

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 13-0043.01 Richard Sweetman x4333

HOUSE BILL 13-1229

HOUSE SPONSORSHIP

Fields and McCann,

SENATE SPONSORSHIP

Carroll,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CRIMINAL BACKGROUND CHECKS PERFORMED PURSUANT**
102 **TO THE TRANSFER OF A FIREARM, AND, IN CONNECTION**
103 **THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Unless a specified exception applies, before any person who is not a licensed gun dealer transfers or attempts to transfer possession of a firearm, he or she shall:

! Require that a background check be conducted of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
February 15, 2013

prospective transferee; and

- ! Obtain approval of the transfer from the Colorado bureau of investigation (bureau) after a background check has been requested by a licensed gun dealer.

A prospective firearm transferor shall arrange for the services of one or more licensed gun dealers to obtain a background check. A prospective firearm transferee shall not accept possession of a firearm unless the prospective firearm transferor has obtained approval of the transfer from the bureau after a background check has been requested by a licensed gun dealer.

A prospective firearm transferee shall not knowingly provide false information to a prospective firearm transferor or to a licensed gun dealer for the purpose of acquiring a firearm.

A person who violates the new provisions commits a class 1 misdemeanor.

Under current law, the clerk of the court of every judicial district and probate court in the state must periodically report to the national instant criminal background check system subject to specified court orders relating to mental health or substance abuse.

The bill requires the clerk of the court to also report this information to the Colorado bureau of investigation.

A court, upon becoming aware that the basis upon which a record of a mentally ill person reported by the clerk of the court does not apply or no longer applies, shall:

- ! Update, correct, modify, or remove the record from any database that the federal or state government maintains and makes available to the national instant criminal background check system, consistent with the rules pertaining to the database; and
- ! Notify the attorney general that such basis does not apply or no longer applies.

The bill sets forth a judicial process whereby a person who has been prohibited from possessing a firearm may apply or petition for relief from federal firearms prohibitions, as permitted by federal law.

In granting relief to a petitioner, the court shall issue findings that:

- ! The petitioner is not likely to act in a manner that is dangerous to public safety; and
- ! Granting relief to the petitioner is not contrary to the public interest.

If the court denies relief to a petitioner, the petitioner may petition the court of appeals to review the denial, including the record of the denying court. A review of a denial shall be de novo in that the court of appeals may, but is not required to, give deference to the decision of the denying court. In reviewing a denial, the court of appeals may receive additional evidence necessary to conduct an adequate review.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 18-12-112 as
3 follows:

4 **18-12-112. Private firearms transfers - background check**
5 **required - penalty.** (1) EXCEPT AS DESCRIBED IN SUBSECTION (6) OF THIS
6 SECTION, BEFORE ANY PERSON WHO IS NOT A LICENSED GUN DEALER, AS
7 DEFINED IN SECTION 12-26.1-106 (6), C.R.S., TRANSFERS OR ATTEMPTS TO
8 TRANSFER POSSESSION OF A FIREARM, HE OR SHE SHALL:

9 (a) REQUIRE THAT A BACKGROUND CHECK, IN ACCORDANCE WITH
10 SECTION 24-33.5-424, C.R.S., BE CONDUCTED OF THE PROSPECTIVE
11 TRANSFEREE; AND

12 (b) OBTAIN APPROVAL OF A TRANSFER FROM THE BUREAU AFTER A
13 BACKGROUND CHECK HAS BEEN REQUESTED BY A LICENSED GUN DEALER,
14 IN ACCORDANCE WITH SECTION 24-33.5-424, C.R.S.

15 (2) (a) A PROSPECTIVE FIREARM TRANSFEROR WHO IS NOT A
16 LICENSED GUN DEALER SHALL ARRANGE FOR A LICENSED GUN DEALER TO
17 OBTAIN THE BACKGROUND CHECK REQUIRED BY THIS SECTION.

