

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 563

Short Title: Strengthen Firearms Background Checks. (Public)

Sponsors: Representatives Schaffer, Faircloth, Burr, and Cleveland (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary I.

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN FIREARMS BACKGROUND CHECKS BY REQUIRING THAT ADDITIONAL INFORMATION BE COLLECTED AND REPORTED TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) AND BY MAKING THE REPORTING OF THAT INFORMATION MORE EFFICIENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-54(d1) is repealed.

SECTION 2. G.S. 122C-54.1 is recodified as G.S. 14-409.42.

SECTION 3. G.S. 14-404(c1) is repealed.

SECTION 4. Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

§ 14-409.43. Reporting of certain disqualifiers to the National Instant Criminal Background Check System (NICS).

(a) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of any of the following judicial determinations or findings, the clerk of superior court in the county where the determination or finding was made shall work through the Administrative Office of the Courts to cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS):

(1) A determination that an individual shall be involuntarily committed to a facility for inpatient mental health treatment upon a finding that the individual is mentally ill and a danger to self or others.

(2) A determination that an individual shall be involuntarily committed to a facility for outpatient mental health treatment upon a finding that the individual is mentally ill and, based on the individual's treatment history, in need of treatment in order to prevent further disability or deterioration that would predictably result in a danger to self or others.

(3) A determination that an individual shall be involuntarily committed to a facility for substance abuse treatment upon a finding that the individual is a substance abuser and a danger to self or others.

(4) A finding that an individual is not guilty by reason of insanity.

(5) A finding that an individual is mentally incompetent to proceed to criminal trial.

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



1 (7) A determination to grant a petition to an individual for the removal of
2 disabilities pursuant to G.S. 14-409.42 or any applicable federal law.

3 The 48-hour period for transmitting a record of a judicial determination or finding to the
4 NICS under subsection (a) of this section begins upon receipt by the clerk of a copy of the
5 judicial determination or finding. The Administrative Office of the Courts shall adopt rules to
6 require clerks of court to transmit information to the NICS in a uniform manner.

7 (b) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving
8 notice of the issuance of a felony warrant, indictment, criminal summons, or order for arrest,
9 the Administrative Office of the Courts shall transmit any unserved felony warrants,
10 indictments, criminal summons, or order for arrests to the NCIC (or National Instant Criminal
11 Background Check System (NICS)).

12 (c) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after service by
13 the sheriff of an order issued by a judge pursuant to Chapter 50B of the General Statutes and
14 pursuant to G.S. 50B-3(d) the sheriff shall cause a record of the order to be transmitted to the
15 National Instant Criminal Information System."

16 **SECTION 5.** G.S. 122C-54(d2) reads as rewritten:

17 "(d2) ~~The record of involuntary commitment for inpatient or outpatient mental health~~
18 ~~treatment or for substance abuse treatment required by subsection (d1) of this section to be~~
19 ~~reported to the National Instant Criminal Background Check System (NICS) by G.S. 14-409.43~~
20 ~~shall be accessible only by an entity having proper access to NICS the sheriff or the sheriff's~~
21 ~~designee for the purposes of conducting background checks under G.S. 14-404 and shall~~
22 ~~remain otherwise confidential as provided by this Article. The Administrative Office of the~~
23 ~~Courts shall adopt rules to require clerks of court to transmit information to the NICS as~~
24 ~~required by subsection (d1) of this section in a uniform manner."~~

25 **SECTION 6.** G.S. 14-404(a) reads as rewritten:

26 "(a) Upon application, and such application must be provided by the sheriff
27 electronically, the sheriff shall issue the permit to a resident of that county, unless the purpose
28 of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when
29 the sheriff has done all of the following:

30 "

31 **SECTION 7.** G.S. 14-415.13(a) reads as rewritten:

32 "(a) A person shall apply to the sheriff of the county in which the person resides to
33 obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the
34 following:

35 (1) An application, completed under oath, on a form provided by the
36 ~~sheriff~~sheriff, and such application form must be provided by the sheriff
37 electronically.

