

SENATE BILL NO. 303

INTRODUCED BY M. MACDONALD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE NATIONAL

5 INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; PROVIDING A PROCEDURE FOR CERTAIN PEOPLE

6 WHO HAVE LOST THEIR RIGHT TO POSSESS A FIREARM DUE TO A DETERMINATION OF A MENTAL

7 DISEASE OR DEFECT TO REGAIN THEIR RIGHT TO POSSES A FIREARM; REQUIRING A DISTRICT

8 COURT GRANTING A PETITION TO RESTORE A PERSON'S RIGHT TO POSSESS A FIREARM OR ANY

9 TYPE OF FINDING THAT A PERSON SUFFERS FROM A MENTAL DISEASE OR DEFECT OR IS AN

10 INCAPACITATED PERSON TO FORWARD A COPY OF THE ORDER TO THE DEPARTMENT OF JUSTICE;

11 REQUIRING THE DEPARTMENT OF JUSTICE TO UPDATE THE FEDERAL BUREAU OF INVESTIGATION

12 AND THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; REQUIRING A DISTRICT

13 COURT TO FORWARD CERTAIN ORDERS OF COMMITMENT TO THE DEPARTMENT OF JUSTICE;

14 REQUIRING THE DEPARTMENT OF JUSTICE TO NOTIFY CERTAIN PERSONS WHOSE FIREARM

15 POSSESSION RIGHTS HAVE BEEN REMOVED OF THE RIGHT TO PETITION A COURT TO REMOVE THE

16 FIREARMS DISABILITY; AND AMENDING SECTIONS 44-2-206 AND 53-21-166, MCA."

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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20 NEW SECTION. **Section 1. Relief from firearms disabilities.** (1) A district court shall make a finding

21 as to whether a person who is the subject of an order, adjudication, or commitment is a person to whom the

22 provisions of 18 U.S.C. 922(g)(4) apply in each of the situations listed in subsections (1)(a) through (1)(d):

- 23 (a) when a district court orders commitment under Title 53, chapter 21, part 1;
- 24 (b) when a guardian or conservator of an incapacitated person is appointed under Title 72, chapter 5,
- 25 part 3;
- 26 (c) when a district court finds a defendant lacks fitness to proceed under 46-14-221; or
- 27 (d) when a defendant is found not guilty by reason of mental disease or defect under Title 46, chapter
- 28 14, part 2.

29 (2) If the court finds that a person is the subject of an adjudication or commitment to whom the provisions

30 of 18 U.S.C. 922(g)(4) apply as provided in subsections (1)(a) through (1)(d), the court shall order the clerk of

1 the district court to forward a copy of the order to the department of justice, which shall forward a copy to the
2 federal bureau of investigation or its successor agency for inclusion in the national instant criminal background
3 check system database.

4 (3) A person who is subject to the provisions of 18 U.S.C. 922(g)(4) or an order, including an
5 appointment or finding described in subsection (1), as a result of an adjudication or commitment that occurred
6 in this state may petition the district court that issued the order to remove the person's firearms-related disabilities
7 as provided in section 105(a) of Public Law 110-180. A copy of the petition for relief must also be served on the
8 director of the department of public health and human services and the county attorney of the county in which
9 the original order, appointment, or finding occurred. The department of public health and human services and the
10 county attorney may appear, support, and object to and present evidence relevant to the relief sought by the
11 petitioner. The court must receive and shall consider evidence, including evidence offered by the petitioner,
12 concerning:

13 (a) the circumstances of the original adjudication, commitment, appointment, or finding;

14 (b) the petitioner's mental health and criminal history records, if any;

15 (c) the petitioner's reputation; and

16 (d) changes in the petitioner's condition or circumstances relevant to the relief sought.

17 (4) If the petitioner, the department of public health and human services, or the county attorney requests
18 a hearing, the court shall hold a hearing and receive and consider evidence, including evidence offered by the
19 petitioner, concerning the factors listed in subsections (3)(a) through (3)(d).

