

I am writing this email to share the Law Center to Prevent Gun Violence's analysis of the "relief from disability" language in [S.B. 141](#). The Law Center to Prevent Gun Violence was founded by lawyers after a mass shooting at a law firm in San Francisco in 1993, and provides free legal expertise to state and local governments across the country in support of gun violence prevention.

The "relief from disability" language in [S.B. 141](#) sets an unusually low bar for disqualified individuals to regain their eligibility to possess firearms. [S.B. 141](#) would allow a person to regain his or her eligibility to possess firearms if 18 months have passed and the person is no longer a "person in need of treatment."

Many states have enacted "relief from disability" language based on the federal NICS Improvement Act of 2007, which made certain grants available to states that established relief from disability programs. According to the federal Act, a state has enacted a program that meets the Act's requirements if, among other things, it "provides that a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities ..., and the person's record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." Consequently, unlike the language in [S.B., 141](#), the language enacted by other states requires a disqualified individual to show that he or she "will not be likely to act in a manner dangerous to public safety" before obtaining relief from disability.

This language protects public safety by ensuring that dangerous individuals will not be able to regain their eligibility to possess guns. 15 states have enacted relief from disability programs that allow the court to grant the relief only if the person "will not be likely to act in a manner dangerous to public safety." These are the 15 state laws that use this language:

Delaware: 11 Del. C. § 1448A

Hawaii: HRS § 134-6.5

Idaho: Idaho Code § 66-356

Illinois: 430 ILCS 65/10

Kansas: K.S.A. § 75-7c27

Kentucky: KRS § 237.108

Louisiana: La. R.S. § 28:57

Mississippi: Miss. Code Ann. § 97-37-5

Missouri: § 571.092 R.S.Mo.

Nebraska: R.R.S. Neb. § 71-963

New York: NY CLS Men Hyg § 7.09

N.C. Gen. Stat. § 122C-54.1

Pennsylvania: 18 Pa.C.S. § 6109

Virginia: Va. Code Ann. § 18.2-308.1:2

West Virginia: W. Va. Code § 61-7A-5

The inclusion of this language protects public safety by ensuring that only people who can safely own a gun are able to obtain relief from disability. It also enables the state to obtain grant funding for NICS reporting. According to the Bureau of Justice Statistics, 26 states [have already received over \\$72 million](#) in these grants. For more information about these grants, see [the application](#).

S.B. 141 would prevent a person from regaining his or her gun eligibility for 18 months after release from the custody of the Department of Mental Health. This provision is supported by academic research that shows that people are more likely to be violent to themselves or others in the period immediately following release. (See page 14 in the Consortium for Risk-Based Firearms Policy, *Guns, Public Health, and Mental Illness*, at <http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/GPHMI-State.pdf>.) However, S.B. 141 would make it relatively easy for a person to regain his or her gun eligibility after this 18-month period is up. All he or she would have to show is that he or she is not a person in need of treatment, i.e., he or she is no longer committable. This standard is much easier to meet than the standard that he or she “will not be likely to act in a manner dangerous to public safety.” It will therefore be much easier for a person, after the 18-month period is up, to regain his or her gun eligibility in Vermont than it is in other states. In comparison with other states, the balance struck by S.B. 141 arguably provides for more restrictions in the period when a person is most dangerous (the period immediately following release), and less restrictions when the person is less likely to be dangerous (thereafter).

Opponents of the current language have objected to the 18-month waiting period. This provision should remain in the bill, unless the standard for obtaining relief from disability is significantly strengthened. The provision as a whole must protect public safety by ensuring that dangerous people are not able to regain their gun eligibility. Ideally, a person should not be able to regain his or her gun eligibility without obtaining the opinion of a mental health professional that the person will not be likely to act in a manner dangerous to public safety. This is the only way to ensure that people who have been properly identified by federal law as too dangerous to obtain firearms are not able to pass a background check and obtain access to firearms.

For our analysis regarding the reporting of dangerously mentally ill people to NICS, please see the attached toolkit, which we authored in conjunction with Americans for Responsible Solutions.

Please let me know if there is any further information I can help provide.

Sincerely,
Lindsay

Lindsay Nichols | Senior Attorney
Law Center to Prevent Gun Violence
268 Bush Street, #555
San Francisco, CA 94104

415-433-2062 ex. 303

lnichols@smartgunlaws.org