR STATE GOVERNMENT MAINTAINS
9 AND MAKES AVAILABLE TO THE NATIONAL INSTANT CRIMINAL
10 BACKGROUND CHECK SYSTEM, CONSISTENT WITH THE RULES PERTAINING
11 TO THE DATABASE; AND

12 (b) NOTIFY THE ATTORNEY GENERAL THAT SUCH BASIS DOES NOT
13 APPLY OR NO LONGER APPLIES.

14 **SECTION 3.** In Colorado Revised Statutes, **add** 13-5-142.5 as
15 follows:

16 **13-5-142.5. National instant criminal background check**
17 **system - judicial process for awarding relief from federal**
18 **prohibitions - legislative declaration.** (1) **Legislative declaration.** THE
19 PURPOSE OF THIS SECTION IS TO SET FORTH A JUDICIAL PROCESS WHEREBY
20 A PERSON MAY APPLY OR PETITION FOR RELIEF FROM FEDERAL FIREARMS
21 PROHIBITIONS IMPOSED PURSUANT TO 18 U.S.C. SEC. 922 (d) (4) AND (g)
22 (4), AS PERMITTED BY THE FEDERAL "NICS IMPROVEMENT AMENDMENTS
23 ACT OF 2007" (PUB.L. 110-180, SEC. 105).

24 (2) **Eligibility.** A PERSON MAY PETITION FOR RELIEF PURSUANT TO
25 THIS SECTION IF:

26 (a) (I) HE OR SHE HAS BEEN FOUND TO BE INCAPACITATED BY
27 ORDER OF THE COURT PURSUANT TO PART 3 OF ARTICLE 14 OF TITLE 15,

1 C.R.S.;

2 (II) HE OR SHE HAS BEEN COMMITTED BY ORDER OF THE COURT TO
3 THE CUSTODY OF THE UNIT IN THE DEPARTMENT OF HUMAN SERVICES THAT
4 ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES, INCLUDING
5 THOSE RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE, PURSUANT
6 TO SECTION 27-81-112 OR 27-82-108, C.R.S.; OR

7 (III) THE COURT HAS ENTERED AN ORDER FOR THE PERSON'S
8 INVOLUNTARY CERTIFICATION FOR SHORT-TERM TREATMENT OF MENTAL
9 ILLNESS PURSUANT TO SECTION 27-65-107, C.R.S., FOR EXTENDED
10 CERTIFICATION FOR TREATMENT OF MENTAL ILLNESS PURSUANT TO
11 SECTION 27-65-108, C.R.S., OR FOR LONG-TERM CARE AND TREATMENT OF
12 MENTAL ILLNESS PURSUANT TO SECTION 27-65-109, C.R.S.; AND

13 (b) HE OR SHE IS A PERSON TO WHOM THE SALE OR TRANSFER OF A
14 FIREARM OR AMMUNITION IS PROHIBITED BY 18 U.S.C. SEC. 922 (d) (4), OR
15 WHO IS PROHIBITED FROM SHIPPING, TRANSPORTING, POSSESSING, OR
16 RECEIVING A FIREARM OR AMMUNITION PURSUANT TO 18 U.S.C. SEC. 922
17 (g) (4).

18 (3) **Due process.** IN A COURT PROCEEDING PURSUANT TO THIS
19 SECTION:

20 (a) THE PETITIONER SHALL HAVE AN OPPORTUNITY TO SUBMIT HIS
21 OR HER OWN EVIDENCE TO THE COURT CONCERNING HIS OR HER PETITION;

22 (b) THE COURT SHALL REVIEW THE EVIDENCE; AND

23 (c) THE COURT SHALL CREATE AND THEREAFTER MAINTAIN A
24 RECORD OF THE PROCEEDING.

