

Amendment to HB 1339-FN

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to background checks during motions to return firearms and ammunition.
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5 Amend the bill by replacing all after the enacting clause with the following:
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7 1 New Section; Criminal Background Checks; Motions for the Return of Firearms and
8 Ammunition. Amend RSA 159-D by inserting after section 3 the following new section:

9 159-D:4 Motions for the Return of Firearms and Ammunition.

10 I. In any matter pending before a court in New Hampshire where firearms and/or
11 ammunition have been seized or removed from an individual in connection with a restraining order
12 issued under RSA 173-B or RSA 633:3-a, an order pertaining to a criminal proceeding such as a bail
13 order, or any other order issued pursuant to the statutory or equitable authority of a court, the
14 individual whose firearms and/or ammunition property has been seized or removed shall be entitled
15 to the prompt return of his or her property upon the termination or expiration of the relevant order,
16 unless such individual is explicitly prohibited from receiving said property by state or federal
17 statute.

18 II. A court shall not be required to request, conduct, or receive the results of a background
19 check prior to returning firearm property to its owner. Should any New Hampshire court require, at
20 its discretion, that a background check be conducted on an individual prior to the return of his or her
21 firearm property, the following conditions shall apply:

22 (a) Upon receipt of a motion or other request for the return of firearms, whether written
23 or oral, the court shall request a National Instant Criminal Background Check System (NICS) check
24 with the New Hampshire department of safety within 2 business days.

25 (b) The department of safety shall initiate a NICS check and shall provide a conclusive
26 response to the court within 10 business days of receiving the court's request stating either "proceed"
27 or "deny." A "deny" response shall only be provided if the NICS check depicts that the individual is
28 clearly prohibited from possessing a firearm pursuant to state or federal law. If the NICS check is
29 inconclusive and the department of safety cannot explicitly demonstrate that the individual is
30 prohibited from possessing a firearm within 10 business days of the court's request, the department
31 of safety may provide a "proceed" response to the requesting court.

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1 (c) If the department of safety issues a “deny” response, it must provide a specific
2 citation to statute, such as one of the prohibited categories included in 18 USC §922(g), and a
3 narration of the specific facts relied upon for finding that the individual is prohibited from
4 possessing a firearm. The narration supporting a "deny" response shall be held in a confidential
5 record with the court and only accessible to court staff, the individual seeking the return of firearms,
6 and his or her designated legal counsel.

7 (d) Should the court receive a “deny” response from the department of safety, the
8 individual seeking the return of firearms property shall be promptly notified and may, within 10
9 business days of receiving notice, request that the court hold a hearing on the matter. Any such
10 hearing shall be scheduled within 10 business days of the court's receiving such a request. At the
11 hearing, the department of safety shall attend and shall hold the burden to demonstrate, by clear
12 and convincing evidence, that the individual seeking the return of firearms property is prohibited
13 from receiving said property under state or federal law. Should the department of safety fail to
14 attend or to meet its burden, the court shall order that the firearms property at issue be returned.

15 (e) Should any person seeking the return of firearms be aggrieved by an order made by
16 the trial court pursuant to the department of safety’s determination pursuant to subparagraph II(c),
17 or the court’s determination after conducting a hearing as set forth in subparagraph II(d), such
18 person shall be entitled to appeal the court’s decision within 30 days, and have his or her case heard
19 by the New Hampshire supreme court. In any such case, a transcript of the proceedings and the
20 trial court’s record shall be transmitted to the supreme court in full, without any fee charged to the
21 petitioner.

22 2 Effective Date. This act shall take effect January 1, 2025.

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2024-0605h

AMENDED ANALYSIS

This bill provides a procedure for conducting a discretionary background check prior to the return of firearms and/or ammunition in a court proceeding.