

**Second Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 02-0777.01 John Hershey

HOUSE BILL 02-1287

HOUSE SPONSORSHIP

Veiga,

SENATE SPONSORSHIP

Phillips,

House Committees

State, Veterans, & Military Affairs

Senate Committees

Judiciary

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Directs the state court administrator to provide access to the integrated Colorado on-line network (ICON) and other electronic databases of court records to the Colorado bureau of investigation for use in background investigations for firearm transfers. Specifies that the bureau may search the ICON and other databases maintained by the state judicial department.

Directs the clerk of the court of every judicial district in the state

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.

SENATE
Amended 2nd Reading
March 27, 2002

HOUSE
3rd Reading Unamended
February 27, 2002

HOUSE
Amended 2nd Reading
February 26, 2002

and the probate court of the city and county of Denver to report to the national instant criminal background check system the name of each person with respect to whom the court has issued:

- A finding of incapacity;
- An order of commitment to the custody of the division of alcohol and drug abuse in the department of human services; and
- An order for involuntary certification for short-term treatment of mental illness, for extended certification for treatment of mental illness, or for long-term care and treatment of mental illness.

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

2

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

6 **13-5-142. National instant criminal background check system**
7 **- reporting.** (1) BEGINNING JULY 1, 2002, THE CLERK OF THE COURT OF
8 EVERY JUDICIAL DISTRICT IN THE STATE SHALL PERIODICALLY REPORT THE
9 FOLLOWING INFORMATION TO THE NATIONAL INSTANT CRIMINAL
10 BACKGROUND CHECK SYSTEM CREATED BY THE FEDERAL "BRADY
11 HANDGUN VIOLENCE PREVENTION ACT" (P.L. NO. 103-159), THE
12 RELEVANT PORTION OF WHICH IS CODIFIED AT 18 U.S.C. SEC. 922 (t):

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

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

1 (c) THE NAME OF EACH PERSON WITH RESPECT TO WHOM THE
2 COURT HAS ENTERED AN ORDER FOR INVOLUNTARY CERTIFICATION FOR
3 SHORT-TERM TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION
4 27-10-107, C.R.S., FOR EXTENDED CERTIFICATION FOR TREATMENT OF
5 MENTAL ILLNESS PURSUANT TO SECTION 27-10-108, C.R.S., OR FOR
6 LONG-TERM CARE AND TREATMENT OF MENTAL ILLNESS PURSUANT TO
7 SECTION 27-10-109, C.R.S.

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

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

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

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

20 (I) THE COURT ENTERED AN ORDER PURSUANT TO SECTION
21 15-14-318, C.R.S., TERMINATING A GUARDIANSHIP ON A FINDING THAT THE
22 PERSON IS NO LONGER AN INCAPACITATED PERSON, IF THE RECORD IN THE
23 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON
24 A FINDING OF INCAPACITY;

25 (II) THE PERIOD OF COMMITMENT OF THE MOST RECENT ORDER OF
26 COMMITMENT OR RECOMMITMENT EXPIRED, OR THE COURT ENTERED AN
27 ORDER TERMINATING THE PERSON'S INCAPACITY OR DISCHARGING THE

1 PERSON FROM COMMITMENT IN THE NATURE OF HABEAS CORPUS, IF THE
2 RECORD IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
3 SYSTEM IS BASED ON AN ORDER OF COMMITMENT TO THE CUSTODY OF THE
4 DIVISION OF ALCOHOL AND DRUG ABUSE, EXCEPT THAT THE CLERK SHALL
5 NOT CANCEL ANY RECORD PERTAINING TO A PERSON WITH RESPECT TO
6 WHOM TWO RECOMMITMENT ORDERS HAVE BEEN ENTERED UNDER SECTION
7 25-1-311 (5) AND (6), C.R.S., OR WHO WAS DISCHARGED FROM
8 TREATMENT UNDER SECTION 25-1-311 (9), C.R.S., ON THE GROUNDS THAT
9 FURTHER TREATMENT WILL NOT BE LIKELY TO BRING ABOUT SIGNIFICANT
10 IMPROVEMENT IN THE PERSON'S CONDITION; OR

11 (III) THE RECORD IN THE CASE WAS SEALED PURSUANT TO SECTION
12 27-10-107 (7), C.R.S., OR THE COURT ENTERED AN ORDER DISCHARGING
13 THE PERSON FROM COMMITMENT IN THE NATURE OF HABEAS CORPUS
14 PURSUANT TO SECTION 27-10-113, C.R.S., IF THE RECORD IN THE
15 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON
16 A COURT ORDER FOR INVOLUNTARY CERTIFICATION FOR SHORT-TERM
17 TREATMENT OF MENTAL ILLNESS.