25 (4) **Proper record.** IN DETERMINING WHETHER TO GRANT RELIEF
26 TO A PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL RECEIVE
27 EVIDENCE CONCERNING, AND SHALL CONSIDER:

1 (a) THE CIRCUMSTANCES REGARDING THE FIREARMS PROHIBITIONS
2 IMPOSED BY 18 U.S.C. SEC. 922 (g) (4);

3 (b) THE PETITIONER'S RECORD, WHICH MUST INCLUDE, AT A
4 MINIMUM, THE PETITIONER'S MENTAL HEALTH RECORDS AND CRIMINAL
5 HISTORY RECORDS; AND

6 (c) THE PETITIONER'S REPUTATION, WHICH THE COURT SHALL
7 DEVELOP, AT A MINIMUM, THROUGH CHARACTER WITNESS STATEMENTS,
8 TESTIMONY, OR OTHER CHARACTER EVIDENCE.

9 (5) **Proper findings.** (a) BEFORE GRANTING RELIEF TO A
10 PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL ISSUE
11 FINDINGS THAT:

12 (I) THE PETITIONER IS NOT LIKELY TO ACT IN A MANNER THAT IS
13 DANGEROUS TO PUBLIC SAFETY; AND

14 (II) GRANTING RELIEF TO THE PETITIONER IS NOT CONTRARY TO
15 THE PUBLIC INTEREST.

16 (b) (I) IF THE COURT DENIES RELIEF TO A PETITIONER PURSUANT TO
17 THIS SECTION, THE PETITIONER MAY PETITION THE COURT OF APPEALS TO
18 REVIEW THE DENIAL, INCLUDING THE RECORD OF THE DENYING COURT.

19 (II) A REVIEW OF A DENIAL SHALL BE DE NOVO IN THAT THE COURT
20 OF APPEALS MAY, BUT IS NOT REQUIRED TO, GIVE DEFERENCE TO THE
21 DECISION OF THE DENYING COURT.

22 (III) IN REVIEWING A DENIAL, THE COURT OF APPEALS HAS
23 DISCRETION, BUT IS NOT REQUIRED, TO RECEIVE ADDITIONAL EVIDENCE
24 NECESSARY TO CONDUCT AN ADEQUATE REVIEW.

25 **SECTION 4.** In Colorado Revised Statutes, 13-9-123, **amend** (1)
26 introductory portion, (2), (3) introductory portion, (3) (a), and (3) (b) (II);
27 and **add** (1.5) and (4) as follows:

1 **13-9-123. National instant criminal background check system**

2 **- reporting. (1) Beginning July 1, 2002 ON AND AFTER THE EFFECTIVE**
3 DATE OF THIS SECTION, the ~~clerk of the probate court~~ STATE COURT
4 ADMINISTRATOR shall ~~periodically report~~ SEND ELECTRONICALLY the
5 following information to the national instant criminal background check
6 system created by the federal "Brady Handgun Violence Prevention Act",
7 Pub.L. 103-159, the relevant portion of which is codified at 18 U.S.C.
8 sec. 922 (t) COLORADO BUREAU OF INVESTIGATION CREATED PURSUANT
9 TO SECTION 24-33.5-401, C.R.S., REFERRED TO WITHIN THIS SECTION AS
10 THE "BUREAU":

11 (1.5) NOT MORE THAN FORTY-EIGHT HOURS AFTER RECEIVING
12 NOTIFICATION OF A PERSON WHO SATISFIES THE DESCRIPTION IN
13 PARAGRAPH (a), (b), OR (c) OF SUBSECTION (1) OF THIS SECTION, THE
14 STATE COURT ADMINISTRATOR SHALL REPORT SUCH FACT TO THE BUREAU.

15 (2) Any report made by the ~~clerk of the probate court~~ STATE
16 COURT ADMINISTRATOR pursuant to this section shall describe the reason
17 for the report and indicate that the report is made in accordance with 18
18 U.S.C. sec. 922 (g) (4).

