

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS55714-LN-374A\* (5/16)

Short Title: Firearms/Mental Incompetence.

(Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT REQUIRING THE COURT AFTER JUDICIAL DETERMINATION OF INVOLUNTARY COMMITMENT TO REPORT THE FACT OF THE COMMITMENT TO THE NATIONAL CRIMINAL BACKGROUND SYSTEM.

The General Assembly of North Carolina enacts:

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

"(d1) After a judicial determination that an individual shall be involuntarily committed for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the clerk of court shall, as soon as practicable, transmit a report of the commitment to the National Instant Criminal Background Check System (NICS). The clerk shall also report a record where an individual is found not guilty by reason of insanity or found mentally incompetent to proceed to trial. The Clerk, upon receipt of documentation that an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1 (18. § U.S.C. 925(c),) shall update the person's record in the NICS. This record of involuntary commitment shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. The Administrative Office of the Courts and the Department of Health and Human Services shall establish protocols to facilitate the transmission of this information to NICS."

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

**"§ 122C-54.1. Restoration of right to purchase firearm.**

(a) Any individual over the age of 18 may apply for the restoration of the right to purchase, possess, or transfer a firearm when the individual no longer requires treatment or medication for a condition which resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this

1 Chapter. No individual who has been found not guilty by reason of insanity may  
2 petition a court for restoration of the right to purchase, possess, or transport a firearm.

3 (b) Subsequent to a judicial determination that an individual is subject to the  
4 commitment procedures in Article 5 of this Chapter, and ordered to undergo either  
5 inpatient or outpatient treatment, the individual, if over the age of 18, and upon the  
6 expiration of any current inpatient or outpatient commitment, may file a petition for an  
7 adjudication by the district court judge that the petitioner is no longer undergoing  
8 treatment or medication for a condition that resulted in commitment and is no longer a  
9 danger to himself or others for purposes of the purchase, possession, or transfer of  
10 firearms pursuant to 18 U.S.C. § 922 and G.S. 14-404 and G.S. 14-415.12.

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

22 (d) Contemporaneous with the petition, the petitioner must file an affidavit by a  
23 psychiatrist or eligible psychologist that the petitioner is no longer undergoing treatment  
24 or medication for a condition resulting in commitment and is no longer a danger to  
25 himself or others for purposes of the purchase, possession, or transfer of firearms. The  
26 burden is on the petitioner to establish by clear and convincing evidence that the  
27 petitioner's possession of firearms no longer poses a danger to himself or others. The  
28 district attorney or designated representative from the North Carolina Attorney  
29 General's office shall present any and all relevant information which may establish that  
30 the petitioner's possession of firearms would pose an undue risk of harm to the  
31 petitioner or the public. For these purposes, the district attorney or designated  
32 representative from the North Carolina Attorney General's office may access and use  
33 any and all mental health records, juvenile records, and criminal history of the petitioner  
34 wherever maintained. The applicant must sign a release for the district attorney or  
35 designated representative from the North Carolina Attorney General's office to receive  
36 any mental health records of the applicant. The proceeding shall be open to the public.  
37 The decision of the district court may be appealed to the superior court for a hearing de  
38 novo. After a denial by the superior court, the applicant must wait a minimum of one  
39 year before reapplying.

40 (e) Upon a judicial determination that a petitioner's possession of firearms is no  
41 longer a danger to the petitioner or the public, the clerk of superior court shall forward  
42 the order to the NICS for updating of the respondent's record."

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

1       "(g) The sheriff shall issue a license or permit for the purchase of a firearm under  
2 this section to an individual denied a permit under subdivision (4) of subsection (c) of  
3 this section if the individual's rights to purchase a firearm have been restored under  
4 G.S. 122C-54.1.

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

7       "(c) The sheriff shall issue a permit for the purchase or possession of a firearm  
8 under this section to an individual denied a permit under subdivision (6) of subsection  
9 (b) of this section if the individual's rights to purchase or possess a firearm have been  
10 restored under G.S. 122C-54.1."

11               **SECTION 4.** There is appropriated from the General Fund to the  
12 Administrative Office of the Courts the sum of twenty-five thousand dollars (\$25,000)  
13 for the 2008-2009 fiscal year to carry out the provisions of this act.

14               **SECTION 5.** Sections 1 through 3 of this act become effective December 1,  
15 2008. Section 4 of this act becomes effective July 1, 2008. The remainder of this act is  
16 effective when it becomes law.  
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