

1 HOUSE BILL NO. 480

2 INTRODUCED BY E. HILL SMITH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL LAWS; PROVIDING A
5 PROCEDURE FOR PEOPLE WHO HAVE LOST THEIR RIGHT TO POSSESS A FIREARM DUE TO A
6 DETERMINATION OF A MENTAL DISEASE OR DEFECT TO REGAIN THEIR RIGHT TO POSSESS A
7 FIREARM; REQUIRING A DISTRICT COURT GRANTING A PETITION TO RESTORE A PERSON'S RIGHT TO
8 POSSESS A FIREARM OR MAKING ANY TYPE OF FINDING THAT A PERSON SUFFERS FROM A MENTAL
9 DISEASE OR DEFECT OR IS AN INCAPACITATED PERSON TO FORWARD A COPY OF THE ORDER TO
10 THE DEPARTMENT OF JUSTICE; REQUIRING THE DEPARTMENT OF JUSTICE TO UPDATE THE FEDERAL
11 BUREAU OF INVESTIGATION AND THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM;
12 AND AMENDING SECTIONS 44-2-206 AND 53-21-166, MCA."

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

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16 NEW SECTION. **Section 1. Relief from firearms disabilities.** (1) A district court shall make a finding
17 as to whether a person who is the subject of an order, adjudication, or commitment is a person to whom the
18 provisions of 18 U.S.C. 922(g)(4) apply in each of the situations listed in subsections (1)(a) through (1)(d):

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

25 (2) If the court finds that a person is the subject of an adjudication or commitment to whom the provisions
26 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
27 the district court to forward a copy of the order to the department of justice, which shall forward a copy to the
28 federal bureau of investigation or its successor agency for inclusion in the national instant criminal background
29 check system database.

30 (3) A person who is subject to the provisions of 18 U.S.C. 922(g)(4) or an order, including an

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

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

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

11 (c) the petitioner's reputation; and

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

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

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

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

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

26 **"44-2-206. Cooperation with FBI and other states.** The department shall:

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

30 (2) obtain and electronically transmit to the national instant criminal background check system database,

1 in accordance with federal law, information relating to eligibility to receive or possess a firearm pursuant to state
2 or federal law. Upon notification to the department that the basis for any information previously transmitted to the
3 database does not apply or no longer applies, the department shall, as soon as practicable, notify the system of
4 the change and shall update, correct, or modify the information or remove it from the database."

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6 **Section 3.** Section 53-21-166, MCA, is amended to read:

7 **"53-21-166. Records to be confidential -- exceptions.** All information obtained and records prepared
8 in the course of providing any services under this part to individuals under any provision of this part are
9 confidential and privileged matter and must remain confidential and privileged after the individual is discharged
10 from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

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

13 (2) when the recipient of services designates persons to whom information or records may be released
14 or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing persons
15 to whom records or information may be disclosed. However, this section may not be construed to compel a
16 physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has
17 been given to the physician, psychologist, social worker, nurse, attorney, or other professional person in
18 confidence by members of a patient's family.

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

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

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

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

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

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

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

2 1]."

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4 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an

5 integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [section 1].

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