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HOUSE BILL 02-1287

BY REPRESENTATIVE(S) Veiga, Borodkin, Boyd, Coleman, Garcia, Groff, Grossman, Jahn, Jameson, Mace, Madden, Marshall, Plant, Romanoff, Sanchez, Schultheis, Tapia, Weddig, and Williams S.; also SENATOR(S) Phillips, Anderson, Entz, Nichol, Perlmutter, and Tupa.

CONCERNING ACCESS TO RECORDS FOR PURPOSES OF BACKGROUND CHECKS
CONDUCTED IN CONNECTION WITH FIREARM TRANSFERS.

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

SECTION 1. Part 1 of article 5 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

13-5-142. National instant criminal background check system - reporting. (1) BEGINNING JULY 1, 2002, THE CLERK OF THE COURT OF EVERY JUDICIAL DISTRICT IN THE STATE SHALL PERIODICALLY REPORT THE FOLLOWING INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM CREATED BY THE FEDERAL "BRADY HANDGUN VIOLENCE PREVENTION ACT" (P.L. NO. 103-159), THE RELEVANT PORTION OF WHICH IS CODIFIED AT 18 U.S.C. SEC. 922 (t):

(a) THE NAME OF EACH PERSON WHO HAS BEEN FOUND TO BE INCAPACITATED BY ORDER OF THE COURT PURSUANT TO PART 3 OF ARTICLE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

14 OF TITLE 15, C.R.S.;

(b) THE NAME OF EACH PERSON WHO HAS BEEN COMMITTED BY ORDER OF THE COURT TO THE CUSTODY OF THE DIVISION OF ALCOHOL AND DRUG ABUSE IN THE DEPARTMENT OF HUMAN SERVICES PURSUANT TO SECTION 25-1-311 OR 25-1-1107, C.R.S.; AND

(c) THE NAME OF EACH PERSON WITH RESPECT TO WHOM THE COURT HAS ENTERED AN ORDER FOR INVOLUNTARY CERTIFICATION FOR SHORT-TERM TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-10-107, C.R.S., FOR EXTENDED CERTIFICATION FOR TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-10-108, C.R.S., OR FOR LONG-TERM CARE AND TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-10-109, C.R.S.

(2) ANY REPORT MADE BY THE CLERK OF THE COURT OF EVERY JUDICIAL DISTRICT IN THE STATE PURSUANT TO THIS SECTION SHALL DESCRIBE THE REASON FOR THE REPORT AND INDICATE THAT THE REPORT IS MADE IN ACCORDANCE WITH 18 U.S.C. SEC. 922 (g) (4).

(3) THE CLERK OF THE COURT OF EVERY JUDICIAL DISTRICT IN THE STATE SHALL TAKE ALL NECESSARY STEPS TO CANCEL A RECORD MADE BY THAT CLERK IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IF:

(a) THE PERSON TO WHOM THE RECORD PERTAINS MAKES A WRITTEN REQUEST TO THE CLERK; AND

(b) NO LESS THAN THREE YEARS BEFORE THE DATE OF THE WRITTEN REQUEST:

(I) THE COURT ENTERED AN ORDER PURSUANT TO SECTION 15-14-318, C.R.S., TERMINATING A GUARDIANSHIP ON A FINDING THAT THE PERSON IS NO LONGER AN INCAPACITATED PERSON, IF THE RECORD IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON A FINDING OF INCAPACITY;

(II) THE PERIOD OF COMMITMENT OF THE MOST RECENT ORDER OF COMMITMENT OR RECOMMITMENT EXPIRED, OR THE COURT ENTERED AN ORDER TERMINATING THE PERSON'S INCAPACITY OR DISCHARGING THE PERSON FROM COMMITMENT IN THE NATURE OF HABEAS CORPUS, IF THE

RECORD IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON AN ORDER OF COMMITMENT TO THE CUSTODY OF THE DIVISION OF ALCOHOL AND DRUG ABUSE; EXCEPT THAT THE CLERK SHALL NOT CANCEL ANY RECORD PERTAINING TO A PERSON WITH RESPECT TO WHOM TWO RECOMMITMENT ORDERS HAVE BEEN ENTERED UNDER SECTION 25-1-311 (5) AND (6), C.R.S., OR WHO WAS DISCHARGED FROM TREATMENT UNDER SECTION 25-1-311 (9), C.R.S., ON THE GROUNDS THAT FURTHER TREATMENT WILL NOT BE LIKELY TO BRING ABOUT SIGNIFICANT IMPROVEMENT IN THE PERSON'S CONDITION; OR

(III) THE RECORD IN THE CASE WAS SEALED PURSUANT TO SECTION 27-10-107 (7), C.R.S., OR THE COURT ENTERED AN ORDER DISCHARGING THE PERSON FROM COMMITMENT IN THE NATURE OF HABEAS CORPUS PURSUANT TO SECTION 27-10-113, C.R.S., IF THE RECORD IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON A COURT ORDER FOR INVOLUNTARY CERTIFICATION FOR SHORT-TERM TREATMENT OF MENTAL ILLNESS.