18 (b) A LICENSED GUN DEALER WHO OBTAINS A BACKGROUND CHECK
19 ON A PROSPECTIVE TRANSFEREE SHALL RECORD THE TRANSFER, AS
20 PROVIDED IN SECTION 12-26-102, C.R.S., AND RETAIN THE RECORDS, AS
21 PROVIDED IN SECTION 12-26-103, C.R.S., IN THE SAME MANNER AS WHEN
22 CONDUCTING A SALE, RENTAL, OR EXCHANGE AT RETAIL. THE LICENSED
23 GUN DEALER SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS,
24 INCLUDING 18 U.S.C. SEC. 922, AS IF HE OR SHE WERE TRANSFERRING THE
25 FIREARM FROM HIS OR HER INVENTORY TO THE PROSPECTIVE TRANSFEREE.

26 (c) A LICENSED GUN DEALER WHO OBTAINS A BACKGROUND CHECK

1 FOR A PROSPECTIVE FIREARM TRANSFEROR PURSUANT TO THIS SECTION
2 SHALL PROVIDE THE FIREARM TRANSFEROR A COPY OF THE RESULTS OF
3 THE BACKGROUND CHECK, INCLUDING THE BUREAU'S APPROVAL OR
4 DISAPPROVAL OF THE TRANSFER.

5 (d) A LICENSED GUN DEALER MAY CHARGE A FEE FOR SERVICES
6 RENDERED PURSUANT TO THIS SECTION, WHICH FEE SHALL NOT EXCEED
7 TEN DOLLARS.

8 (3) (a) A PROSPECTIVE FIREARM TRANSFEREE UNDER THIS SECTION
9 SHALL NOT ACCEPT POSSESSION OF THE FIREARM UNLESS THE PROSPECTIVE
10 FIREARM TRANSFEROR HAS OBTAINED APPROVAL OF THE TRANSFER FROM
11 THE BUREAU AFTER A BACKGROUND CHECK HAS BEEN REQUESTED BY A
12 LICENSED GUN DEALER, AS DESCRIBED IN PARAGRAPH (b) OF SUBSECTION
13 (1) OF THIS SECTION.

14 (b) A PROSPECTIVE FIREARM TRANSFEREE SHALL NOT KNOWINGLY
15 PROVIDE FALSE INFORMATION TO A PROSPECTIVE FIREARM TRANSFEROR
16 OR TO A LICENSED GUN DEALER FOR THE PURPOSE OF ACQUIRING A
17 FIREARM.

18 (4) IF THE BUREAU APPROVES A TRANSFER OF A FIREARM
19 PURSUANT TO THIS SECTION, THE APPROVAL SHALL BE VALID FOR THIRTY
20 CALENDAR DAYS, DURING WHICH TIME THE TRANSFEROR AND TRANSFEREE
21 MAY COMPLETE THE TRANSFER.

22 (5) A PERSON WHO TRANSFERS A FIREARM IN VIOLATION OF THE
23 PROVISIONS OF THIS SECTION MAY BE JOINTLY AND SEVERALLY LIABLE FOR
24 ANY CIVIL DAMAGES PROXIMATELY CAUSED BY THE TRANSFEREE'S
25 SUBSEQUENT USE OF THE FIREARM.

26 (6) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

27 (a) A TRANSFER OF AN ANTIQUE FIREARM, AS DEFINED IN 18 U.S.C.

1 SEC. 921(a) (16), AS AMENDED, OR A CURIO OR RELIC, AS DEFINED IN 27
2 CFR 478.11, AS AMENDED;

3 (b) EXCEPT AS PROHIBITED BY SECTION 18-12-111, A TRANSFER
4 THAT IS A BONA FIDE GIFT BETWEEN IMMEDIATE FAMILY MEMBERS, WHICH
5 ARE LIMITED TO SPOUSES, PARENTS, CHILDREN, SIBLINGS, GRANDPARENTS,
6 AND GRANDCHILDREN;

7 (c) A TRANSFER THAT OCCURS BY OPERATION OF LAW OR BECAUSE
8 OF THE DEATH OF A PERSON FOR WHOM THE PROSPECTIVE TRANSFEROR IS
9 AN EXECUTOR OR ADMINISTRATOR OF AN ESTATE OR A TRUSTEE OF A
10 TRUST CREATED IN A WILL;

11 (d) A TRANSFER THAT IS TEMPORARY AND OCCURS WHILE IN THE
12 HOME OF THE UNLICENSED TRANSFEREE IF:

13 (I) THE UNLICENSED TRANSFEREE IS NOT PROHIBITED FROM
14 POSSESSING FIREARMS; AND

15 (II) THE UNLICENSED TRANSFEREE REASONABLY BELIEVES THAT
16 POSSESSION OF THE FIREARM IS NECESSARY TO PREVENT IMMINENT DEATH
17 OR SERIOUS BODILY INJURY TO THE UNLICENSED TRANSFEREE; ■

18 (e) THE TRANSFER IS A TEMPORARY TRANSFER OF POSSESSION
19 WITHOUT TRANSFER OF OWNERSHIP OR A TITLE TO OWNERSHIP, WHICH
20 TRANSFER TAKES PLACE:

21 (I) AT A SHOOTING RANGE LOCATED IN OR ON PREMISES OWNED OR
22 OCCUPIED BY A DULY INCORPORATED ORGANIZATION ORGANIZED FOR
23 CONSERVATION PURPOSES OR TO FOSTER PROFICIENCY IN FIREARMS;

24 (II) AT A TARGET FIREARM SHOOTING COMPETITION UNDER THE
25 AUSPICES OF, OR APPROVED BY, A STATE AGENCY OR A NONPROFIT
26 ORGANIZATION; OR

27 (III) WHILE HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING

1 IF:

2 (A) THE HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING IS
3 LEGAL IN ALL PLACES WHERE THE UNLICENSED TRANSFEREE POSSESSES
4 THE FIREARM; AND

5 (B) THE UNLICENSED TRANSFEREE HOLDS ANY LICENSE OR PERMIT
6 THAT IS REQUIRED FOR SUCH HUNTING, FISHING, TARGET SHOOTING, OR
7 TRAPPING; OR

8 (f) A TRANSFER OF A FIREARM THAT IS MADE TO FACILITATE THE
9 REPAIR OR MAINTENANCE OF THE FIREARM; EXCEPT THAT THIS PARAGRAPH
10 (f) DOES NOT APPLY UNLESS ALL PARTIES WHO POSSESS THE FIREARM AS
11 A RESULT OF THE TRANSFER MAY LEGALLY POSSESS A FIREARM.

12 (7) (a) A PERSON WHO VIOLATES A PROVISION OF THIS SECTION
13 COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED IN
14 ACCORDANCE WITH SECTION 18-1.3-501. THE PERSON SHALL ALSO BE
15 PROHIBITED FROM POSSESSING A FIREARM FOR TWO YEARS, BEGINNING ON
16 THE DATE OF HIS OR HER CONVICTION.

17 (b) WHEN A PERSON IS CONVICTED OF VIOLATING A PROVISION OF
18 THIS SECTION, THE CLERK OF THE COURT SHALL REPORT THE CONVICTION
19 TO THE BUREAU AND TO THE NATIONAL INSTANT CRIMINAL BACKGROUND
20 CHECK SYSTEM CREATED BY THE FEDERAL "BRADY HANDGUN VIOLENCE
21 PREVENTION ACT" (PUB.L. 103-159), THE RELEVANT PORTION OF WHICH
22 IS CODIFIED AT 18 U.S.C. SEC. 922 (t). THE REPORT SHALL INCLUDE
23 INFORMATION INDICATING THAT THE PERSON IS PROHIBITED FROM
24 POSSESSING A FIREARM FOR TWO YEARS, BEGINNING ON THE DATE OF HIS
25 OR HER CONVICTION.

26 **SECTION 2.** In Colorado Revised Statutes, 13-5-142, **amend** (1)
27 introductory portion; and **add** (4) as follows:

1 **13-5-142. National instant criminal background check system**
2 **- reporting.** (1) ~~Beginning July 1, 2002~~ ON AND AFTER THE EFFECTIVE
3 DATE OF THIS SECTION, the clerk of the court of every judicial district in
4 the state shall ~~periodically~~ report the following information to THE
5 COLORADO BUREAU OF INVESTIGATION CREATED AND EXISTING PURSUANT
6 TO SECTION 24-33.5-401, C.R.S., AND TO the national instant criminal
7 background check system created by the federal "Brady Handgun
8 Violence Prevention Act" (Pub.L. 103-159), the relevant portion of which
9 is codified at 18 U.S.C. sec. 922 (t):

