

HB 1711-FN - AS AMENDED BY THE HOUSE

28Mar2024... 0431h

2024 SESSION

24-3144

09/08

HOUSE BILL

1711-FN

AN ACT

authorizing the state to report mental health data for firearms background check purposes and providing for processes for confiscation of firearms following certain mental health-related court proceedings and for relief from mental health-related firearms disabilities.

SPONSORS:

Rep. Roy, Rock. 31; Rep. Stone, Sull. 8; Rep. Meuse, Rock. 37; Rep. Monteil, Ches. 15

COMMITTEE:

Criminal Justice and Public Safety

ANALYSIS

This bill authorizes the state to report mental health data for firearms background check purposes and provides for processes for the confiscation of firearms following certain mental health-related court proceedings and for relief from mental health-related firearms disabilities.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT authorizing the state to report mental health data for firearms background check purposes and providing for processes for confiscation of firearms following certain mental health-related court proceedings and for relief from mental health-related firearms disabilities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Short Title. This bill shall be known as "The Chief Bradley Haas Mental Health Firearms
2 Reporting Act".

3 2 Sale of Firearms; Criminal History Record Check, Mental Health Record Check, and
4 Protective Order Check. Amend RSA 159-D:1 to read as follows:

5 159-D:1 Sale of Firearms; Criminal History Record **Check, Mental Health Record Check**, and
6 Protective Order Check.

7 The department of safety may become the point of contact for the federal government for the
8 purposes of the National Instant Criminal Background Check System (NICS).

9 3 New Chapter; Mental Health Reporting for Firearm Background Checks. Amend RSA by
10 inserting after chapter 159-E the following new chapter:

11 CHAPTER 159-F

12 MENTAL HEALTH REPORTING FOR FIREARM BACKGROUND CHECKS

13 159-F:1 Short Title.

14 This chapter shall be known as "Bradley's Law" in honor of retired Police Chief Bradley Haas
15 who was shot and killed while defending the lives and safety of the patients and staff of the New
16 Hampshire Hospital.

17 159-F:2 Mental Health Reporting Authorized.

18 I. In compliance with the federal NICS Improvement Amendments Act of 2007, Public Law
19 110-180 and the Brady Handgun Violence Prevention Act of 1993, Public Law 103-159, the New
20 Hampshire judicial branch and the department of safety are authorized to report to the National
21 Instant Criminal Background Check System (NICS) records concerning persons who have been
22 disqualified from possessing or receiving a firearm under 18 U.S.C. section 922(g)(4) because they
23 have been:

24 (a) Adjudicated as not guilty of a crime by reason of insanity;

25 (b) Adjudicated as incompetent to stand trial and found by the court to be a danger to
26 themselves or others pursuant to RSA 171-B:2, 135-E:5 or 135:17-a; or

27 (c) Involuntarily committed to a mental health facility pursuant to RSA 135-C:34-54.

28 159-F:3 Entry Into the National Instant Criminal Background Check System.

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1 I. Notwithstanding any other provision of law, including the requirement of a closed hearing
2 and file under RSA 135-C:43, when a judge orders a nonemergency involuntary admission pursuant
3 to RSA 135-C:34-54 or a commitment pursuant to RSA 171-B:2, and the order is one that qualifies
4 under 18 U.S.C. section 922(g)(4), the court shall retain a record of the court order and promptly
5 cause the disposition to be entered in the NICS Indices. When a person is found not guilty by reason
6 of insanity, or incompetent to stand trial and found by the court to be a danger to himself or herself
7 or others court pursuant to RSA 135-E or 135:17-a, as provided in this section, the department of
8 safety shall promptly cause that disposition to be entered in the NICS Indices, in accordance with
9 paragraph II.

10 II. The court or the department of safety shall report only the person's name, an identifier
11 signifying the applicable prohibition under 18 U.S.C. section 922(g), the person's social security
12 number, and date of birth.

13 III. If a court determines that a person is not competent to stand trial and finds that the
14 person is also a danger to themselves or others, but, after 90 days, the person is not committed
15 pursuant to RSA 171-B:2, 135-C:34-54, or 135-E:5, upon the motion of any party or sua sponte, the
16 court may transmit that finding to the department of safety for entry into the NICS Indices.

17 159-F:4 Notifications; Confiscation of Firearms.