20 (5) The court shall grant the petition for relief if it finds by a preponderance of the evidence that the
21 petitioner is not likely to act in a manner dangerous to public safety and that granting the relief would not be
22 contrary to the public interest. The petitioner may appeal a denial of the requested relief, and review on appeal
23 must be de novo. A person may file a petition for relief under this section no more than once every 2 years.

24 (6) When a court issues an order granting a petition for relief under subsection (3), the clerk of the district
25 court shall immediately forward a copy of the order to the department of justice, which in turn shall immediately
26 forward a copy to the federal bureau of investigation or its successor agency for inclusion in the national instant
27 criminal background check system database.

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29 **NEW SECTION. Section 2. Notification of person whose rights to possess firearms removed.**

30 Within 5 years of transmitting information to the national instant criminal background check system database as

1 required in 44-2-206(2) for a person to whom the provisions of 18 U.S.C. 922(g)(4) apply as provided in [section
 2 1(1)(a) or (1)(b)] and every subsequent 5 years, the department of justice shall notify the person of the person's
 3 right to use the process provided in [section 1(3) through (6)] to have the firearms disability removed. The
 4 notification must include a sample petition and contact information for the district court of the county in which the
 5 person resides at the time of the notification.

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7 **Section 3.** Section 44-2-206, MCA, is amended to read:

8 **"44-2-206. Cooperation with FBI and other states.** The department shall:

9 (1) cooperate with identification bureaus in other states and with the federal bureau of investigation to
 10 develop and carry on a complete interstate and international system of criminal identification and investigation;
 11 and

12 (2) obtain and electronically transmit to the national instant criminal background check system database,
 13 in accordance with federal law, information relating to eligibility to receive or possess a firearm pursuant to state
 14 or federal law. Upon notification to the department that the basis for any information previously transmitted to the
 15 database does not apply or no longer applies, the department shall, as soon as is practicable, notify the system
 16 of the change and shall update, correct, or modify the information or remove it from the database."

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18 NEW SECTION. **Section 4. Commitment order to department of justice.** If a court commits the
 19 respondent as provided in 53-21-127(3), the court shall forward the order to the department of justice for inclusion
 20 in the national instant criminal background check system database.

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22 **Section 5.** Section 53-21-166, MCA, is amended to read:

23 **"53-21-166. Records to be confidential -- exceptions.** All information obtained and records prepared
 24 in the course of providing any services under this part to individuals under any provision of this part are
 25 confidential and privileged matter and must remain confidential and privileged after the individual is discharged
 26 from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

27 (1) in communications between qualified professionals in the provision of services or appropriate
 28 referrals;

29 (2) when the recipient of services designates persons to whom information or records may be released
 30 or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing persons

1 to whom records or information may be disclosed. However, this section may not be construed to compel a
 2 physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has
 3 been given to the physician, psychologist, social worker, nurse, attorney, or other professional person in
 4 confidence by members of a patient's family.

5 (3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical
 6 assistance to which a recipient may be entitled;

7 (4) for research if the department has promulgated rules for the conduct of research. Rules must include
 8 but are not limited to the requirement that all researchers shall sign an oath of confidentiality.

9 (5) to the courts as necessary for the administration of justice;

10 (6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to
 11 whom the record or information pertains and the custodian of the record or information pursuant to the rules of
 12 civil procedure;

13 (7) to members of the mental disabilities board of visitors or their agents when necessary to perform their
 14 functions as set out in 53-21-104; ~~and~~

15 (8) to the mental health ombudsman when necessary to perform the ombudsman functions as provided
 16 in 2-15-210; and

17 (9) to the department of justice as necessary to perform its functions as set forth in 44-2-206 and [section
 18 1]."

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 20 **NEW SECTION. Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an
 21 integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [section 1].

22 (2) [Section 2] is intended to be codified as an integral part of Title 44, chapter 4, and the provisions of
 23 Title 44, chapter 4, apply to [section 2].

24 (3) [Section 4] is intended to be codified as an integral part of Title 53, chapter 21, part 1, and the
 25 provisions of Title 53, chapter 21, part 1, apply to [section 4].

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