

Senator Daniel W. Thatcher proposes the following substitute bill:

REMOVAL FROM DATABASE RESTRICTING FIREARM

PURCHASE

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Lee B. Perry

LONG TITLE

General Description:

This bill provides a procedure for a person to be relieved from disability which restricts the person's access to a firearm.

Highlighted Provisions:

This bill:

- ▶ provides procedures for a person to be relieved from disability for mental health disqualifiers restricting the purchase or possession of a firearm;
- ▶ requires the person to petition a court for an order to be relieved from disability;
- ▶ sets requirements the person must meet before petitioning the court;
- ▶ requires the court to hold a hearing and take evidence;
- ▶ provides a standard for the court;
- ▶ provides the Bureau of Criminal Identification with direction to remove a person if the court approves the petition; and
- ▶ allows for a de novo appeal if the court denies the petition.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **76-10-532**, Utah Code Annotated 1953



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **76-10-532** is enacted to read:

33 **76-10-532. Removal from National Instant Check System database.**

34 (1) A person who is subject to the restrictions in Subsection 76-10-503(1)(b)(v), (vi),
35 or (vii), or 18 U.S.C. 922(d)(4) and (g)(4) based on a commitment, finding, or adjudication
36 that occurred in this state may petition the district court in the county in which the
37 commitment, finding, or adjudication occurred to remove the disability imposed.

38 (2) The petition shall be filed in the district court in the county where the commitment,
39 finding, or adjudication occurred. The petition shall include:

40 (a) a listing of facilities, with their addresses, where the petitioner has ever received
41 mental health treatment;

42 (b) a release signed by the petitioner to allow the prosecutor or county attorney to
43 obtain the petitioner's mental health records;

44 (c) a verified report of a mental health evaluation conducted by a licensed ~~§~~ → [psychologist]
45 [or] ← § psychiatrist occurring within 30 days prior to the filing of the petition, which shall include a
46 statement regarding:

47 (i) the nature of the commitment, finding, or adjudication that resulted in the restriction
48 on the petitioner's ability to purchase or possess a dangerous weapon;

49 (ii) the petitioner's previous and current mental health treatment;

50 (iii) the petitioner's previous violent behavior, if any;

51 (iv) the petitioner's current mental health medications and medication management;

52 (v) the length of time the petitioner has been stable;

53 (vi) external factors that may influence the petitioner's stability;

54 (vii) the ability of the petitioner to maintain stability with or without medication; and

55 (viii) whether the petitioner is dangerous to public safety; and

56 (d) a copy of the petitioner's state and federal criminal history record.

57 (3) The petitioner shall serve the petition on the prosecuting entity that prosecuted the
 58 case or, if the disability is not based on a criminal case, on the county or district attorney's
 59 office having jurisdiction where the petition was filed ~~H→~~ **and the individual who filed the**
 59a **original action which resulted in the disability** ←~~H~~ .

60 (4) The court shall schedule a hearing as soon as practicable. The petitioner may
 61 present evidence and subpoena witnesses to appear at the hearing. The prosecuting ~~H→~~ , [~~or~~] ←~~H~~
 61a county
 62 attorney ~~H→~~ , **or the individual who filed the original action which resulted in the**
 62a **disability** ←~~H~~ may object to the petition and present evidence in support of the objection.

63 (5) The court shall consider the following evidence:

64 (a) the facts and circumstances that resulted in the commitment, finding or
 65 adjudication; and

66 (b) the person's mental health and criminal history records.

67 (6) The court shall grant the relief if the court finds by clear and convincing evidence
 68 that:

69 (a) the person is not a danger to the person or to others;

70 (b) the person is not likely to act in a manner dangerous to public safety; and

71 (c) the requested relief would not be contrary to the public interest.

72 (7) The court shall issue an order with its findings and send a copy to the bureau.

73 (8) The bureau, upon receipt of a court order removing a person's disability under
 74 Subsection 76-10-5(1)(b)(vii), shall send a copy of the court order to the National Instant
 75 Check System requesting removal of the person's name from the database. In addition, if the
 76 person is listed in a state database utilized by the bureau to determine eligibility for the
 77 purchase or possession of a firearm or to obtain a concealed firearm permit, the bureau shall
 78 remove the petitioner's name or send a copy of the court's order to the agency responsible for
 79 the database for removal of the petitioner's name.

80 (9) If the court denies the petition, the petitioner may not petition again for relief until
 81 at least two years after the date of the court's final order.

82 (10) The petitioner may appeal a denial of the requested relief. The review on appeal
 83 shall be de novo.