



Montana Department of Justice

*Presentation by
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Federal Law

● “Gun Control Act” of 1968

- *Prohibitions Against Certain Persons Owning or Possessing Firearms:*
 - *Persons convicted in any court of a felony crime, 18 U.S.C. § 921(a)(20);*
 - *Persons who are fugitives from justice, 18 U.S.C. § 922(g)(2);*
 - *Persons who are unlawful users of or addicted to any controlled substance, 18 U.S.C. § 922(g)(3);*

Federal Law

- *Prohibitions Cont'd:*
 - ***Persons who have been adjudicated as mental defectives or have been committed to any mental institution,***
18 U.S.C. § 922(g)(4);
 - *Persons who are aliens and are illegally or unlawfully in the United States,*
18 U.S.C. § 922(g)(5);
 - *Persons who have been discharged from the U.S. Armed Forces under dishonorable conditions,*
18 U.S.C. § 922(g)(6);

Federal Law

- *Prohibitions Cont'd:*
 - *Persons who, having been citizens of the U.S., have renounced their citizenship,
18 U.S.C. § 922(g)(7);*
 - *Persons subject to a court restraining order against an intimate partner or child,
18 U.S.C. § 922(g)(8);*
 - *Persons convicted of domestic violence,
18 U.S.C. § 922(g)(9);*
 - *Persons who are under indictment for a felony crime,
18 U.S.C. § 922(n);*

Federal Law

- The terms in the mental defective prohibition in § 922(g)(4) have been defined in 27 C.F.R. § 478.11:
 - Adjudicated as a mental defective. (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
 - (1) Is a danger to himself or to others; or
 - (2) Lacks the mental capacity to contract or manage his own affairs.
 - (b) The term shall include --
 - (1) A finding of insanity by a court in a criminal case; and
 - (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

Federal Law

- Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes a commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.
- Mental institution. Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Federal Law

- “Brady Handgun Violence Prevention Act” of 1993
 - Requires Federal Firearms Licensees to conduct background checks on transferees/purchasers of firearms. This system is known as the National Instant Criminal Background Check System (NICS).

Federal Law

- NICS Improvement Amendment Act 2007
 - Requires states to provide mental defective records to NICS and to establish an appeals and restoration process for persons who have been denied firearms due to mental defective status. A state's failure to report this information will result in the state being ineligible for newly-created NIAA grants, beginning in 2008. Beginning in 2014, the state will begin losing Byrne grant funds at an incremental rate, up to 5% after five years.

Federal Law

- Since 1998, when the FBI launched NICS, the database has grown to include the names of more than 8.3 million illegal immigrants, felons, fugitives, spouse abusers, drug addicts, and the mentally ill that are prohibited from purchasing guns.

State Compliance

- States actively working to provide mental defective names to NICS: California, Colorado, Texas, Michigan, Ohio, North Carolina, Florida, Virginia, Missouri, New York

State Compliance

- States not reporting at all before 2012: Alaska, Delaware, Idaho, Louisiana, Massachusetts, Oregon, Pennsylvania, Rhode Island
- Most States: Minimal Reporting (including MT)
- The GAO reported in 2012 that mental health records in NICS increased 800% from 2004 to 2011, but most gains came from 12 states

Montana Law

- There are several protections in Mont. Code Ann. § 53-21-101 et. seq. for persons treated for mental illness. These include:
 - Files shall be kept separate and sealed five days prior to a committed person's release, -103;
 - A committed person does not lose civil and legal rights unless specifically directed in a court order, -141;
 - No admitted person is required to be fingerprinted, -143;
 - Records are to be kept confidential, with some exceptions, -166;
 - The fact of treatment is not to be used for discrimination, -189; and
 - The fact of treatment is not to be used in subsequent court proceedings, -190.

Montana Law

- Records are to be kept confidential, with some exceptions, -166;
 - Predates Federal Legislation Creating NICS
 - Amended in 2001 for Mental Health Ombudsman
- Failed legislation amending 53-21-166, MCA?
 - Unknown

Montana Law

- Montana does not currently report to NICS persons who meet the federal prohibition of a mentally defective person or a person committed for mental treatment.
- However, it does appear that Montana reports some categories of persons under the “mental defective” definition. We report those who have been acquitted or found not competent to stand trial for a crime due to mental incompetence or insanity.

Montana Law

- Montana does not currently have a system to restore the gun purchasing rights when someone is no longer a mental defective

Montana Law

○ States MT Recognizes for CWP

- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Florida
- Georgia
- Idaho
- Indiana

Iowa
Kansas
Kentucky
Louisiana
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Nebraska
Nevada
New Jersey
New Mexico
New York
North Carolina

North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin
Wyoming

Montana Law

- For information on which states recognize Montana's CWPs, we encourage people to confirm with each individual state

(27 States? - Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin, Wyoming)

- Some States Require Mental Health Histories for CWP

Legislative Considerations

- Maintaining Privacy Protections of Mental Health Patients
- Gun Ownership
 - How to Address Gun Ownership When Someone Deemed a “Mental Defective”
 - How to Restore Rights When Someone is No Longer a “Mental Defective”
- Federal Funding of Law Enforcement

Potential Participants

- ◉ Gun Advocates
- ◉ Mental Health Advocates & Providers
- ◉ District Judges
- ◉ Federal Agencies
- ◉ Gun Vendors
- ◉ Board of Crime Control