

REMOVAL OF FIREARM DISABILITY TRAINING

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Introduction

In the last few years gun violence has been the focus of a national dialogue due to recent mass shootings. Mass shootings are extremely rare and account for one tenth of 1% of all firearm-related homicides in the United States. (Consortium for Risk-Based Firearm Policy, 2013)¹ Much of the focus by the media has been on the relationship between mental illness and violence. Research shows that the large majority of people with mental illness do not engage in violence and that violence is caused by factors other than mental illness. (Consortium for Risk-Based Firearm Policy, 2013)² Only about 4% of violence in the United States is attributable to mental illness. (Consortium for Risk-Based Firearm Policy, 2013)³ Research also suggests that a small group of individuals, at certain times, with serious mental illness are at an elevated risk of violence. (Consortium for Risk-Based Firearm Policy, 2013)⁴ It is also important to remember that those with serious mental illness have high rates of co-occurring substance use, which is a risk factor for violence in the general population. (Consortium for Risk-Based Firearm Policy, 2013)⁵ Sixty-one percent of the gun deaths each year in the United States are due to suicide. (Cornell, Evans, Guerra, Kinscherff, Mankowski, Randazzo, Scrivner, Sorenson, Tynan, and Webster, 2013)⁶

The Brady law restricts certain individuals from purchasing firearms or ammunition, including those with mental health adjudications. The Brady law also requires background checks to be performed before most firearms are purchased. To meet this requirement, the National Instant Criminal Background Check System (NICS) was created. States are required to provide certain information, including mental health adjudications, to NICS.

Nebraska submits mental health adjudications to NICS via the Nebraska State Patrol. The District Court Clerks provide the Nebraska Department of Health and Human Services and the Nebraska State Patrol electronic information regarding an order of commitment, discharge of a commitment, or the removal of a firearm-related disability

¹ Consortium for Risk-Based Firearm Policy (2013, December) Gun Violence: Prediction, Prevention, and Policy: An Evidence-Based Approach for State Policy, 4.

² Consortium for Risk-Based Firearm Policy (2013, December) Gun Violence: Prediction, Prevention, and Policy: An Evidence-Based Approach for State Policy, 5.

³ Consortium for Risk-Based Firearm Policy (2013, December) Gun Violence: Prediction, Prevention, and Policy: An Evidence-Based Approach for State Policy, 6.

⁴ Consortium for Risk-Based Firearm Policy (2013, December) Gun Violence: Prediction, Prevention, and Policy: An Evidence-Based Approach for State Policy, 6.

⁵ Consortium for Risk-Based Firearm Policy (2013, December) Gun Violence: Prediction, Prevention, and Policy: An Evidence-Based Approach for State Policy, 6.

⁶ Cornell, D., Evans Jr., A.C., Guerra, N.G., Kinscherff, R., Mankowski, E., Randazzo, M., Scrivner, E., Sorenson, S., Tynan, W.D., Webster, D.W., American Psychological Association (2013) Gun Violence: Prediction, Prevention, and Policy, 4.

within 30 days of the order. The Nebraska State Patrol electronically sends the information received from the District Court Clerk to the NICS database.

LB512 was brought before the legislature in 2011 due to the Brady law. LB512 addresses the removal of a firearm-related disability for someone who has been committed by a mental health board. Neb. Rev. Stat. §69-2402 states that a “Firearm-related disability means a person is not permitted to (a) purchase, possess, ship, transport, or receive a firearm under either state or federal law, (b) obtain a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404, or (c) obtain a permit to carry a concealed handgun under the Concealed Handgun Permit Act.”

Forms

A person who has a firearm-related disability may petition the mental health board to have the firearm-related disability removed. The Division of Behavioral Health’s website http://dhhs.ne.gov/behavioral_health/Pages/FirearmRestoration.aspx outlines the process for a subject of a mental health board commitment to apply to have their firearm-related disability removed. This website contains the articles referenced in the introduction. These articles may provide guidance on additional issues related to the removal of a firearm-related disability. The Division of Behavioral Health may provide the subject the names of all of the mental health boards that have committed the subject by completing and submitting the release found on the Division of Behavioral Health website. The Division of Behavioral Health does not provide templates of the forms that the subject will need to file.

The removal of the firearm disability order template is located at http://dhhs.ne.gov/behavioral_health/Pages/beh_commit_commit.aspx. This template has been approved by the Nebraska State Patrol and the Bureau of Alcohol, Tobacco, and Firearms.

Additional information from the Department of Health and Human Services, Division of Behavioral Health, regarding the removal of a firearm-related disability can be found at: http://dhhs.ne.gov/behavioral_health/Pages/beh_commit_handgun.aspx

Procedure

The subject can request a hearing before the mental health board to present his or her case for removal of a firearm-related disability. Neb. Rev. Stat. §71-963(2)(a) states a petition for removal of a firearm-related disability should be granted if the mental health board determines:

1. The subject will not be likely to act in a manner dangerous to public safety and
2. The removal of the firearm-related disability would not be contrary to the public interest.

Neb. Rev. Stat. §71-963(2)(b) provides that to determine these factors the mental health board should consider evidence that addresses:

1. Circumstances around the mental health commitment or adjudication;
2. The subject's record, which must include the subject's mental health and criminal history records;
3. The subject's reputation through, at a minimum, character witness statements, testimony, or other character evidence; and
4. Changes in the subject's condition, treatment, treatment history, or circumstances relevant to the relief sought.

Neb. Rev. Stat. §71-955 governs the rules of evidence that apply in all hearings held under the Nebraska Mental Health Commitment Act. LB512 does not state the standard of proof. Other jurisdictions use the preponderance of the evidence standard.

A subject may appeal a denial of the removal of the firearm-related disability to the District Court. The review on appeal is de novo, which is based on a review of the record from the proceeding.