

House Research Act Summary

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TOPIC: Public Safety; Mental Health Commitment Information for Background Checks

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Overview

This Act conforms Minnesota law to the federal National Instant Criminal Background Check System (NICS) Improvement Act of 2007, which requires states to include mental health records in the information provided to the FBI's background check system for gun purchases. The federal Act also requires states to provide a process by which a person who has become firearms ineligible for mental health reasons can have his or her eligibility restored following treatment and recovery from the disqualifying condition. Lastly, it provides incentive monies for states that comply in a timely manner, and fiscal penalties for those that do not.

That federal legislation was prompted by the fatal shootings of 33 college students at Virginia Polytechnic Institute and State University in Blacksburg, Virginia on April 16, 2007.

In the present enactment, Minnesota complies with the joint requirements of the federal Act by directing the timely reporting to NICS of firearms disqualifying mental health records, and by providing a process for restoring firearms eligibility when appropriate. With that, it is expected that Minnesota will qualify for incentive funding being provided under the federal enactment.

Section

- 1** **Transmittal of data to NICS.** Requires that a court must transmit to the FBI's National Instant Criminal Background Check System a record of its action whenever the court:
- 1) Commits a person to confinement or treatment, whether as an inpatient or outpatient, as being mentally ill, developmentally disabled, mentally ill and dangerous, or chemically dependent;

- 2) Determines in a criminal case that a person is incompetent to stand trial or is not guilty by reason of mental illness; or
- 3) Restores a person's ability to possess a firearm under section 609.165, subdivision 1d, or 624.713, subdivision 4.

2 Firearms ineligible persons. Clarifies that for a person to become ineligible to possess a firearm for mental health reasons, the person must have been *committed by a judicial determination* in Minnesota or elsewhere as being mentally ill, developmentally disabled, or mentally ill and dangerous to the public, or have been found by the court as being incompetent to stand trial or not guilty by reason of mental illness.

Seeking mental health treatment or hospitalization *voluntarily* does not disqualify a person from firearms eligibility; only a *determination by a court* (for the stated reasons) does that, and it does so irrespective of whether the court has or has not ordered the person to be *confined*.

(The Virginia Tech shooter, for example, had been determined by a court to be mentally ill and was ordered to outpatient treatment, rather than to confinement. Nevertheless, under the language of this Minnesota Act, such person would thereby become ineligible to possess firearms.)

Reinstatement of firearms eligibility. Section 2 of the Act also modifies some of the criteria by which some firearms-ineligible persons can have their firearms eligibility restored, as follows.

- 1) *A certificate of a medical doctor or psychiatrist* stating that a person who has been disqualified for mental health reasons is no longer suffering from the disqualifying condition will no longer suffice to restore the person's firearms eligibility. Instead, the person's ability to possess a firearm must have been restored under a new judicial restoration process established by the Act (see Section 3 of the Act, below).
- 2) Likewise, for a person who has been convicted of a misdemeanor or gross misdemeanor violation of Chapter 152 (a controlled substance violation), or who has been judicially committed for habitual use of a controlled substance or marijuana. A certificate from a medical doctor or psychiatrist that the person has not abused a controlled substance or marijuana for the past two years will no longer suffice. Instead, the person must have remained free of a re-conviction for at least three years, or the person's ability to possess a firearm must have been restored under the new judicial restoration process established by the Act (see Section 3 below).
- 3) A person who has been judicially committed to a treatment facility in Minnesota or elsewhere as being chemically dependent continues to be able to have his or her firearms eligibility restored by completing the treatment. However, under the Act, the person may also petition the court for restoration under the new judicial restoration process established by the Act (see Section 3 below).

The Act also specifically defines the term "*judicial determination*."

3 Restoration of firearms eligibility to a civilly committed person; petition authorized. Establishes a judicial process by which a person who has become ineligible to possess a firearm as a result of a judicial determination for mental health reasons (as described in

Section 1 of the Act, above) may petition the court to restore that eligibility.

In accordance with principles of due process, the court may grant such relief if the circumstances regarding the person's condition, and the person's record and reputation, are determined to be such that the person is not likely to act in a manner that is dangerous to public safety, and the granting of relief would not be contrary to the public interest.

In making such determination, the court may consider evidence from a licensed medical doctor or clinical psychologist that the person is no longer suffering from the disease or condition that led to the disability, or that it has been successfully treated for three consecutive years.

This structuring of the court's role is intended to reflect the federal requirement for the restoration authority to be a qualified, neutral third party.

4 , 5, & 6 **Conforming changes** in statutes governing permits to purchase or carry a handgun.

7 **Effective dates.** Section 1 is given a delayed effective date of July 1, 2010. The remaining sections have the default effective date of August 1, 2009.