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

20 **13-9-123. National instant criminal background check system**
21 **- reporting.** (1) BEGINNING JULY 1, 2002, THE CLERK OF THE PROBATE
22 COURT SHALL PERIODICALLY REPORT THE FOLLOWING INFORMATION TO
23 THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM CREATED
24 BY THE FEDERAL "BRADY HANDGUN VIOLENCE PREVENTION ACT" (P.L.
25 No. 103-159), THE RELEVANT PORTION OF WHICH IS CODIFIED AT 18
26 U.S.C. SEC. 922 (t):

27 (a) THE NAME OF EACH PERSON WHO HAS BEEN FOUND TO BE

1 INCAPACITATED BY ORDER OF THE COURT PURSUANT TO PART 3 OF ARTICLE
2 14 OF TITLE 15, C.R.S.;

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

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

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

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

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

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

25 (I) THE COURT ENTERED AN ORDER PURSUANT TO SECTION
26 15-14-318, C.R.S., TERMINATING A GUARDIANSHIP ON A FINDING THAT THE
27 PERSON IS NO LONGER AN INCAPACITATED PERSON, IF THE RECORD IN THE

1 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON
2 A FINDING OF INCAPACITY;

3 (II) THE PERIOD OF COMMITMENT OF THE MOST RECENT ORDER OF
4 COMMITMENT OR RECOMMITMENT EXPIRED, OR THE COURT ENTERED AN
5 ORDER TERMINATING THE PERSON'S INCAPACITY OR DISCHARGING THE
6 PERSON FROM COMMITMENT IN THE NATURE OF HABEAS CORPUS, IF THE
7 RECORD IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
8 SYSTEM IS BASED ON AN ORDER OF COMMITMENT TO THE CUSTODY OF THE
9 DIVISION OF ALCOHOL AND DRUG ABUSE, EXCEPT THAT THE CLERK SHALL
10 NOT CANCEL ANY RECORD PERTAINING TO A PERSON WITH RESPECT TO
11 WHOM TWO RECOMMITMENT ORDERS HAVE BEEN ENTERED UNDER SECTION
12 25-1-311 (5) AND (6), C.R.S., OR WHO WAS DISCHARGED FROM
13 TREATMENT UNDER SECTION 25-1-311 (9), C.R.S., ON THE GROUNDS THAT
14 FURTHER TREATMENT WILL NOT BE LIKELY TO BRING ABOUT SIGNIFICANT
15 IMPROVEMENT IN THE PERSON'S CONDITION; OR

16 (III) THE RECORD IN THE CASE WAS SEALED PURSUANT TO SECTION
17 27-10-107 (7), C.R.S., OR THE COURT ENTERED AN ORDER DISCHARGING
18 THE PERSON FROM COMMITMENT IN THE NATURE OF HABEAS CORPUS
19 PURSUANT TO SECTION 27-10-113, C.R.S., IF THE RECORD IN THE
20 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IS BASED ON
21 A COURT ORDER FOR INVOLUNTARY CERTIFICATION FOR SHORT-TERM
22 TREATMENT OF MENTAL ILLNESS.

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

25 **18-4-412. Theft of medical records or medical information -**
26 **penalty. (4) The obtaining, accessing, use, or disclosure of relevant**
27 **medical records or medical information pursuant to 18 U.S.C. sec. 922 (t)**

1 ~~and section 24-33.5-424~~ SECTIONS 24-33.5-424, 13-5-142, AND 13-9-123,
2 C.R.S., by the Colorado bureau of investigation, THE CLERK OF THE
3 COURT OF ANY JUDICIAL DISTRICT IN THE STATE, THE CLERK OF THE
4 PROBATE COURT OF THE CITY AND COUNTY OF DENVER, or by any of its
5 THEIR employees and accessing such records and information through the
6 NICS system shall not constitute theft of a medical record or medical
7 information under this section.

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

10 (2) This act shall apply to court orders entered on and after July
11 1, 2002.

12 [REDACTED]

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