38 "

39 **SECTION 8.** G.S. 15A-502 reads as rewritten:

40 "**§ 15A-502. Photographs and fingerprints.**

41 (a) A person charged with the commission of a felony or a misdemeanor may be
42 photographed and his fingerprints may be taken for law-enforcement records only when he has
43 been:

- 44 (1) Arrested or committed to a detention facility, or
45 (2) Committed to imprisonment upon conviction of a crime, or
46 (3) Convicted of a felony.

47 (a1) It shall be the duty of the arresting law-enforcement agency to cause a person
48 charged with the commission of a felony to be fingerprinted and to forward those fingerprints
49 to the State Bureau of Investigation.

50 (a2) It shall be the duty of the arresting law enforcement agency to cause a person
51 charged with the commission of any of the following misdemeanors to be fingerprinted, for the

1 purposes of reporting these offenses to the National Criminal Instant Background Check
2 System (NICS), and to forward those fingerprints to the State Bureau of Investigation:

3 (1) G.S. 14-134.3 (Domestic criminal trespass), G.S. 15A-1382.1 (Offense that
4 involved domestic violence), or G.S. 50B-4.1 (Violation of a valid protective
5 order).

6 (2) G.S. 20-138.1 (Impaired driving), G.S. 20-138.2 (Impaired driving in
7 commercial vehicle), G.S. 20-138.2A (Operating a commercial vehicle after
8 consuming alcohol), and G.S. 20-138.2B (Operating various school, child
9 care, EMS, firefighting, or law enforcement vehicles after consuming
10 alcohol).

11 (3) G.S. 90-95(d) (Possession of a controlled substance).

12 (a3) It shall be the duty of the arresting law enforcement agency to cause a person
13 charged with a crime to provide to the magistrate as much of the following information as
14 possible for the person arrested:

15 (1) Name including first, last, middle, maiden, and nickname or alias.

16 (2) Address including street, city, and state.

17 (3) Drivers license number and state of issuance.

18 (4) Date of birth.

19 (5) Gender.

20 (6) Race.

21 (7) Social Security number.

22 (8) Relationship to the alleged victim and whether it is a "personal relationship"
23 as defined by G.S. 50B-1(b).

24 (a4) It shall be the duty of the arresting law enforcement agency to cause a person who
25 has been charged with a misdemeanor offense of assault, stalking, or communicating a threat
26 and held under G.S. 15A-534.1, to be fingerprinted for the purposes of reporting these offenses
27 to the National Criminal Instant Background Check System (NICS) and to forward those
28 fingerprints to the State Bureau of Investigation.

29 (a5) It shall be the duty of the magistrate to enter into the court information system all
30 information provided by the arresting law enforcement agency on the person arrested.

31 ~~(a2)~~(a6) If the person cannot be identified by a valid form of identification, it shall be the
32 duty of the arresting law-enforcement agency to cause a person charged with the commission
33 of:

34 (1) Any offense involving impaired driving, as defined in G.S. 20-4.01(24a), or

35 (2) Driving while license revoked if the revocation is for an Impaired Driving
36 License Revocation as defined in G.S. 20-28.2

37 to be fingerprinted and photographed.

38 (b) This section does not authorize the taking of photographs or fingerprints when the
39 offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes,
40 "Motor Vehicles." Notwithstanding the prohibition in this subsection, a photograph may be
41 taken of a person who operates a motor vehicle on a street or highway if:

42 (1) The person is cited by a law enforcement officer for a motor vehicle moving
43 violation, and

44 (2) The person does not produce a valid drivers license upon the request of a law
45 enforcement officer, and

46 (3) The law enforcement officer has a reasonable suspicion concerning the true
47 identity of the person.

48 As used in this subsection, the phrase "motor vehicle moving violation" does not include the
49 offenses listed in the third paragraph of G.S. 20-16(c) for which no points are assessed, nor
50 does it include equipment violations specified in Part 9 of Article 3 of Chapter 20 of the
51 General Statutes.

1 (b1) Any photograph authorized by subsection (b) of this section and taken by a law
2 enforcement officer or agency:

- 3 (1) Shall only be taken of the operator of the motor vehicle, and only from the
4 neck up.
5 (2) Shall be taken at either the location where the citation is issued, or at the jail
6 if an arrest is made.
7 (3) Shall be retained by the law enforcement officer or agency until the final
8 disposition of the case.
9 (4) Shall not be used for any purpose other than to confirm the identity of the
10 alleged offender.
11 (5) Shall be destroyed by the law enforcement officer or agency upon a final
12 disposition of the charge.