10 (4) PURSUANT TO SECTION 102 (c) OF THE FEDERAL "NICS
11 IMPROVEMENT AMENDMENTS ACT OF 2007" (PUB.L. 110-180), A COURT,
12 UPON BECOMING AWARE THAT THE BASIS UPON WHICH A RECORD
13 REPORTED BY THE CLERK OF THE COURT PURSUANT TO SUBSECTION (1) OF
14 THIS SECTION DOES NOT APPLY OR NO LONGER APPLIES, SHALL:

15 (a) UPDATE, CORRECT, MODIFY, OR REMOVE THE RECORD FROM
16 ANY DATABASE THAT THE FEDERAL OR STATE GOVERNMENT MAINTAINS
17 AND MAKES AVAILABLE TO THE NATIONAL INSTANT CRIMINAL
18 BACKGROUND CHECK SYSTEM, CONSISTENT WITH THE RULES PERTAINING
19 TO THE DATABASE; AND

20 (b) NOTIFY THE ATTORNEY GENERAL THAT SUCH BASIS DOES NOT
21 APPLY OR NO LONGER APPLIES.

22 **SECTION 3.** In Colorado Revised Statutes, **add** 13-5-142.5 as
23 follows:

24 **13-5-142.5. National instant criminal background check**
25 **system - judicial process for awarding relief from federal**
26 **prohibitions - legislative declaration.** (1) **Legislative declaration.** THE
27 PURPOSE OF THIS SECTION IS TO SET FORTH A JUDICIAL PROCESS WHEREBY

1 A PERSON MAY APPLY OR PETITION FOR RELIEF FROM FEDERAL FIREARMS
2 PROHIBITIONS IMPOSED PURSUANT TO 18 U.S.C. SEC. 922 (d) (4) AND (g)
3 (4), AS PERMITTED BY THE FEDERAL "NICS IMPROVEMENT AMENDMENTS
4 ACT OF 2007" (PUB.L. 110-180, SEC. 105).

5 (2) **Eligibility.** A PERSON MAY PETITION FOR RELIEF PURSUANT TO
6 THIS SECTION IF:

7 (a) (I) HE OR SHE HAS BEEN FOUND TO BE INCAPACITATED BY
8 ORDER OF THE COURT PURSUANT TO PART 3 OF ARTICLE 14 OF TITLE 15,
9 C.R.S.;

10 (II) HE OR SHE HAS BEEN COMMITTED BY ORDER OF THE COURT TO
11 THE CUSTODY OF THE UNIT IN THE DEPARTMENT OF HUMAN SERVICES THAT
12 ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES, INCLUDING
13 THOSE RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE, PURSUANT
14 TO SECTION 27-81-112 OR 27-82-108, C.R.S.; OR

15 (III) THE COURT HAS ENTERED AN ORDER FOR THE PERSON'S
16 INVOLUNTARY CERTIFICATION FOR SHORT-TERM TREATMENT OF MENTAL
17 ILLNESS PURSUANT TO SECTION 27-65-107, C.R.S., FOR EXTENDED
18 CERTIFICATION FOR TREATMENT OF MENTAL ILLNESS PURSUANT TO
19 SECTION 27-65-108, C.R.S., OR FOR LONG-TERM CARE AND TREATMENT OF
20 MENTAL ILLNESS PURSUANT TO SECTION 27-65-109, C.R.S.; AND

21 (b) HE OR SHE IS A PERSON TO WHOM THE SALE OR TRANSFER OF A
22 FIREARM OR AMMUNITION IS PROHIBITED BY 18 U.S.C. SEC. 922 (d) (4), OR
23 WHO IS PROHIBITED FROM SHIPPING, TRANSPORTING, POSSESSING, OR
24 RECEIVING A FIREARM OR AMMUNITION PURSUANT TO 18 U.S.C. SEC. 922
25 (g) (4).

26 (3) **Due process.** IN A COURT PROCEEDING PURSUANT TO THIS
27 SECTION:

1 (a) THE PETITIONER SHALL HAVE AN OPPORTUNITY TO SUBMIT HIS
2 OR HER OWN EVIDENCE TO THE COURT CONCERNING HIS OR HER PETITION;

3 (b) THE COURT SHALL REVIEW THE EVIDENCE; AND

4 (c) THE COURT SHALL CREATE AND THEREAFTER MAINTAIN A
5 RECORD OF THE PROCEEDING.