19 (3) The ~~clerk of the probate court~~ STATE COURT ADMINISTRATOR
20 shall take all necessary steps to cancel a record made by ~~that clerk~~ THE
21 STATE COURT ADMINISTRATOR in the national instant criminal background
22 check system if:

23 (a) The person to whom the record pertains makes a written
24 request to the ~~clerk~~ STATE COURT ADMINISTRATOR; and

25 (b) No less than three years before the date of the written request:

26 (II) The period of commitment of the most recent order of
27 commitment or recommitment expired, or the court entered an order

1 terminating the person's incapacity or discharging the person from
2 commitment in the nature of habeas corpus, if the record in the national
3 instant criminal background check system is based on an order of
4 commitment to the custody of the unit in the department of human
5 services that administers behavioral health programs and services,
6 including those related to mental health and substance abuse; except that
7 the ~~clerk~~ STATE COURT ADMINISTRATOR shall not cancel any record
8 pertaining to a person with respect to whom two recommitment orders
9 have been entered under section 27-81-112 (7) and (8), C.R.S., or who
10 was discharged from treatment under section 27-81-112 (11), C.R.S., on
11 the grounds that further treatment will not be likely to bring about
12 significant improvement in the person's condition; or

13 (4) PURSUANT TO SECTION 102 (c) OF THE FEDERAL "NICS
14 IMPROVEMENT AMENDMENTS ACT OF 2007" (PUB.L. 110-180), A COURT,
15 UPON BECOMING AWARE THAT THE BASIS UPON WHICH A RECORD
16 REPORTED BY THE STATE COURT ADMINISTRATOR PURSUANT TO
17 SUBSECTION (1) OF THIS SECTION DOES NOT APPLY OR NO LONGER APPLIES,
18 SHALL:

19 (a) UPDATE, CORRECT, MODIFY, OR REMOVE THE RECORD FROM
20 ANY DATABASE THAT THE FEDERAL OR STATE GOVERNMENT MAINTAINS
21 AND MAKES AVAILABLE TO THE NATIONAL INSTANT CRIMINAL
22 BACKGROUND CHECK SYSTEM, CONSISTENT WITH THE RULES PERTAINING
23 TO THE DATABASE; AND

24 (b) NOTIFY THE ATTORNEY GENERAL THAT SUCH BASIS DOES NOT
25 APPLY OR NO LONGER APPLIES.

26 **SECTION 5.** In Colorado Revised Statutes, **add** 13-9-124 as
27 follows:

1 **13-9-124. National instant criminal background check system**
2 **- judicial process for awarding relief from federal prohibitions -**
3 **legislative declaration. (1) Legislative declaration.** THE PURPOSE OF
4 THIS SECTION IS TO SET FORTH A JUDICIAL PROCESS WHEREBY A PERSON
5 MAY APPLY OR PETITION FOR RELIEF FROM FEDERAL FIREARMS
6 PROHIBITIONS IMPOSED PURSUANT TO 18 U.S.C. SEC. 922 (d) (4) AND (g)
7 (4), AS PERMITTED BY THE FEDERAL "NICS IMPROVEMENT AMENDMENTS
8 ACT OF 2007" (PUB.L. 110-180, SEC. 105).

9 (2) **Eligibility.** A PERSON MAY PETITION FOR RELIEF PURSUANT TO
10 THIS SECTION IF:

11 (a) (I) HE OR SHE HAS BEEN FOUND TO BE INCAPACITATED BY
12 ORDER OF THE COURT PURSUANT TO PART 3 OF ARTICLE 14 OF TITLE 15,
13 C.R.S.;

14 (II) HE OR SHE HAS BEEN COMMITTED BY ORDER OF THE COURT TO
15 THE CUSTODY OF THE UNIT IN THE DEPARTMENT OF HUMAN SERVICES THAT
16 ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES, INCLUDING
17 THOSE RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE, PURSUANT
18 TO SECTION 27-81-112 OR 27-82-108, C.R.S.; OR

19 (III) THE COURT HAS ENTERED AN ORDER FOR THE PERSON'S
20 INVOLUNTARY CERTIFICATION FOR SHORT-TERM TREATMENT OF MENTAL
21 ILLNESS PURSUANT TO SECTION 27-65-107, C.R.S., FOR EXTENDED
22 CERTIFICATION FOR TREATMENT OF MENTAL ILLNESS PURSUANT TO
23 SECTION 27-65-108, C.R.S., OR FOR LONG-TERM CARE AND TREATMENT OF
24 MENTAL ILLNESS PURSUANT TO SECTION 27-65-109, C.R.S.; AND

25 (b) HE OR SHE IS A PERSON TO WHOM THE SALE OR TRANSFER OF A
26 FIREARM OR AMMUNITION IS PROHIBITED BY 18 U.S.C. SEC. 922 (d) (4), OR
27 WHO IS PROHIBITED FROM SHIPPING, TRANSPORTING, POSSESSING, OR

1 RECEIVING A FIREARM OR AMMUNITION PURSUANT TO 18 U.S.C. SEC. 922

2 (g) (4).

3 (3) **Due process.** IN A COURT PROCEEDING PURSUANT TO THIS
4 SECTION:

5 (a) THE PETITIONER SHALL HAVE AN OPPORTUNITY TO SUBMIT HIS
6 OR HER OWN EVIDENCE TO THE COURT CONCERNING HIS OR HER PETITION;

7 (b) THE COURT SHALL REVIEW THE EVIDENCE; AND

8 (c) THE COURT SHALL CREATE AND THEREAFTER MAINTAIN A
9 RECORD OF THE PROCEEDING.

10 (4) **Proper record.** IN DETERMINING WHETHER TO GRANT RELIEF
11 TO A PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL RECEIVE
12 EVIDENCE CONCERNING, AND SHALL CONSIDER:

13 (a) THE CIRCUMSTANCES REGARDING THE FIREARMS PROHIBITIONS
14 IMPOSED BY 18 U.S.C. SEC. 922 (g) (4);

15 (b) THE PETITIONER'S RECORD, WHICH MUST INCLUDE, AT A
16 MINIMUM, THE PETITIONER'S MENTAL HEALTH RECORDS AND CRIMINAL
17 HISTORY RECORDS; AND

18 (c) THE PETITIONER'S REPUTATION, WHICH THE COURT SHALL
19 DEVELOP, AT A MINIMUM, THROUGH CHARACTER WITNESS STATEMENTS,
20 TESTIMONY, OR OTHER CHARACTER EVIDENCE.

21 (5) **Proper findings.** (a) BEFORE GRANTING RELIEF TO A
22 PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL ISSUE
23 FINDINGS THAT:

24 (I) THE PETITIONER IS NOT LIKELY TO ACT IN A MANNER THAT IS
25 DANGEROUS TO PUBLIC SAFETY; AND

26 (II) GRANTING RELIEF TO THE PETITIONER IS NOT CONTRARY TO
27 THE PUBLIC INTEREST.

1 (b) (I) IF THE COURT DENIES RELIEF TO A PETITIONER PURSUANT TO
2 THIS SECTION, THE PETITIONER MAY PETITION THE COURT OF APPEALS TO
3 REVIEW THE DENIAL, INCLUDING THE RECORD OF THE DENYING COURT.

4 (II) A REVIEW OF A DENIAL SHALL BE DE NOVO IN THAT THE COURT
5 OF APPEALS MAY, BUT IS NOT REQUIRED TO, GIVE DEFERENCE TO THE
6 DECISION OF THE DENYING COURT.

7 (III) IN REVIEWING A DENIAL, THE COURT OF APPEALS HAS
8 DISCRETION, BUT IS NOT REQUIRED, TO RECEIVE ADDITIONAL EVIDENCE
9 NECESSARY TO CONDUCT AN ADEQUATE REVIEW.

10 **SECTION 6.** In Colorado Revised Statutes, 18-12-101, **add** (1)
11 (b.5) as follows:

12 **18-12-101. Definitions - peace officer affirmative defense.**

13 (1) As used in this article, unless the context otherwise requires:

14 (b.5) "BUREAU" MEANS THE COLORADO BUREAU OF
15 INVESTIGATION CREATED IN SECTION 24-33.5-401, C.R.S.