18 I. Before the close of the hearing conducted pursuant to RSA 135:17-a, RSA 135-C:34-54,
19 RSA 135-E:5, or RSA 171-B:2, the court shall inquire of the person if he or she currently owns or has
20 access to any firearms, and if so, where they are located. If the person answers affirmatively, the
21 court shall inform the person that the court may order law enforcement to confiscate those firearms
22 or ammunition. In addition, the court shall offer the opportunity for the person to make voluntary
23 arrangements to relinquish possession of his or her firearms or ammunition to law enforcement or to
24 another individual in accordance with paragraph III.

25 II. On the conclusion of a proceeding under RSA 135:17-a establishing dangerousness under
26 RSA 159-F:3, or on an order of commitment under RSA 135-C:34-54, 135-E:5, or 171-B:2, or upon the
27 entry of a judgment of not guilty by reason of insanity, the court shall notify the person that such
28 person is prohibited under federal law from purchasing, possessing, carrying, or transporting a
29 firearm unless a petition for relief from disability is subsequently granted pursuant to RSA 159-G.

30 III. The court may simultaneously with any order of commitment issue an order:

31 (a) Directing the person to make arrangements to voluntarily relinquish possession of
32 any firearms or ammunition he or she owns to law enforcement;

33 (b) Directing the person to transfer any firearms to another person with whom the
34 person committed does not cohabitate, who is not himself or herself a prohibited person, and to
35 whom the court determines such transfer should be permitted; or

36 (c) Directing law enforcement to confiscate any firearms or ammunition owned by the
37 person no later than 48 hours after the order is issued.

1 IV. Firearms voluntarily relinquished or confiscated by law enforcement may be transferred
2 to a federally licensed firearms dealer, at the person's own expense, for further disposition at the
3 request of the owner and upon order of the court. Retrieval and disposal of any firearms not
4 transferred to an individual or federally licensed firearms dealer shall be through the process as set
5 forth in RSA 595-A:6.

6 159-F:4 Notifications; Confiscation of Firearms.

7 I. On the conclusion of a proceeding under RSA 135:17-a establishing dangerousness under
8 RSA 159-F:3, or on an order of commitment under RSA 135-C:34-54, 135-E:5, or 171-B:2, or upon the
9 entry of a judgment of not guilty by reason of insanity, the court shall notify the person that such
10 person is prohibited under federal law from purchasing, possessing, carrying, or transporting a
11 firearm unless a petition for relief from disability is subsequently granted pursuant to RSA 159-G.
12 The court shall inquire of the person if they currently own or have access to any firearms, and if so,
13 where they are located.

14 II. The court may simultaneously with any order of commitment issue an order to law
15 enforcement to confiscate any firearms or ammunition owned by the person. Law enforcement shall
16 carry out the order of the court as soon as possible, but in no case later than 48 hours after the order
17 is issued. The person may transfer any firearms to another person with whom the person committed
18 does not cohabitate and who is not themselves a prohibited person, and upon an order of the court
19 permitting such transfer. The department of safety shall provide the court with the information
20 necessary to make this notification. Alternatively, the firearms may be transferred to a federally
21 licensed firearms dealer, at the person's own expense, for further disposition at the request of the
22 owner and upon order of the court. Retrieval and disposal of any firearms not transferred to an
23 individual or federally licensed firearms dealer shall be through the process as set forth in RSA 595-
24 A:6.

25 159-F:5 Exclusions.

26 I. Neither the court nor the department of safety shall transmit information on persons
27 seeking voluntary treatment or on persons involuntarily hospitalized for assessment or evaluation.

28 II. Information the court or the department of safety causes to be transmitted to NICS
29 pursuant to this chapter shall not be considered as public records pursuant to RSA 91-A.

30 III. The records entered into the NICS Indices pursuant to this chapter shall only be used
31 for purposes of determining eligibility to purchase, possess, carry, or transfer a firearm or
32 ammunition. Information furnished shall not include confidential medical or treatment records,
33 confidential tax or financial data, or library records.

34 IV. Neither the court nor the department of safety shall submit the name of any person to
35 NICS signifying a prohibition under 18 U.S.C. section 922(g) except pursuant to the processes
36 outlined in this chapter.

37 195-F:6 Appointment of Attorney.

1 Unless otherwise provided in statute, a person may be appointed an attorney by the court for
2 the purposes of any hearing referred to in this chapter.

3 4 New Paragraph; Access to Governmental Records and Meetings; Exemptions. Amend RSA 91-
4 A:5 by inserting after paragraph I-a the following new paragraph:

5 I-b. Information caused to be transmitted by the court to the National Instant Criminal
6 Background Check System pursuant to RSA 159-F:5, II.