6 (4) **Proper record.** IN DETERMINING WHETHER TO GRANT RELIEF
7 TO A PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL RECEIVE
8 EVIDENCE CONCERNING, AND SHALL CONSIDER:

9 (a) THE CIRCUMSTANCES REGARDING THE FIREARMS PROHIBITIONS
10 IMPOSED BY 18 U.S.C. SEC. 922 (g) (4);

11 (b) THE PETITIONER'S RECORD, WHICH MUST INCLUDE, AT A
12 MINIMUM, THE PETITIONER'S MENTAL HEALTH RECORDS AND CRIMINAL
13 HISTORY RECORDS; AND

14 (c) THE PETITIONER'S REPUTATION, WHICH THE COURT SHALL
15 DEVELOP, AT A MINIMUM, THROUGH CHARACTER WITNESS STATEMENTS,
16 TESTIMONY, OR OTHER CHARACTER EVIDENCE.

17 (5) **Proper findings.** (a) BEFORE GRANTING RELIEF TO A
18 PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL ISSUE
19 FINDINGS THAT:

20 (I) THE PETITIONER IS NOT LIKELY TO ACT IN A MANNER THAT IS
21 DANGEROUS TO PUBLIC SAFETY; AND

22 (II) GRANTING RELIEF TO THE PETITIONER IS NOT CONTRARY TO
23 THE PUBLIC INTEREST.

24 (b) (I) IF THE COURT DENIES RELIEF TO A PETITIONER PURSUANT TO
25 THIS SECTION, THE PETITIONER MAY PETITION THE COURT OF APPEALS TO
26 REVIEW THE DENIAL, INCLUDING THE RECORD OF THE DENYING COURT.

27 (II) A REVIEW OF A DENIAL SHALL BE DE NOVO IN THAT THE COURT

1 OF APPEALS MAY, BUT IS NOT REQUIRED TO, GIVE DEFERENCE TO THE
2 DECISION OF THE DENYING COURT.

3 (III) IN REVIEWING A DENIAL, THE COURT OF APPEALS MAY
4 RECEIVE ADDITIONAL EVIDENCE NECESSARY TO CONDUCT AN ADEQUATE
5 REVIEW.

6 **SECTION 4.** In Colorado Revised Statutes, 13-9-123, **amend** (1)
7 introductory portion; and **add** (4) as follows:

8 **13-9-123. National instant criminal background check system**
9 **- reporting.** (1) ~~Beginning July 1, 2002~~ ON AND AFTER THE EFFECTIVE
10 DATE OF THIS SECTION, the clerk of the probate court shall ~~periodically~~
11 report the following information to THE COLORADO BUREAU OF
12 INVESTIGATION CREATED AND EXISTING PURSUANT TO SECTION
13 24-33.5-401, C.R.S., AND TO the national instant criminal background
14 check system created by the federal "Brady Handgun Violence Prevention
15 Act" (Pub.L. 103-159), the relevant portion of which is codified at 18
16 U.S.C. sec. 922 (t):

17 (4) PURSUANT TO SECTION 102 (c) OF THE FEDERAL "NICS
18 IMPROVEMENT AMENDMENTS ACT OF 2007" (PUB.L. 110-180), A COURT,
19 UPON BECOMING AWARE THAT THE BASIS UPON WHICH A RECORD
20 REPORTED BY THE CLERK OF THE COURT PURSUANT TO SUBSECTION (1) OF
21 THIS SECTION DOES NOT APPLY OR NO LONGER APPLIES, SHALL:

22 (a) UPDATE, CORRECT, MODIFY, OR REMOVE THE RECORD FROM
23 ANY DATABASE THAT THE FEDERAL OR STATE GOVERNMENT MAINTAINS
24 AND MAKES AVAILABLE TO THE NATIONAL INSTANT CRIMINAL
25 BACKGROUND CHECK SYSTEM, CONSISTENT WITH THE RULES PERTAINING
26 TO THE DATABASE; AND