16 **SECTION 7.** In Colorado Revised Statutes, 18-12-202, **repeal** (1)
17 as follows:

18 **18-12-202. Definitions.** As used in this part 2, unless the context
19 otherwise requires:

20 (1) ~~"Bureau" means the Colorado bureau of investigation within~~
21 ~~the department of public safety.~~

22 **SECTION 8.** In Colorado Revised Statutes, 18-12-103.5, **amend**
23 (2) as follows:

24 **18-12-103.5. Defaced firearms - contraband - destruction.**

25 (2) Defaced firearms ~~which~~ THAT are deemed to be contraband shall be
26 placed in the possession of the ~~Colorado bureau of investigation~~ or of a
27 local law enforcement agency designated by the ~~Colorado bureau of~~

1 investigation and shall be destroyed or rendered permanently inoperable.

2 ==

APPROPRIATION FROM

<u>ITEM & SUBTOTAL</u>	<u>TOTAL</u>	<u>GENERAL FUND</u>	<u>GENERAL FUND EXEMPT</u>	<u>CASH FUNDS</u>	<u>REAPPROPRIATED FUNDS</u>	<u>FEDERAL FUNDS</u>
\$	\$	\$	\$	\$	\$	\$

SECTION 9. Appropriation to the department of public safety for the fiscal year beginning July 1, 2012. In Session Laws of Colorado 2012, section 2 of chapter 305,

(HB 12-1335), amend Part XVII (1) (A), (5) (D), and the affected totals as amended by section 1 Senate Bill 13-101, as follows:

Section 2. Appropriation.

PART XVII

DEPARTMENT OF PUBLIC SAFETY

(1) EXECUTIVE DIRECTOR'S OFFICE

(A) Administration

<u>Personal Services</u>	<u>2,269,953</u>				<u>2,269,953^a</u>	
				=	<u>(27.7 FTE)</u>	
<u>Health, Life, and Dental</u>	<u>9,672,220</u>	<u>1,576,210</u>		<u>6,929,526^b</u>	<u>674,902^c</u>	<u>491,582(I)</u>
	<u>9,699,820</u>	<u>1,603,810</u>				
<u>Short-term Disability</u>	<u>148,142</u>	<u>27,698</u>		<u>102,625^b</u>	<u>12,338^c</u>	<u>5,481(I)</u>
	<u>148,436</u>	<u>27,992</u>				
<u>S.B. 04-257 Amortization</u>	<u>2,673,401</u>	<u>495,541</u>		<u>1,856,708^b</u>	<u>222,071^c</u>	<u>99,081(I)</u>

APPROPRIATION FROM

	<u>ITEM & SUBTOTAL</u>	<u>TOTAL</u>	<u>GENERAL FUND</u>	<u>GENERAL FUND EXEMPT</u>	<u>CASH FUNDS</u>	<u>REAPPROPRIATED FUNDS</u>	<u>FEDERAL FUNDS</u>
	\$	\$	\$	\$	\$	\$	\$
1	<u>2,678,987</u>		<u>501,127</u>				
2	<u>S.B. 06-235 Supplemental</u>	<u>2,295,550</u>	<u>423,817</u>		<u>1,599,803^b</u>	<u>186,783^c</u>	<u>85,147(I)</u>
3		<u>2,300,550</u>	<u>428,817</u>				
4	<u>Shift Differential</u>	<u>320,607</u>	<u>67,963</u>		<u>221,871^b</u>	<u>30,773^c</u>	
5	<u>Workers' Compensation</u>	<u>2,827,657</u>			<u>265,336^b</u>	<u>2,562,321^a</u>	
6	<u>Operating Expenses</u>	<u>151,046</u>				<u>151,046^a</u>	
7	<u>Legal Services for 4,524</u>	<u>349,441</u>	<u>78,945</u>		<u>103,404^b</u>	<u>167,092^a</u>	
8	<u>Purchase of Services from</u>	<u>2,504,611</u>	<u>978,611</u>		<u>1,361,675^b</u>	<u>164,325^a</u>	
9	<u>Multiuse Network</u>	<u>1,986,110</u>	<u>1,486,029</u>		<u>337,638^b</u>	<u>162,443^a</u>	
10	<u>Management and</u>	<u>261,189</u>			<u>85,395^d</u>	<u>175,794^a</u>	
11	<u>Payment to Risk</u>	<u>1,177,817</u>	<u>177,192</u>		<u>195,240^d</u>	<u>805,385^a</u>	
12	<u>Vehicle Lease Payments</u>	<u>80,076</u>	<u>22,698</u>		<u>29,437^e</u>	<u>27,941^f</u>	
13	<u>Leased Space</u>	<u>1,907,259</u>	<u>858,230</u>		<u>494,386^b</u>	<u>554,643^f</u>	
14		<u>1,937,259</u>	<u>888,230</u>				

