

HOUSE BILL NO. HB0059

Reporting of and relief from firearms disqualification.

Sponsored by: Representative(s) Pownall, Burlingame,
Kirkbride and Stith and Senator(s) Von
Flatern

A BILL

for

1 AN ACT relating to public safety; providing that certain
2 mental health information that evidences federal firearms
3 disqualification may be reported as specified; creating a
4 procedure for persons disqualified for mental health
5 reasons to challenge their disqualification; requiring the
6 division of criminal investigation to collect and report
7 specified mental health information; requiring state and
8 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.

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13 *Be It Enacted by the Legislature of the State of Wyoming:*

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15 **Section 1.** W.S. 1-23-108 is created to read:

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2 **1-23-108. Right of action; mental health prohibitor**
3 **information.**

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5 (a) As used in this section, "mental health
6 prohibitor information" means as defined by W.S.
7 9-1-611(b)(iv).

8

9 (b) A person who is prohibited from purchasing and
10 possessing firearms under 18 U.S.C. § 922(d)(4) and (g)(4)
11 because of a commitment, finding or adjudication that
12 occurred in this state may petition the court to remove,
13 pursuant to Section 105(a) of P.L. 110-180, the
14 disabilities imposed under 18 U.S.C. § 922(d)(4) and
15 (g)(4).

16

17 (c) The petition shall be filed in the court in which
18 the commitment, finding or adjudication occurred. Copies of
19 the petition shall be served on the office of the district
20 attorney who represented the state in the underlying case,
21 the division of criminal investigation and the office of
22 the district attorney in the petitioner's current county of
23 residence.

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2 (d) The petition shall state with specificity:

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

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

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

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

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17 (v) The petitioner's mental health and criminal
18 history.

19

20 (e) The court upon receipt of the petition shall
21 schedule a hearing after proof of service to all parties
22 required under subsection (c) of this section. The court
23 shall provide notice of the hearing to the petitioner and

1 the office of the district attorney who represented the
2 state in the underlying case and all other parties served
3 with the petition.

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5 (f) Upon service of the petition, the division of
6 criminal investigation shall immediately deliver a copy of
7 the petition to all entities that supplied the mental
8 health prohibitor information at issue in the petition to
9 the division pursuant to W.S. 9-1-624(c) by delivering a
10 copy of the petition to the person designated to receive
11 notice under W.S. 9-1-624(h).

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13 (g) The burden is on the petitioner to establish by a
14 preponderance of the evidence that the circumstances
15 regarding the disabilities imposed under 18 U.S.C. §
16 922(d)(4) and (g)(4) and the petitioner's record and
17 reputation are such that the petitioner will not be likely
18 to act in a manner dangerous to public safety and that it
19 is not contrary to the public interest to grant the
20 petition and remove the disabilities. The district attorney
21 shall present any admissible, relevant information to the
22 contrary. For the purposes specified in this subsection,
23 the district attorney may access and use any and all

1 admissible mental health records, juvenile records, and
2 criminal history of the petitioner wherever maintained. The
3 applicant shall sign a release for the district attorney to
4 receive any mental health records of the applicant.

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

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9 (j) In determining the petition, the court shall
10 consider the circumstances regarding the firearm
11 disabilities from which relief is sought, the petitioner's
12 mental health and criminal history, any properly admitted
13 expert testimony, the petitioner's reputation, developed at
14 a minimum through character witness statements, testimony,
15 or other character evidence, and any changes in the
16 petitioner's condition or circumstances since the original
17 commitment, adjudication or finding relevant to the relief
18 sought.

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20 (k) The court shall grant the petition for relief if
21 it finds by a preponderance of the evidence that the
22 petitioner is not likely to act in a manner dangerous to

1 public safety and that granting of the relief would not be
2 contrary to the public interest.

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4 (m) When the court issues an order granting a
5 petition under this section, the clerk of court shall
6 immediately forward a copy of the order to the division of
7 criminal investigation, which shall in turn immediately
8 forward a copy to the federal bureau of investigation, or
9 its successor agency, for updating of the national instant
10 criminal background check system.

11

12 (n) If a petition is granted under this section, the
13 commitment, adjudication or finding for which relief is
14 granted shall, pursuant to Section 105(a) of P.L. 110-180,
15 be deemed not to have occurred for purposes of 18 U.S.C. §
16 922(d)(4) and (g)(4) and the petitioner's firearms rights,
17 including the right to receive or possess a firearm and
18 ammunition if not otherwise prohibited by state or federal
19 law, the right to be eligible to carry a firearm pursuant
20 to a permit to carry a concealed firearm, where it is
21 otherwise permitted by state law, and the right to carry a
22 firearm as otherwise permitted by law, are completely and
23 fully restored.

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2 (o) The petitioner may appeal a denial of a petition
3 and the review on appeal shall be de novo.