27 (b) NOTIFY THE ATTORNEY GENERAL THAT SUCH BASIS DOES NOT

1 APPLY OR NO LONGER APPLIES.

2 **SECTION 5.** In Colorado Revised Statutes, **add** 13-9-124 as
3 follows:

4 **13-9-124. National instant criminal background check system**
5 **- judicial process for awarding relief from federal prohibitions -**
6 **legislative declaration.** (1) **Legislative declaration.** THE PURPOSE OF
7 THIS SECTION IS TO SET FORTH A JUDICIAL PROCESS WHEREBY A PERSON
8 MAY APPLY OR PETITION FOR RELIEF FROM FEDERAL FIREARMS
9 PROHIBITIONS IMPOSED PURSUANT TO 18 U.S.C. SEC. 922 (d) (4) AND (g)
10 (4), AS PERMITTED BY THE FEDERAL "NICS IMPROVEMENT AMENDMENTS
11 ACT OF 2007" (PUB.L. 110-180, SEC. 105).

12 (2) **Eligibility.** A PERSON MAY PETITION FOR RELIEF PURSUANT TO
13 THIS SECTION IF:

14 (a) (I) HE OR SHE HAS BEEN FOUND TO BE INCAPACITATED BY
15 ORDER OF THE COURT PURSUANT TO PART 3 OF ARTICLE 14 OF TITLE 15,
16 C.R.S.;

17 (II) HE OR SHE HAS BEEN COMMITTED BY ORDER OF THE COURT TO
18 THE CUSTODY OF THE UNIT IN THE DEPARTMENT OF HUMAN SERVICES THAT
19 ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES, INCLUDING
20 THOSE RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE, PURSUANT
21 TO SECTION 27-81-112 OR 27-82-108, C.R.S.; OR

22 (III) THE COURT HAS ENTERED AN ORDER FOR THE PERSON'S
23 INVOLUNTARY CERTIFICATION FOR SHORT-TERM TREATMENT OF MENTAL
24 ILLNESS PURSUANT TO SECTION 27-65-107, C.R.S., FOR EXTENDED
25 CERTIFICATION FOR TREATMENT OF MENTAL ILLNESS PURSUANT TO
26 SECTION 27-65-108, C.R.S., OR FOR LONG-TERM CARE AND TREATMENT OF
27 MENTAL ILLNESS PURSUANT TO SECTION 27-65-109, C.R.S.; AND

1 (b) HE OR SHE IS A PERSON TO WHOM THE SALE OR TRANSFER OF A
2 FIREARM OR AMMUNITION IS PROHIBITED BY 18 U.S.C. SEC. 922 (d) (4), OR
3 WHO IS PROHIBITED FROM SHIPPING, TRANSPORTING, POSSESSING, OR
4 RECEIVING A FIREARM OR AMMUNITION PURSUANT TO 18 U.S.C. SEC. 922
5 (g) (4).

6 (3) **Due process.** IN A COURT PROCEEDING PURSUANT TO THIS
7 SECTION:

8 (a) THE PETITIONER SHALL HAVE AN OPPORTUNITY TO SUBMIT HIS
9 OR HER OWN EVIDENCE TO THE COURT CONCERNING HIS OR HER PETITION;

10 (b) THE COURT SHALL REVIEW THE EVIDENCE; AND

11 (c) THE COURT SHALL CREATE AND THEREAFTER MAINTAIN A
12 RECORD OF THE PROCEEDING.

13 (4) **Proper record.** IN DETERMINING WHETHER TO GRANT RELIEF
14 TO A PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL RECEIVE
15 EVIDENCE CONCERNING, AND SHALL CONSIDER:

16 (a) THE CIRCUMSTANCES REGARDING THE FIREARMS PROHIBITIONS
17 IMPOSED BY 18 U.S.C. SEC. 922 (g) (4);

18 (b) THE PETITIONER'S RECORD, WHICH MUST INCLUDE, AT A
19 MINIMUM, THE PETITIONER'S MENTAL HEALTH RECORDS AND CRIMINAL
20 HISTORY RECORDS; AND

21 (c) THE PETITIONER'S REPUTATION, WHICH THE COURT SHALL
22 DEVELOP, AT A MINIMUM, THROUGH CHARACTER WITNESS STATEMENTS,
23 TESTIMONY, OR OTHER CHARACTER EVIDENCE.

