

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 294

02/04/2013 Authored by Rosenthal, Liebling, Yarusso and Paymar

The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; modifying the judicial process for restoring firearms
1.3 eligibility to certain persons who have become ineligible; modifying the judicial
1.4 challenge process for persons who have been denied a permit to carry a handgun;
1.5 amending Minnesota Statutes 2012, sections 609.165, subdivision 1d; 624.713,
1.6 subdivision 4; 624.714, subdivisions 6, 8, 12.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2012, section 609.165, subdivision 1d, is amended to read:

1.9 Subd. 1d. **Judicial restoration of ability to possess firearm by felon.** (a) A person
1.10 prohibited by state law from shipping, transporting, possessing, or receiving a firearm
1.11 because of a conviction or a delinquency adjudication for committing a crime of violence
1.12 may petition a court to restore the person's ability to possess, receive, ship, or transport
1.13 firearms and otherwise deal with firearms if at least five years have elapsed since the
1.14 person's sentence was discharged.

1.15 (b) A person petitioning the court under paragraph (a) shall serve a copy of the
1.16 petition by mail on the prosecutorial office that had jurisdiction over the crime of violence
1.17 and the corrections agent, if any, who supervised the person in the community before the
1.18 person's sentence was discharged.

1.19 (c) The court may grant the relief sought if the person shows good cause to do so
1.20 and the person ~~has been released from physical confinement~~ establishes by clear and
1.21 convincing evidence that: (1) the person is not likely to act in a manner that is dangerous
1.22 to public safety; and (2) the granting of relief is not contrary to the public interest.

1.23 (d) If a petition is denied, the person may not file another petition until three years
1.24 have elapsed without the permission of the court.

1.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.1 Sec. 2. Minnesota Statutes 2012, section 624.713, subdivision 4, is amended to read:

2.2 Subd. 4. **Restoration of firearms eligibility to civilly committed person; petition**
 2.3 **authorized.** (a) A person who is prohibited from possessing a firearm under subdivision
 2.4 1, due to commitment resulting from a judicial determination that the person is mentally
 2.5 ill, developmentally disabled, mentally ill and dangerous, or chemically dependent, may
 2.6 petition a court to restore the person's ability to possess a firearm.

2.7 (b) A person petitioning the court under paragraph (a) shall serve a copy of the
 2.8 petition by mail on the prosecutorial office responsible for the commitment.

2.9 ~~(b)~~ (c) The court may grant the relief sought in paragraph (a) in accordance with the
 2.10 principles of due process if the person establishes by clear and convincing evidence that
 2.11 the circumstances regarding the person's disqualifying condition and the person's record
 2.12 and reputation are determined to be such that:

2.13 (1) the person is not likely to act in a manner that is dangerous to public safety; and
 2.14 (2) the granting of relief would not be contrary to the public interest.

2.15 ~~(e)~~ (d) When determining whether a person has met the requirement of paragraph ~~(b)~~
 2.16 (c), clause (1), the court may consider evidence from a licensed medical doctor or clinical
 2.17 psychologist that the person is no longer suffering from the disease or condition that
 2.18 caused the disability or that the disease or condition has been successfully treated for a
 2.19 period of three consecutive years.

2.20 ~~(d)~~ (e) Review on appeal shall be de novo.

2.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.22 Sec. 3. Minnesota Statutes 2012, section 624.714, subdivision 6, is amended to read:

2.23 Subd. 6. **Granting and denial of permits.** (a) The sheriff must, within 30 days
 2.24 after the date of receipt of the application packet described in subdivision 3:

2.25 (1) issue the permit to carry;

2.26 (2) deny the application for a permit to carry solely on the grounds that the applicant
 2.27 failed to qualify under the criteria described in subdivision 2, paragraph (b); or

2.28 (3) deny the application on the grounds that there exists a ~~substantial~~ likelihood that
 2.29 the applicant is a danger to self or the public if authorized to carry a pistol under a permit.

2.30 (b) Failure of the sheriff to notify the applicant of the denial of the application
 2.31 within 30 days after the date of receipt of the application packet constitutes issuance of the
 2.32 permit to carry and the sheriff must promptly fulfill the requirements under paragraph (c).
 2.33 To deny the application, the sheriff must provide the applicant with written notification
 2.34 and the specific factual basis justifying the denial under paragraph (a), clause (2) or (3),
 2.35 including the source of the factual basis. The sheriff must inform the applicant of the

3.1 applicant's right to submit, within 20 business days, any additional documentation relating
 3.2 to the propriety of the denial. Upon receiving any additional documentation, the sheriff
 3.3 must reconsider the denial and inform the applicant within 15 business days of the result
 3.4 of the reconsideration. Any denial after reconsideration must be in the same form and
 3.5 substance as the original denial and must specifically address any continued deficiencies
 3.6 in light of the additional documentation submitted by the applicant. The applicant must be
 3.7 informed of the right to seek de novo review of the denial as provided in subdivision 12.

3.8 (c) Upon issuing a permit to carry, the sheriff must provide a laminated permit
 3.9 card to the applicant by first class mail unless personal delivery has been made. Within
 3.10 five business days, the sheriff must submit the information specified in subdivision 7,
 3.11 paragraph (a), to the commissioner for inclusion solely in the database required under
 3.12 subdivision 15, paragraph (a). The sheriff must transmit the information in a manner and
 3.13 format prescribed by the commissioner.

3.14 (d) Within five business days of learning that a permit to carry has been suspended
 3.15 or revoked, the sheriff must submit information to the commissioner regarding the
 3.16 suspension or revocation for inclusion solely in the databases required or permitted under
 3.17 subdivision 15.

3.18 (e) Notwithstanding paragraphs (a) and (b), the sheriff may suspend the application
 3.19 process if a charge is pending against the applicant that, if resulting in conviction, will
 3.20 prohibit the applicant from possessing a firearm.

3.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.22 Sec. 4. Minnesota Statutes 2012, section 624.714, subdivision 8, is amended to read:

3.23 Subd. 8. **Permit to carry voided.** (a) The permit to carry is void at the time that the
 3.24 holder becomes prohibited by law from possessing a firearm, in which event the holder
 3.25 must return the permit card to the issuing sheriff within five business days after the holder
 3.26 knows or should know that the holder is a prohibited person. If the sheriff has knowledge
 3.27 that a permit is void under this paragraph, the sheriff must give notice to the permit holder
 3.28 in writing in the same manner as a denial. Failure of the holder to return the permit within
 3.29 the five days is a gross misdemeanor unless the court finds that the circumstances or the
 3.30 physical or mental condition of the permit holder prevented the holder from complying
 3.31 with the return requirement.

3.32 (b) When a permit holder is convicted of an offense that prohibits the permit holder
 3.33 from possessing a firearm, the court must take possession of the permit, if it is available,
 3.34 and send it to the issuing sheriff.

4.1 (c) The sheriff of the county where the application was submitted, or of the county
 4.2 of the permit holder's current residence, may file a petition with the district court therein,
 4.3 for an order revoking a permit to carry on the grounds set forth in subdivision 6, paragraph
 4.4 (a), clause (3). An order shall be issued only if the sheriff meets the burden of proof and
 4.5 criteria set forth in subdivision 12. ~~If the court denies the petition, the court must award~~
 4.6 ~~the permit holder reasonable costs and expenses, including attorney fees.~~

4.7 (d) A permit revocation must be promptly reported to the issuing sheriff.

4.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.9 Sec. 5. Minnesota Statutes 2012, section 624.714, subdivision 12, is amended to read:

4.10 Subd. 12. **Hearing upon denial or revocation.** (a) Any person aggrieved by denial
 4.11 or revocation of a permit to carry may appeal by petition to the district court having
 4.12 jurisdiction over the county or municipality where the application was submitted. The
 4.13 petition must list the sheriff as the respondent. The district court must hold a hearing at
 4.14 the earliest practicable date and in any event no later than 60 days following the filing of
 4.15 the petition for review. The court may not grant or deny any relief before the completion
 4.16 of the hearing. The record of the hearing must be sealed. The matter must be heard de
 4.17 novo without a jury.

4.18 (b) The court must issue written findings of fact and conclusions of law regarding
 4.19 the issues submitted by the parties. The court must issue its writ of mandamus directing
 4.20 that the permit be issued and order other appropriate relief unless the sheriff establishes
 4.21 by ~~clear and convincing~~ a preponderance of the evidence:

4.22 (1) that the applicant is disqualified under the criteria described in subdivision 2,
 4.23 paragraph (b); or

4.24 (2) that there exists a ~~substantial~~ likelihood that the applicant is a danger to self or
 4.25 the public if authorized to carry a pistol under a permit. ~~Incidents of alleged criminal~~
 4.26 ~~misconduct that are not investigated and documented may not be considered.~~

4.27 (c) If an applicant is denied a permit on the grounds that the applicant is listed in
 4.28 the criminal gang investigative data system under section 299C.091, the person may
 4.29 challenge the denial, after disclosure under court supervision of the reason for that listing,
 4.30 based on grounds that the person:

4.31 (1) was erroneously identified as a person in the data system;

4.32 (2) was improperly included in the data system according to the criteria outlined in
 4.33 section 299C.091, subdivision 2, paragraph (b); or

4.34 (3) has demonstrably withdrawn from the activities and associations that led to
 4.35 inclusion in the data system.

5.1 ~~(d) If the court grants a petition brought under paragraph (a), the court must award~~
5.2 ~~the applicant or permit holder reasonable costs and expenses including attorney fees.~~

5.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.