

**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 from a database which would restrict the person's access to a firearm.

Highlighted Provisions:

This bill:

- ▶ provides a procedure for a person to be removed from the NICS database;
- ▶ requires the person to petition a court for an order to be removed;
- ▶ 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:



28 **53-5-712**, Utah Code Annotated 1953

29

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

31 Section 1. Section **53-5-712** is enacted to read:

32 **53-5-712. Removal from National Instant Check System database.**

33 (1) A person who is denied a permit for a concealed firearm on the basis of Subsection
34 53-5-704(2)(a)(vii) or 18 U.S.C. 922(d)(4) and (g)(4) based on a commitment, finding, or
35 adjudication that occurred in this state may petition the court in which the commitment,
36 finding, or adjudication occurred to remove the disability imposed.

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

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

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

43 (c) a verified report of a mental health examination conducted by a licensed
44 psychologist or psychiatrist and occurring within 30 days prior to the filing of the petition,
45 which supports that the petitioner is competent and not likely to act in a manner dangerous to
46 public safety.

47 (3) The petitioner shall serve the petition on the office of the prosecutor that prosecuted
48 the case or, if the disability is not based on a criminal case, on the office of the attorney for the
49 county in which the petition was filed.

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

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

54 (a) the facts and circumstances that led to the person being restricted;

55 (b) the person's mental health and criminal history records;

56 (c) evidence concerning the person's reputation, including the testimony of character
57 witnesses; and

58 (d) any other evidence relating to whether the petitioner is a threat to public safety and

59 whether granting the relief would be contrary to the public interest.

60 (6) The court shall grant the relief if the court finds by clear and convincing evidence

61 that:

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

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

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

65 (7) The court shall transmit its findings to the bureau.

66 (8) The bureau, upon receipt of a court order removing a person's disability under

67 Subsection 76-10-5(1)(b)(vii), shall transmit a copy of the court order to the National Instant

68 Check System requesting removal of the person's name from the database. In addition, if the

69 person is listed in a state database utilized by the bureau to determine eligibility for a concealed

70 firearm permit, the bureau shall remove the petitioner's name or transmit a copy of the court's

71 order to the agency responsible for the database for removal of the petitioner's name.

72 (9) If the court denies the petition, the petitioner may not petition again for relief until

73 at least two years after the date of the court's final order.

74 (10) The petitioner may appeal a denial of the requested relief. The review on appeal

75 shall be de novo.

Legislative Review Note

as of 2-14-13 1:44 PM

Office of Legislative Research and General Counsel