APPROPRIATION FROM

	<u>ITEM & SUBTOTAL</u>	<u>TOTAL</u>	<u>GENERAL FUND</u>	<u>GENERAL FUND EXEMPT</u>	<u>CASH FUNDS</u>	<u>REAPPROPRIATED FUNDS</u>	<u>FEDERAL FUNDS</u>
	\$	\$	\$	\$	\$	\$	\$
1	<u>Capitol Complex Leased</u>	<u>1,263,475</u>	<u>16,890</u>	=	<u>462,435^g</u>	<u>784,150^h</u>	
2	<u>Communication Services</u>	<u>652,003</u>			<u>593,137^g</u>	<u>49,123^h</u>	<u>9,743(I)</u>
3	<u>COFRS Modernization</u>	<u>168,478</u>	<u>52,658</u>		<u>81,603^g</u>	<u>34,217^h</u>	
4	<u>Utilities</u>	<u>87,407</u>			<u>85,907^d</u>	<u>1,500ⁱ</u>	
5	<u>Distributions to Local</u>	<u>50,000</u>			<u>50,000ⁱ</u>		
6		<u>30,846,442</u>					
7		<u>30,914,922</u>					
8							

^a Of these amounts, \$5,347,958 shall be from departmental indirect cost recoveries and \$1,110,401 shall be from statewide indirect cost recoveries.

^b Of these amounts, \$12,221,914 shall be from the Highway Users Tax Fund created in Section 43-4-201 (1) (a), C.R.S., and \$1,051,058 shall be from various sources of cash funds.

^c Of these amounts, \$323,498 shall be from departmental indirect cost recoveries, \$80,440 shall be from other state agencies for dispatch services, \$74,361 shall be from the Department of Personnel Capitol Complex leased space rent proceeds, \$47,125 shall be from the Judicial Department, \$32,358 shall be from the Legislative Department, \$16,130 shall be from the Department of Law, and \$552,955 shall be from various sources.

^d These amounts shall be from the Highway Users Tax Fund created in Section 43-4-201 (1) (a), C.R.S.

^e This amount shall be from various sources of cash funds.

APPROPRIATION FROM

<u>ITEM & SUBTOTAL</u>	<u>TOTAL</u>	<u>GENERAL FUND</u>	<u>GENERAL FUND EXEMPT</u>	<u>CASH FUNDS</u>	<u>REAPPROPRIATED FUNDS</u>	<u>FEDERAL FUNDS</u>
\$	\$	\$	\$	\$	\$	\$

1 ¶ Of these amounts, \$544,118 shall be from departmental indirect cost recoveries and \$38,466 shall be from Limited Gaming funds appropriated to the Department of Revenue.

2 § Of these amounts, \$1,075,163 shall be from the Highway Users Tax Fund created in Section 43-4-201 (1) (a), C.R.S., and \$62,012 shall be from various sources of cash funds.

3 h Of these amounts, \$826,313 shall be from departmental indirect cost recoveries and \$41,177 shall be from various sources of reappropriated funds.

4 i This amount shall be from Limited Gaming funds appropriated to the Department of Revenue.