24 (5) **Proper findings.** (a) BEFORE GRANTING RELIEF TO A
25 PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL ISSUE
26 FINDINGS THAT:

27 (I) THE PETITIONER IS NOT LIKELY TO ACT IN A MANNER THAT IS

1 DANGEROUS TO PUBLIC SAFETY; AND

2 (II) GRANTING RELIEF TO THE PETITIONER IS NOT CONTRARY TO
3 THE PUBLIC INTEREST.

4 (b) (I) IF THE COURT DENIES RELIEF TO A PETITIONER PURSUANT TO
5 THIS SECTION, THE PETITIONER MAY PETITION THE COURT OF APPEALS TO
6 REVIEW THE DENIAL, INCLUDING THE RECORD OF THE DENYING COURT.

7 (II) A REVIEW OF A DENIAL SHALL BE DE NOVO IN THAT THE COURT
8 OF APPEALS MAY, BUT IS NOT REQUIRED TO, GIVE DEFERENCE TO THE
9 DECISION OF THE DENYING COURT.

10 (III) IN REVIEWING A DENIAL, THE COURT OF APPEALS MAY
11 RECEIVE ADDITIONAL EVIDENCE NECESSARY TO CONDUCT AN ADEQUATE
12 REVIEW.

13 **SECTION 6.** In Colorado Revised Statutes, 18-12-101, **add** (1)
14 (b.5) as follows:

15 **18-12-101. Definitions - peace officer affirmative defense.**

16 (1) As used in this article, unless the context otherwise requires:

17 (b.5) "BUREAU" MEANS THE COLORADO BUREAU OF
18 INVESTIGATION CREATED IN SECTION 24-33.5-401, C.R.S.

19 **SECTION 7.** In Colorado Revised Statutes, 18-12-202, **repeal** (1)
20 as follows:

21 **18-12-202. Definitions.** As used in this part 2, unless the context
22 otherwise requires:

23 (1) ~~"Bureau" means the Colorado bureau of investigation within~~
24 ~~the department of public safety.~~

25 **SECTION 8.** In Colorado Revised Statutes, 18-12-103.5, **amend**
26 (2) as follows:

27 **18-12-103.5. Defaced firearms - contraband - destruction.**

1 (2) Defaced firearms ~~which~~ THAT are deemed to be contraband shall be
2 placed in the possession of the ~~Colorado~~ bureau of investigation or of a
3 local law enforcement agency designated by the ~~Colorado~~ bureau of
4 investigation and shall be destroyed or rendered permanently inoperable.

5 **SECTION 9. Appropriation.** (1) In addition to any other
6 appropriation, there is hereby appropriated, out of any moneys in the
7 general fund not otherwise appropriated, to the department of public
8 safety, for the fiscal year beginning July 1, 2013, the sum of \$1,612,006
9 and 27.4 FTE, or so much thereof as may be necessary, to be allocated for
10 the implementation of this act as follows:

- 11 (a) \$360,288 for the executive director's office; and
- 12 (b) \$1,251,718 and 27.4 FTE for the state point of contact-national
13 instant criminal background check program.

14 **SECTION 10. Appropriation.** (1) In addition to any other
15 appropriation, there is hereby appropriated, out of any moneys in the
16 instant criminal background check cash fund created in section
17 24-33.5-424 (3.5) (b), Colorado Revised Statutes, not otherwise
18 appropriated, to the department of public safety, for the fiscal year
19 beginning July 1, 2013, the sum of \$1,612,006 and 27.4 FTE, or so much
20 thereof as may be necessary, to be allocated for the implementation of this
21 act as follows:

- 22 (a) \$360,288 for the executive director's office; and
- 23 (b) \$1,251,718 and 27.4 FTE for the state point of contact-national
24 instant criminal background check program.

25 **SECTION 11. Effective Date.** This act takes effect July 1, 2013;
26 except that section 9 of this act takes effect only if House Bill 13-1228
27 does not become law, and section 10 of this act takes effect only if House

1 Bill 13-1228 becomes law.

2 **SECTION 12. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.