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HOUSE BILL 91

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO REPORTS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; REQUIRING THE ADMINISTRATIVE OFFICE OF THE COURTS AND OTHERS TO REPORT COURT PROCEEDINGS, ADJUDICATIONS AND REDETERMINATIONS RELATING TO THE ELIGIBILITY OF A PERSON TO RECEIVE OR POSSESS A FIREARM OR AMMUNITION OR TO OBTAIN A CONCEALED HANDGUN LICENSE TO THE FEDERAL BUREAU OF INVESTIGATION'S NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; PROVIDING FOR A RIGHT TO INSPECT AND CORRECT RECORDS; REQUIRING RULEMAKING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 34, Article 9 NMSA 1978 is enacted to read:

"[NEW MATERIAL] REPORTING TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.--

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1 A. In any circumstance other than that described in
2 Subsection B of this section, the administrative office of the
3 courts shall obtain and electronically transmit information
4 from court proceedings relating to a person's eligibility to
5 receive or possess a firearm or ammunition pursuant to state or
6 federal law to the federal bureau of investigation's national
7 instant criminal background check system. The administrative
8 office of the courts shall also be responsible for notifying,
9 as soon as practicable within ten days of receipt of the
10 information, the federal bureau of investigation to update,
11 correct, modify or remove information affecting a person's
12 eligibility to receive or possess a firearm or ammunition
13 pursuant to state or federal law in the national instant
14 criminal background check system.

15 B. The administrative office of the courts shall
16 electronically transmit information about a court order,
17 judgment or verdict to the federal bureau of investigation for
18 entry into the national instant criminal background check
19 system regarding each person who has been adjudicated as a
20 mental defective or committed to a mental institution and is
21 therefore, pursuant to federal law, disabled from receiving or
22 possessing a firearm or ammunition.

23 C. Upon entry of a court order, judgment or verdict
24 referred to in Subsection B of this section, the administrative
25 office of the courts shall transmit to the federal bureau of

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1 investigation only that information necessary to identify the
2 person for the sole purpose of inclusion in the national
3 instant criminal background check system. The administrative
4 office of the courts, consistent with rules promulgated
5 pursuant to Subsection L of this section, shall also notify the
6 person that, as an adjudicated mental defective or as a person
7 committed to a mental institution, the person is disabled
8 pursuant to federal law from receiving or possessing a firearm
9 or ammunition.

10 D. A person who has been adjudicated as a mental
11 defective or committed to a mental institution and is
12 therefore, pursuant to federal law, disabled from receiving or
13 possessing a firearm or ammunition or, pursuant to state law,
14 is ineligible for a concealed handgun license may petition the
15 court that originated the order, judgment or verdict or another
16 court of competent jurisdiction to remove that person's
17 firearm-related disabilities and restore the person's right to
18 receive and possess a firearm and ammunition and the right to
19 be eligible for a concealed handgun license. A copy of the
20 petition seeking relief from disabilities shall be served upon
21 the office of the attorney general and upon all parties to the
22 proceeding resulting in a court order, judgment or verdict
23 described in Subsection B of this section.

24 E. The court shall conduct a hearing and receive
25 and consider evidence on a petition for relief described in

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1 Subsection D of this section, including evidence offered by the
2 petitioner, concerning:

3 (1) the circumstances regarding the firearm
4 disabilities from which relief is sought;

5 (2) the petitioner's mental health and
6 criminal history records, if any;

7 (3) the petitioner's reputation, developed, at
8 a minimum, through character witness statements, testimony or
9 other character evidence; and

10 (4) changes in the petitioner's condition or
11 circumstances since the original court order, judgment or
12 verdict that are relevant to the relief sought.

13 F. After conducting a hearing on the petition, the
14 court shall grant the petition for relief from the disability
15 reported pursuant to Subsection B of this section if the court
16 finds by a preponderance of the evidence that the petitioner
17 will not be likely to act in a manner dangerous to public
18 safety and that granting the relief will not be contrary to the
19 public interest.

20 G. A record shall be kept of the proceedings held
21 pursuant to Subsection E of this section. The decision of the
22 court may be appealed.

23 H. Regardless of whether an earlier decision has
24 been appealed, a person may petition for relief pursuant to
25 Subsection D of this section not more than once every two years

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1 and, in the case of a person who was committed to a mental
2 institution, not before the person has been discharged from
3 that commitment.

4 I. Upon the entry of a court order granting relief
5 from disabilities pursuant to Subsection F of this section, and
6 as soon as practicable within ten days of receipt of the court
7 order granting relief, the administrative office of the courts
8 and any other state agency as applicable shall each be
9 separately responsible for updating, correcting, modifying or
10 removing the petitioner's record from their own databases that
11 they make available to the national instant criminal background
12 check system and each shall promptly notify the United States
13 attorney general for the purpose of reporting to the national
14 instant criminal background check system that the basis for the
15 petitioner being disabled pursuant to federal law from
16 receiving or possessing a firearm or ammunition no longer
17 applies.

18 J. The administrative office of the courts is
19 prohibited from disclosing information regarding a court order,
20 judgment or verdict referred to in Subsection B of this section
21 or regarding a petitioner or proceedings under this section,
22 except as otherwise provided by law. Information compiled and
23 transmitted under this section is not a public record and is
24 not subject to disclosure pursuant to the Inspection of Public
25 Records Act.

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