5 j This amount shall be from the Hazardous Materials Safety Fund created in Section 42-20-107 (1), C.R.S.

6

7 32,763,273

8 32,831,753

9

10 **(5) COLORADO BUREAU OF INVESTIGATION¹**

11 **(D) State Point of Contact - National Instant Criminal Background Check Program**

12 Personal Services 1,312,023 1,086,212 225,811^a

13 1,484,477 1,258,666

14 (22.0 FTE) (4.4 FTE)

APPROPRIATION FROM

	<u>ITEM & SUBTOTAL</u>	<u>TOTAL</u>	<u>GENERAL FUND</u>	<u>GENERAL FUND EXEMPT</u>	<u>CASH FUNDS</u>	<u>REAPPROPRIATED FUNDS</u>	<u>FEDERAL FUNDS</u>
	\$	\$	\$	\$	\$	\$	\$
1			(26.0 FTE)				
2	<u>Operating Expenses</u>						
	<u>361,248</u>		<u>300,744</u>		<u>60,504^a</u>		
3	<u>482,781</u>		<u>422,277</u>				
4	<u>1,673,271</u>						
5	<u>1,967,258</u>						
6							
7		<u>29,019,641</u>					
8		<u>29,313,628</u>					
9							
10	<u>^a These amounts shall be from permit application fees collected pursuant to Section 18-12-205 (2) (b), C.R.S.</u>						
11							
12	<u>TOTALS PART XVII</u>						
13	<u>(PUBLIC SAFETY)</u>	<u>\$273,982,783</u>	<u>\$84,338,122</u>		<u>\$136,496,137^a</u>	<u>\$25,083,490</u>	<u>\$28,065,034^b</u>
14		<u>\$274,345,250</u>	<u>\$84,700,589</u>				

APPROPRIATION FROM

<u>ITEM & SUBTOTAL</u>	<u>TOTAL</u>	<u>GENERAL FUND</u>	<u>GENERAL FUND EXEMPT</u>	<u>CASH FUNDS</u>	<u>REAPPROPRIATED FUNDS</u>	<u>FEDERAL FUNDS</u>
\$	\$	\$	\$	\$	\$	\$

1

2 ^a Of this amount, \$105,755,507 is from the Highway Users Tax Fund pursuant to Section 43-4-201 (3) (a) (III) (C), C.R.S.

3 ^b This amount contains an (I) notation.

1 **SECTION 10. Appropriation.** (1) In addition to any other
2 appropriation, there is hereby appropriated, out of any moneys in the
3 general fund not otherwise appropriated, to the department of public
4 safety, for the fiscal year beginning July 1, 2013, the sum of \$1,415,932
5 and 24.7 FTE, or so much thereof as may be necessary, to be allocated for
6 the implementation of this act as follows:

- 7 (a) \$324,806 for the executive director's office;
- 8 (b) \$80,000 for the Colorado crime information center; and
- 9 (c) \$1,011,126 and 24.7 FTE for the state point of contact-national
10 instant criminal background check program.

11 **SECTION 11. Appropriation.** (1) In addition to any other
12 appropriation, there is hereby appropriated, out of any moneys in the
13 instant criminal background check cash fund created in section
14 24-33.5-424 (3.5) (b), Colorado Revised Statutes, not otherwise
15 appropriated, to the department of public safety, for the fiscal year
16 beginning July 1, 2013, the sum of \$1,415,932 and 24.7 FTE, or so
17 much thereof as may be necessary, to be allocated for the implementation
18 of this act as follows:

- 19 (a) \$324,806 for the executive director's office;
- 20 (b) \$80,000 for the Colorado crime information center; and
- 21 (c) \$1,011,126 and 24.7 FTE for the state point of contact-national
22 instant criminal background check program.

23 **SECTION 12. Effective Date.** This act takes effect upon
24 passage; except that section 10 of this act takes effect only if House Bill
25 13-1228 does not become law, and section 11 of this act takes effect only
26 if House Bill 13-1228 becomes law.

27 **SECTION 13. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.