

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 288

Short Title: Amend Laws Regarding Mental Commitment Bars. (Public)

Sponsors: Senator Cook (Primary Sponsor).

Referred to: Rules and Operations of the Senate.

March 16, 2015

A BILL TO BE ENTITLED

AN ACT NARROWING THE TYPES OF INCOMPETENCY FINDINGS THAT MUST BE REPORTED TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM AND AMENDING THE PROCESS FOR INDIVIDUALS TO REMOVE FIREARMS DISABILITIES AFTER RESTORATION TO COMPETENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-54(d1)(6) reads as rewritten:

"(6) A finding that an individual lacks the capacity to manage the individual's own affairs due to marked subnormal ~~intelligence or intelligence~~, mental illness, ~~incompetency, condition, or disease or incompetency~~."

SECTION 2. G.S. 122C-54.1 reads as rewritten:

"§ 122C-54.1. **Restoration process to remove ~~mental commitment bar~~ firearms disabilities.**

(a) Any individual over the age of 18 may petition for the removal of the disabilities pursuant to 18 U.S.C. § 922(d)(4) and (g)(4), G.S. 14-415.3, and G.S. 14-415.12 arising out of a determination or finding required to be transmitted to the National Instant Criminal Background Check System by subdivisions (1) through (6) of subsection (d1) of G.S. 122C-54. ~~The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment.~~

(b) For relief from a determination or finding described in subdivisions (1) through (5) of G.S. 122C-54(d1), the individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. The following process applies to all petitions involving a determination or finding described in subdivisions (1) through (5) of G.S. 122C-54(d1):

(1) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination or finding or in the district court of the county of the petitioner's residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the attorney who represented the State in the underlying case, or that attorney's successor. Copies of the petition must be served on the director of the relevant inpatient or outpatient treatment facility and the district attorney in the petitioner's current county of residence.

(e)(2) The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to



1 public safety and that the granting of the relief would not be contrary to the
2 public interest. The district attorney shall present any and all relevant
3 information to the contrary. For these purposes, the district attorney may
4 access and use any and all mental health records, juvenile records, and
5 criminal history of the petitioner wherever maintained. The applicant must
6 sign a release for the district attorney to receive any mental health records of
7 the applicant. This hearing shall be closed to the public, unless the court
8 finds that the public interest would be better served by conducting the
9 hearing in public. If the court determines the hearing should be open to the
10 public, upon motion by the petitioner, the court may allow for the in camera
11 inspection of any mental health records. The court may allow the use of the
12 record but shall restrict it from public disclosure, unless it finds that the
13 public interest would be better served by making the record public. The
14 district court shall enter an order that the petitioner is or is not likely to act in
15 a manner dangerous to public safety and that the granting of the relief would
16 or would not be contrary to the public interest. The court shall include in its
17 order the specific findings of fact on which it bases its decision. In making
18 its determination, the court shall consider the circumstances regarding the
19 firearm disabilities from which relief is sought, the petitioner's mental health
20 and criminal history records, the petitioner's reputation, developed at a
21 minimum through character witness statements, testimony, or other character
22 evidence, and any changes in the petitioner's condition or circumstances
23 since the original determination or finding relevant to the relief sought. The
24 decision of the district court may be appealed to the superior court for a
25 hearing de novo. After a denial by the superior court, the applicant must wait
26 a minimum of one year before reapplying. Attorneys designated by the
27 Attorney General shall be available to represent the State, or assist in the
28 representation of the State, in a restoration proceeding when requested to do
29 so by a district attorney and approved by the Attorney General. An attorney
30 so designated shall have all the powers of the district attorney under this
31 section.

32 ~~(d)~~(c) Upon a judicial determination to grant a petition under subsection (b) of this section,
33 the clerk of superior court in the county where the petition was granted shall forward the order
34 to the National Instant Criminal Background Check System (NICS) for updating of the
35 respondent's record.

36 (d) For relief from an adjudication of incompetence described in subdivision (6) of
37 G.S. 122C-54(d1), the individual shall file a petition for restoration to competency as provided
38 in G.S. 35A-1130. If restored to competency, the individual may submit a written request to the
39 clerk who exercised jurisdiction in the incompetency proceeding to update the individual's
40 record in NICS. Upon verification by the clerk that the individual has been restored to
41 competency, the clerk shall update the individual's record in NICS."

42 **SECTION 3.** This act becomes effective October 1, 2015.