

SB0080S01 compared with SB0080

~~{deleted text}~~ shows text that was in SB0080 but was deleted in SB0080S01.

inserted text shows text that was not in SB0080 but was inserted into SB0080S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

LONG TITLE

General Description:

This bill provides a procedure for a person to be ~~{removed}~~relieved from ~~{a database}~~disability which ~~{would restrict}~~restricts the person's access to a firearm.

Highlighted Provisions:

This bill:

- ▶ provides ~~{a procedure}~~procedures for a person to be ~~{removed from the NICS database}~~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 ~~{removed}~~relieved from disability;

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- ▶ 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:

None

Utah Code Sections Affected:

ENACTS:

~~{53-5-712}~~76-10-532, Utah Code Annotated 1953

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

Section 1. Section ~~{53-5-71}~~76-10-532 is enacted to read:

~~{53-5-712}~~76-10-532. **Removal from National Instant Check System database.**

(1) A person who is ~~{denied a permit for a concealed firearm on the basis of Subsection 53-5-704(2)(a)(vii)}~~subject to the restrictions in Subsection 76-10-503(1)(b)(v), (vi), or (vii), or 18 U.S.C. 922(d)(4) and (g)(4) based on a commitment, finding, or adjudication that occurred in this state may petition the district court in the county in which the commitment, finding, or adjudication occurred to remove the disability imposed.

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

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

(b) a release signed by the petitioner to allow the prosecutor or county attorney to obtain the petitioner's mental health records;~~{ and }~~

(c) a verified report of a mental health {examination} evaluation conducted by a licensed psychologist or psychiatrist~~{ and }~~ occurring within 30 days prior to the filing of the petition, which {supports that} shall include a statement regarding:

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

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

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

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

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

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

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

(viii) whether the petitioner is ~~{ competent and not likely to act in a manner }~~ dangerous to public safety; and

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

(3) The petitioner shall serve the petition on the ~~{ office of the prosecutor }~~ prosecuting entity that prosecuted the case or, if the disability is not based on a criminal case, on the ~~{ office of the attorney for the county in which }~~ county or district attorney's office having jurisdiction where the petition was filed.

(4) The court shall schedule a hearing as soon as practicable. The petitioner may present evidence and subpoena witnesses to appear at the hearing. The prosecuting or county attorney may object to the petition and present evidence in support of the objection.

(5) The court shall consider the following evidence:

(a) the facts and circumstances that ~~{ led to }~~ resulted in the ~~{ person being restricted; }~~ commitment, finding or adjudication; and

(b) the person's mental health and criminal history records ~~{; }~~.

~~{~~ ~~— (c) evidence concerning the person's reputation, including the testimony of character witnesses; and~~

~~— (d) any other evidence relating to whether the petitioner is a threat to public safety and whether granting the relief would be contrary to the public interest.~~

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

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

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

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

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

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

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

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

†

Legislative Review Note

~~as of 2-14-13 1:44 PM~~

~~Office of Legislative Research and General Counsel~~