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5 **Section 2.** W.S. 9-1-611(b) by creating a new
6 paragraph (iv) and by renumbering (iv) as (v), 9-1-624(a)
7 by creating a new paragraph (v) and by creating new
8 subsections (c) through (h), 25-10-110 by creating a new
9 subsection (p), 25-10-121 and 25-10-122(a) by creating a
10 new paragraph (v) are amended to read:

11

12 **9-1-611. Division of criminal investigation; created;**
13 **definitions; director; appointment; qualifications.**

14

15 (b) As used in this act:

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17 (iv) "Mental health prohibitor information"
18 means documentation evidencing an involuntary commitment to
19 a mental institution under W.S. 25-10-110, a finding of
20 incompetence to stand trial, a verdict of not guilty by
21 reason of mental illness or deficiency and an adjudication
22 of having a mental illness that presents a danger to self
23 or others under W.S. 25-10-110;

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2 ~~(iv)~~(v) "This act" means W.S. 9-1-611 through
3 9-1-627.

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5 **9-1-624. Division of criminal investigation; uniform**
6 **procedures and forms for collecting and disseminating**
7 **identification data; collection and dissemination of mental**
8 **health prohibitor information; agencies to cooperate.**

9

10 (a) The division shall:

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

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21 (c) A court that orders a commitment, finding or
22 adjudication that results in an involuntary commitment to a
23 mental institution under W.S. 25-10-110, a finding of

1 incompetence to stand trial, a verdict of not guilty by
2 reason of mental illness or deficiency or an adjudication
3 of having a mental illness that presents a danger to self
4 or others under W.S. 25-10-110 shall for the purposes of
5 this section enter a separate summary order in a format
6 required by the division that includes the person's name
7 and nonclinical identifying information, the person's
8 social security number and date of birth, together with a
9 summary statement of the order that shall not include any
10 underlying diagnoses or treatment detail not used by the
11 federal bureau of investigation, or its successor agency,
12 for the national instant criminal background check system.
13 The clerk of court shall forward a copy of the summary
14 order to the division.

15
16 (d) Upon written request by a person whose
17 information has been disclosed or that person's authorized
18 representative, the division shall identify to the
19 requestor or his authorized representative all mental
20 health prohibitor information submitted to the federal
21 bureau of investigation about the requestor.

22

1 (e) All information collected by the division under
2 paragraph (a)(v) of this section shall be confidential
3 information and, except as otherwise provided by this
4 section or other state law, shall not constitute a public
5 record and shall not be disseminated.

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7 (f) The division shall establish by rule a procedure
8 to grant a petitioning individual or his authorized
9 representative the ability to obtain, inspect and correct
10 mental health prohibitor information collected by the
11 division and for the transmission of the corrected
12 information to the federal bureau of investigation when any
13 person submits to the division a judicial order or other
14 proof which establishes that a record previously submitted
15 to the federal bureau of investigation is not correct, that
16 a person is no longer subject to a mental health prohibitor
17 or that a person has otherwise been granted relief from a
18 mental health prohibitor. The rules shall include
19 provisions for the transmission of the correction or
20 removal of any mental health prohibitor information within
21 ten (10) days of receiving an order issued pursuant to W.S.
22 1-23-108.

23

1 (g) A person authorized by this section and by W.S.
2 25-10-122(a)(v) to disseminate mental health prohibitor
3 information, including information which indicates that a
4 person is not subject to a mental health prohibitor, is not
5 civilly or criminally liable for contributing or for
6 disseminating the information to authorized persons.

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

16
17 **25-10-110. Involuntary hospitalization proceedings.**

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19 (p) After ordering a person to be involuntarily
20 hospitalized under this section, the clerk of court shall
21 forward to the division of criminal investigation the
22 information required in W.S. 9-1-624(c).

23

1 **25-10-121. Admission not to create presumption as to**
2 **competency nor ground for guardianship.**

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4 Admission to a hospital under this act shall not create any
5 presumption with respect to the patient's mental or legal
6 competency to exercise civil, contractual or other rights
7 for which a legal standard of competency exists. Admission
8 to a hospital under this act is not sufficient cause for
9 guardianship of the person or estate of any patient.
10 Nothing in this section shall prevent the submission and
11 disclosure of mental health prohibitor information as
12 required by W.S. 9-1-624 or the use of mental health
13 prohibitor information as provided in W.S. 1-23-108.

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15 **25-10-122. Records to be kept confidential;**
16 **exceptions.**

17

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

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(v) The disclosure is necessary for purposes of reporting to the national instant criminal background check system the identity of a person who is prohibited from possessing, selling or transferring a firearm under 18 U.S.C. § 922(d)(4) and (g)(4) provided:

(A) The disclosure is made by the clerk of district court that makes the commitment or adjudication that causes an individual to become a prohibited person under 18 U.S.C. § 922(d)(4) and (g)(4);

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

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

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

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

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(END)