7 5 New Chapter; Relief from Disabilities. Amend RSA by inserting after chapter 159-F the
8 following new chapter:

9 CHAPTER 159-G

10 RELIEF FROM DISABILITIES

11 159-G:1 Relief from Disabilities Petition.

12 Any person who has a non-emergency involuntary commitment under RSA 135-C:34-54 or has
13 been found not guilty by reason of insanity or incompetent to stand trial and found by the court to be
14 a danger to himself or herself or others pursuant to RSA 171-B:2, 135-E:5 or 135:17-a, as outlined in
15 RSA 159-F, and who is subject to the firearm disabilities of 18 U.S.C. section 922 (g)(4), may petition
16 for a review of the person's mental capacity to possess or purchase a firearm no sooner than the
17 following time frames. Individuals found not guilty by reason of insanity may file for relief with the
18 court 6 months after the finding of not guilty by reason of insanity status, unless the person was
19 committed to an institution pursuant to RSA 651:8-b, in which case the person may file for relief 15
20 days after absolute discharge. Individuals found incompetent to stand trial and found by the court
21 to be a danger to themselves or others under RSA 135:17-a, as outlined in RSA 159-F, may file for
22 relief with the court 6 months after the finding of incompetency, unless the person was committed to
23 an institution pursuant to RSA 171-B:2 or RSA 135-C:34-54, in which case the person may file for
24 relief 15 days from when an absolute discharge order has been filed with the probate court. A person
25 committed under RSA 135-E:5 may petition for relief 15 days after absolute discharge.

26 159-G:2 Psychiatric Examination.

27 Upon receipt of a petition for relief, the court shall schedule a hearing no later than 60 days after
28 the date the petition was filed. Simultaneously, the court shall order an independent psychiatric
29 examination be completed no more than 45 days from the date of the court's order. The independent
30 psychiatrist shall provide the court with an opinion as to whether the person is disabled by a mental
31 illness and is likely to act in a manner dangerous to public safety.

32 159-G:3 Hearing; Order; Appeals.

33 I. The petitioner may present evidence and call witnesses at the hearing on the petition.
34 The court shall make written findings of fact and conclusions of law on the issues before it and issue
35 a final order. The court may only consider applications for relief due to mental health adjudications
36 or commitments that occurred in New Hampshire. The court shall review the circumstances
37 regarding the firearms disabilities imposed by 18 U.S.C. section 922(g)(4), and records consisting of

1 at minimum mental health and any criminal record, if applicable, and the person's reputation
2 developed through character witness testimony, witness statements, or other character evidence.

3 II. The court shall grant the relief requested in the petition if the judge finds by clear and
4 convincing evidence that the petitioner will not be likely to act in a manner that is dangerous to
5 public safety and that granting the relief would not be contrary to the public interest. If the final
6 order grants relief, the court shall, as soon as possible, request that the NICS entry be redacted and
7 shall notify the United States Attorney General that the basis for the record being made available no
8 longer applies. The petitioner may appeal a final order denying relief within 30 days of the order to
9 the New Hampshire supreme court. The supreme court shall review the case de novo and has
10 discretion to review additional evidence.

11 III. If the motion for relief is denied, unless a court finds good cause for considering a
12 petition for relief sooner, the person may petition the court for relief again after 2 years have
13 elapsed.

14 6 Application Required. The attorney general shall make application for approval of section 5 of
15 this act to the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives, or other such
16 agency as may be required by federal law in order to ensure New Hampshire citizens are provided
17 with the ability to have their rights restored. RSA 159-F shall not take effect until the attorney
18 general receives federal approval of the restoration of rights process.

19 7 Contingency. Sections 2 - 5 of this act shall take effect on the date the attorney general
20 certifies to the secretary of state and director of the office of legislative services that the state has
21 received approval from the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives,
22 pursuant to section 6 of this act. If the attorney general does not receive such approval, sections 2 -
23 5 of this act shall not take effect.

24 8 Appropriation; New Hampshire Judicial Branch. The sum of \$1 for the fiscal year ending
25 June 30, 2025, is hereby appropriated to the New Hampshire judicial branch for the cost of
26 independent psychiatrist evaluations. The governor is authorized to draw a warrant for said sum
27 out of any money in the treasury not otherwise appropriated.