SECTION 2. Article 9 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

13-9-123. National instant criminal background check system - reporting. (1) BEGINNING JULY 1, 2002, THE CLERK OF THE PROBATE COURT SHALL PERIODICALLY REPORT THE FOLLOWING INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM CREATED BY THE FEDERAL "BRADY HANDGUN VIOLENCE PREVENTION ACT" (P.L. No. 103-159), THE RELEVANT PORTION OF WHICH IS CODIFIED AT 18 U.S.C. SEC. 922 (t):

(a) THE NAME OF EACH PERSON WHO HAS BEEN FOUND TO BE INCAPACITATED BY ORDER OF THE COURT PURSUANT TO PART 3 OF ARTICLE 14 OF TITLE 15, C.R.S.;

(b) THE NAME OF EACH PERSON WHO HAS BEEN COMMITTED BY ORDER OF THE COURT TO THE CUSTODY OF THE DIVISION OF ALCOHOL AND DRUG ABUSE IN THE DEPARTMENT OF HUMAN SERVICES PURSUANT TO SECTION 25-1-311 OR 25-1-1107, C.R.S.; AND

(c) THE NAME OF EACH PERSON WITH RESPECT TO WHOM THE COURT HAS ENTERED AN ORDER FOR INVOLUNTARY CERTIFICATION FOR

SHORT-TERM TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-10-107, C.R.S., FOR EXTENDED CERTIFICATION FOR TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-10-108, C.R.S., OR FOR LONG-TERM CARE AND TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-10-109, C.R.S.

(2) ANY REPORT MADE BY THE CLERK OF THE PROBATE COURT PURSUANT TO THIS SECTION SHALL DESCRIBE THE REASON FOR THE REPORT AND INDICATE THAT THE REPORT IS MADE IN ACCORDANCE WITH 18 U.S.C. SEC. 922 (g) (4).

(3) THE CLERK OF THE PROBATE COURT SHALL TAKE ALL NECESSARY STEPS TO CANCEL A RECORD MADE BY THAT CLERK IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IF:

(a) THE PERSON TO WHOM THE RECORD PERTAINS MAKES A WRITTEN REQUEST TO THE CLERK; AND

(b) NO LESS THAN THREE YEARS BEFORE THE DATE OF THE WRITTEN REQUEST:

(I) THE COURT ENTERED AN ORDER PURSUANT TO SECTION 15-14-318, C.R.S., TERMINATING A GUARDIANSHIP ON A FINDING THAT THE PERSON IS NO LONGER AN INCAPACITATED PERSON, IF THE RECORD IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON A FINDING OF INCAPACITY;

(II) THE PERIOD OF COMMITMENT OF THE MOST RECENT ORDER OF COMMITMENT OR RECOMMITMENT EXPIRED, OR THE COURT ENTERED AN ORDER TERMINATING THE PERSON'S INCAPACITY OR DISCHARGING THE PERSON FROM COMMITMENT IN THE NATURE OF HABEAS CORPUS, IF THE RECORD IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON AN ORDER OF COMMITMENT TO THE CUSTODY OF THE DIVISION OF ALCOHOL AND DRUG ABUSE; EXCEPT THAT THE CLERK SHALL NOT CANCEL ANY RECORD PERTAINING TO A PERSON WITH RESPECT TO WHOM TWO RECOMMITMENT ORDERS HAVE BEEN ENTERED UNDER SECTION 25-1-311 (5) AND (6), C.R.S., OR WHO WAS DISCHARGED FROM TREATMENT UNDER SECTION 25-1-311 (9), C.R.S., ON THE GROUNDS THAT FURTHER TREATMENT WILL NOT BE LIKELY TO BRING ABOUT SIGNIFICANT IMPROVEMENT IN THE PERSON'S CONDITION; OR

(III) THE RECORD IN THE CASE WAS SEALED PURSUANT TO SECTION 27-10-107 (7), C.R.S., OR THE COURT ENTERED AN ORDER DISCHARGING THE PERSON FROM COMMITMENT IN THE NATURE OF HABEAS CORPUS PURSUANT TO SECTION 27-10-113, C.R.S., IF THE RECORD IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON A COURT ORDER FOR INVOLUNTARY CERTIFICATION FOR SHORT-TERM TREATMENT OF MENTAL ILLNESS.

SECTION 3. 18-4-412 (4), Colorado Revised Statutes, is amended to read:

18-4-412. Theft of medical records or medical information - penalty. (4) The obtaining, accessing, use, or disclosure of relevant medical records or medical information pursuant to 18 U.S.C. sec. 922 (t) and ~~section 24-33.5-424~~ SECTIONS 24-33.5-424, 13-5-142, AND 13-9-123, C.R.S., by the Colorado bureau of investigation, THE CLERK OF THE COURT OF ANY JUDICIAL DISTRICT IN THE STATE, THE CLERK OF THE PROBATE COURT OF THE CITY AND COUNTY OF DENVER, or by any of ~~its~~ THEIR employees and accessing such records and information through the NICS system shall not constitute theft of a medical record or medical information under this section.

SECTION 4. Effective date - applicability. (1) This act shall take effect January 1, 2003.

(2) This act shall apply to court orders entered on and after July 1, 2002.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Stan Matsunaka
PRESIDENT OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO