

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 2081*
Judiciary I (Civil) Committee Substitute Adopted 6/12/08
Appropriations/Base Budget Committee Substitute Adopted 7/9/08
Fourth Edition Engrossed 7/10/08

Short Title: NICS Reporting/Restoration.

(Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE REPORTING OF INVOLUNTARY MENTAL
2 COMMITMENT TO THE NATIONAL INSTANT CRIMINAL BACKGROUND
3 CHECK SYSTEM; AND TO PROVIDE FOR A RESTORATION PROCESS TO
4 REMOVE THE COMMITMENT BAR TO THE PURCHASE, POSSESSION,
5 AND TRANSFER OF FIREARMS.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 122C-54 is amended by adding the following new
9 subsection to read:

10 "(d1) After a judicial determination that an individual shall be involuntarily
11 committed for either inpatient or outpatient mental health treatment pursuant to Article
12 5 of this Chapter, the clerk of superior court in the county where the judicial
13 determination was made shall, as soon as practicable, cause a report of the commitment
14 to be transmitted to the National Instant Criminal Background Check System (NICS).
15 Reporting of an individual involuntarily committed to outpatient mental health
16 treatment under this subsection shall only be reported if the individual is found to be a
17 danger to self or others. The clerk shall also cause to be transmitted to NICS a record
18 where an individual is found not guilty by reason of insanity or found mentally
19 incompetent to proceed to criminal trial. The clerk, upon receipt of documentation that
20 an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1
21 or any applicable federal law, shall cause the individual's record in NICS to be updated.
22 The record of involuntary commitment shall be accessible only by an entity having
23 proper access to NICS and shall remain otherwise confidential as provided by this
24 Article. The clerk shall effect the transmissions to NICS required by the subsection
25 according to protocols which shall be established by the Administrative Office of the
26 Courts."

1 **SECTION 2.** Article 3 of Chapter 122C of the General Statutes is amended
2 by adding the following new section to read:

3 **"§ 122C-54.1. Restoration process to remove mental commitment bar.**

4 (a) Any individual over the age of 18 may petition for the removal of the mental
5 commitment bar to purchase, possess, or transfer a firearm when the individual no
6 longer suffers from the condition that resulted in the individual's involuntary
7 commitment for either inpatient or outpatient mental health treatment pursuant to
8 Article 5 of this Chapter and no longer poses a danger to self or others for purposes of
9 the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922,
10 G.S. 14-404, and G.S. 14-415.12. The individual may file the petition with a district
11 court judge upon the expiration of any current inpatient or outpatient commitment. No
12 individual who has been found not guilty by reason of insanity may petition a court for
13 restoration under this section.

14 (b) The petition must be filed in the district court of the county where the
15 respondent was the subject of the most recent judicial determination that either inpatient
16 or outpatient treatment was appropriate or in the district court of the county of the
17 petitioner's residence. An individual disqualified from firearms possession due to a
18 comparable out-of-State mental commitment shall make application in the county of
19 residence. The clerk of court upon receipt of the petition shall schedule a hearing using
20 the regularly scheduled commitment court time and provide notice of the hearing to the
21 petitioner and the district attorney. Copies of the petition must be served on the director
22 of the inpatient and outpatient treatment facility, in-State or out-of-State, and the district
23 attorney in the petitioner's current county of residence.

24 (c) The burden is on the petitioner to establish by a preponderance of the
25 evidence that the petitioner no longer suffers from the condition that resulted in
26 commitment and no longer poses a danger to self or others for purposes of the purchase,
27 possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and
28 G.S. 14-415.12. The district attorney shall present any and all relevant information to
29 the contrary. For these purposes, the district attorney may access and use any and all
30 mental health records, juvenile records, and criminal history of the petitioner wherever
31 maintained. The applicant must sign a release for the district attorney to receive any
32 mental health records of the applicant. This hearing shall be closed to the public, unless
33 the court finds that the public interest would be better served by conducting the hearing
34 in public. If the court determines the hearing should be open to the public, upon motion
35 by the petitioner, the court may allow for the in camera inspection of any mental health
36 records. The court may allow the use of the record but shall restrict it from public
37 disclosure, unless it finds that the public interest would be better served by making the
38 record public. The district court shall enter an order that the petitioner does or does not
39 continue to suffer from the condition that resulted in commitment and does or does not
40 continue to pose a danger to self or others for purposes of the purchase, possession, or
41 transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The
42 court shall include in its order the specific findings of fact on which it bases its decision.
43 The decision of the district court may be appealed to the superior court for a hearing de
44 novo. After a denial by the superior court, the applicant must wait a minimum of one

1 year before reapplying. Attorneys designated by the Attorney General shall be available
2 to represent the State, or assist in the representation of the State, in a restoration
3 proceeding when requested to do so by a district attorney and approved by the Attorney
4 General. An attorney so designated shall have all the powers of the district attorney
5 under this section.

6 (d) Upon a judicial determination to grant a petition under this section, the clerk
7 of superior court in the county where the petition was granted shall forward the order to
8 the National Instant Criminal Background Check System (NICS) for updating of the
9 respondent's record."

10 **SECTION 3.(a)** G.S. 14-404 is amended by adding the following new
11 subsection to read:

12 "(g) An applicant shall not be ineligible to receive a permit under subsection (4) of
13 subsection (c) of this section because of involuntary commitment to mental health
14 services if the individual's rights have been restored under G.S. 122C-54.1."

15 **SECTION 3.(b)** G.S. 14-415.12 is amended by adding the following new
16 subsection to read:

17 "(c) An applicant shall not be ineligible to receive a concealed carry permit under
18 subdivision (6) of subsection (b) of this section because of involuntary commitment to
19 mental health services if the individual's rights have been restored under
20 G.S. 122C-54.1."

21 **SECTION 4.** The Administrative Office of the Courts may use up to
22 twenty-five thousand dollars (\$25,000) of funds within its budget for the 2008-2009
23 fiscal year to carry out the provisions of this act.

24 **SECTION 5.** Sections 1 through 3 of this act become effective December 1,
25 2008. Section 4 of this act becomes effective July 1, 2008. The remainder of this act is
26 effective when it becomes law.