28 9 Repeal. RSA 126-AA:2, VI, relative to submission of information to NICS, is repealed.

29 10 Effective Date.

30 I. Sections 2 - 5 of this act shall take effect as provided in section 7 of this act.

31 II. The remainder of this act shall take effect 60 days after passage.

HB 1711-FN- FISCAL NOTE
AS INTRODUCED

AN ACT authorizing the state to report mental health data for firearms background check purposes and providing for processes for confiscation of firearms following certain mental health-related court proceedings and for relief from mental health-related firearms disabilities.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
Revenue Fund(s)	None			
Expenditures	\$0	Judicial Branch Position - \$84K in FY25, \$82K in FY26, and \$85K in FY27 Psychiatric Evaluations - Indeterminable Law Enforcement Training - Indeterminable		
Funding Source(s)	General Fund			
Appropriations	\$0	\$1	\$0	\$0
Funding Source(s)	General Fund			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ N/A

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	Law Enforcement Training - Indeterminable		
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Law Enforcement Training - Indeterminable		

METHODOLOGY:

This bill authorizes the State to report mental health data for firearms background check purposes and provides processes for confiscation of firearms following certain mental health-related court proceedings and for relief from mental health-related firearms disabilities.

The Judicial Branch states this bill would increase the volume of information that needs to be recorded and reported out of the domestic violence and protective order registries. The National Center for States Courts' weighted caseload study for New Hampshire found that there were insignificant registry staff for the current workloads. The Branch states, in the current budget, the legislature took action to address this, but adding additional critical reporting would require additional resources to be dedicated. However, the Branch believes the current and additional workload can be handled by adding a single new staff member at an estimated cost of approximately \$84,000 in FY 2025, \$82,000 in FY 2026, and \$85,000 in FY 2027. The Branch adds that it does not currently pay for psychiatric evaluations when performed and may need to hire additional staff, at an additional cost, which cannot be estimated at this time. It should be noted that this bill provides only \$1 to the Judicial Branch, in FY 2025, specifically for the cost of independent psychiatrist evaluations.

The Department of Safety states all software mechanisms are currently in place to accommodate this bill and it will require no additional staff or other cost to implement other than minimal staff training. The Department states there will need to be training provided relative to the confiscation of firearms and the process that shall ensue in those cases. The Department states training initiatives may come at a cost, but cannot be estimated at this time. This cost could apply to all law enforcement agencies throughout the state (state, county, and local).

The Department of Justice states any obligations this bill may impose on it would be absorbed by current staffing levels and will not result in any fiscal impact to the Department.

The Department of Health and Human Services states RSA 159-G, as proposed by this bill, would allow any person who has been civilly committed under RSA 135-C:34-54, or who has been found not guilty by reason of insanity (NGRI) or incompetent to stand trial, and who is subject to the firearm disabilities of 18 USC section 922(d)(4) and (g)(4) and RSA 159-F to petition the probate court for a civil review of the person's capacity to purchase or possess a firearm, which could have an impact on Department expenditures. Such a motion for relief may be filed only after six months has elapsed from the time the commitment order has expired, or six months after the person's NGRI or incompetence to stand trial status has ended. Upon receipt of a petition for relief the court shall order an independent psychiatric examination from the Department's Bureau of Behavioral Health to be completed prior to the hearing. The cost to the Department for these psychiatric evaluations will depend on how many petitions for relief are filed in any given year. The psychiatrists who perform examinations for commitment hearings under RSA 135-C:34-54 typically charge \$400 per hour, and it is anticipated that the hourly fee for examinations under proposed RSA 159-G would be the same. The psychiatrist would need to research the matter, which would entail a review of medical records and presumably an

interview with the person who filed the petition for relief. The psychiatrist would also need to draft a report and testify at the hearing. There would also be compensation for travel time. During FY 2023, the average invoice submitted by independent psychiatrists who perform evaluations for probate court nonemergency involuntary admission hearings was \$15,641.12. It is anticipated that the invoices submitted by independent psychiatrists who perform psychiatric examinations under proposed RSA 159-G would be in the same monetary range. There would be an additional cost to the Department if it opts to be a party at the hearing relative to the person's mental capacity to purchase and possess a firearm, and if it opts to be represented by counsel. Depending upon the number of petitions for relief that are filed, the Department may or may not be able to absorb this expense with existing resources.

AGENCIES CONTACTED:

Judicial Branch, Department of Safety, Department of Justice, and Department of Health and Human Services