

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

931V0210

HOUSE BILL NO. 1229

Introduced by: Representatives Johns, Bolin, Cronin, Erickson, Gibson, Gosch, Hoffman, Hunhoff (Bernie), Kopp, Parsley, and Wink and Senators Tieszen, Brown, Frerichs, Kirkeby, Otten (Ernie), and Vehle

1 FOR AN ACT ENTITLED, An Act to provide for the reporting of certain person's names to the
2 National Instant Criminal Background Check System.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 27A-10 be amended by adding thereto a NEW SECTION to read
5 as follows:

6 If the board of mental illness orders an involuntary commitment based on a finding pursuant
7 to § 27A-10-9.1 that the person is a danger to self as defined in subdivision 27A-1-1(7)(a) or
8 a danger to others as defined in subdivision 27A-1-1(6), the chair of the board shall report to the
9 attorney general for reporting to the National Instant Criminal Background Check System the
10 involuntarily committed person's name and other identifying information. The chair shall submit
11 the report to the attorney general, in the manner and form prescribed by the attorney general,
12 within seven working days after the date of the final order of involuntary commitment. The
13 report may not include information relating to the person's diagnosis or treatment.

14 Section 2. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 The prosecuting attorney shall report to the attorney general for reporting to the National
3 Instant Criminal Background Check System the name and other identifying information of any
4 person who is acquitted of a crime by reason of insanity pursuant to § 23A-26-5 or who is
5 determined to be incompetent to stand trial pursuant to § 23A-10A-4. The prosecuting attorney
6 shall submit the report to the attorney general, in the manner and form prescribed by the attorney
7 general, within seven working days after the date of the verdict acquitting for insanity or the
8 adjudication of incompetency. The report may not include information relating to the person's
9 diagnosis or treatment.

10 Section 3. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The attorney general shall transmit to the National Instant Criminal Background Check
13 System administered by the Federal Bureau of Investigation the name and other identifying
14 information of any person who is prohibited from possessing a firearm under
15 18 U.S.C. 922(g)(4) because the person was acquitted of a crime by reason of insanity pursuant
16 to § 23A-26-5, the person was determined to be incompetent to stand trial pursuant to
17 § 23A-10A-4, or the person was involuntarily committed pursuant to chapter 27A-10 based on
18 a finding that the person is a danger to self as defined in subdivision 27A-1-1(7)(a) or a danger
19 to others as defined in subdivision 27A-1-1(6).

20 Section 4. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 A person who is prohibited from possessing a firearm pursuant to the provisions of
23 18 U.S.C. 922(g)(4) because of a commitment or adjudication that occurred in this state may
24 petition the court of the county in which the person resides for the restoration of the right to

1 possess or receive a firearm. The petitioner shall serve a copy of the petition for restoration on
2 the state's attorney of the county in which the petition is filed. The state's attorney shall represent
3 the state at the hearing on the petition.

4 Section 5. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Within sixty days after the date of filing the petition for restoration, the court shall conduct
7 a hearing to determine whether the petitioner's right to possess a firearm should be restored. The
8 record of the hearing is confidential and may only be disclosed to the parties and the Supreme
9 Court in the event of an appeal. If the court finds, based on the preponderance of the evidence
10 presented at the hearing, that the petitioner is not a danger to self as defined in subdivision 27A-
11 1-1(7)(a) or a danger to others as defined in subdivision 27A-1-1(6), the court shall enter an
12 order restoring the petitioner's right to possess a firearm and directing the attorney general to
13 report to the National Instant Criminal Background Check System that the petitioner is no
14 longer prohibited from possessing a firearm under 18 U.S.C. 922(g)(4).

15 Section 6. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 If the court enters an order restoring the petitioner's right to possess a firearm, the state's
18 attorney shall submit a copy of the order to the attorney general within seven working days after
19 the order becomes final. The attorney general shall, within seven working days after receiving
20 the order, report to the National Instant Criminal Background Check System that the petitioner
21 is no longer prohibited from possessing a firearm under 18 U.S.C 922(g)(4).