13 (c) This section does not authorize the taking of photographs or fingerprints of a
14 juvenile alleged to be delinquent except under Article 21 of Chapter 7B of the General Statutes.

15 (d) This section does not prevent the taking of photographs, moving pictures, video or
16 sound recordings, fingerprints, or the like to show a condition of intoxication or for other
17 evidentiary use.

18 (e) Fingerprints or photographs taken pursuant to subsection (a), (a1), or (a2) of this
19 section may be forwarded to the State Bureau of Investigation, the Federal Bureau of
20 Investigation, or other law-enforcement agencies."

21 **SECTION 9.** The Administrative Office of the Courts shall use funds available
22 from the Court Technology Fund to comply with Section 4 of this bill and to provide all of the
23 following historical records to the National Instant Criminal Background Check System (NICS)
24 by May 31, 2019:

- 25 (1) Involuntary commitments for in-patient and out-patient mental health and
26 substance abuse treatment from all counties.
27 (2) Findings of not guilty by reason of insanity or mentally incompetent to stand
28 trial from all counties.
29 (3) Findings that an individual lacks the capacity to manage the individual's own
30 affairs due to marked subnormal intelligence or mental illness,
31 incompetency, condition, or disease from all counties.
32 (4) Convictions for misdemeanor possession of controlled substances under
33 G.S. 90-95(d) from all counties from January 1, 2009.
34 (5) Convictions for all misdemeanors as identified in G.S. 14-134.3,
35 15A-1382.1, or 50B-4.1 from all counties.
36 (6) Convictions for all misdemeanors as identified in G.S. 20-138.1, 20-138.2,
37 20-138.2A, and 20-138.2B or convicted and sentenced under
38 G.S. 20-179(f3) for more than two years from all counties.
39 (7) Active and unserved felony warrants, indictments, criminal summons, and
40 orders for arrest from all counties.

41 **SECTION 10.** G.S. 14-404(g) reads as rewritten:

42 "(g) An applicant shall not be ineligible to receive a permit under subdivision (c)(4) of
43 this section because of involuntary commitment to mental health services if the individual's
44 rights have been restored under ~~G.S. 122C-54.1~~G.S. 14-409.42."

45 **SECTION 11.** G.S. 14-415.3(c) reads as rewritten:

46 "(c) The provisions of this section shall not apply to a person whose rights have been
47 restored pursuant to ~~G.S. 122C-54.1~~G.S. 14-409.42."

48 **SECTION 12.** G.S. 14-415.12(c) reads as rewritten:

49 "(c) An applicant shall not be ineligible to receive a concealed carry permit under
50 subdivision (6) of subsection (b) of this section because of an adjudication of mental incapacity

1 or illness or an involuntary commitment to mental health services if the individual's rights have
2 been restored under ~~G.S. 122C-54.1~~ G.S. 14-409.42."

3 **SECTION 13.** G.S. 122C-54.1(a), recodified as G.S. 14-409.42(a) by Section 2 of
4 this act, reads as rewritten:

5 "(a) Any individual over the age of 18 may petition for the removal of the disabilities
6 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
7 a determination or finding required to be transmitted to the National Instant Criminal
8 Background Check System by subdivisions (1) through (6) ~~of subsection (d1) of G.S. 122C-54.~~
9 of subsection (a) of G.S. 14-409.43. The individual may file the petition with a district court
10 judge upon the expiration of any current inpatient or outpatient commitment."

11 **SECTION 14.** G.S. 15A-534(a) reads as rewritten:

12 "(a) In determining conditions of pretrial release a judicial official must impose at least
13 one of the following conditions:

- 14 (1) Release the defendant on his written promise to appear.
- 15 (2) Release the defendant upon his execution of an unsecured appearance bond
16 in an amount specified by the judicial official.
- 17 (3) Place the defendant in the custody of a designated person or organization
18 agreeing to supervise him.
- 19 (4) Require the execution of an appearance bond in a specified amount secured
20 by a cash deposit of the full amount of the bond, by a mortgage pursuant to
21 G.S. 58-74-5, or by at least one solvent surety.
- 22 (5) House arrest with electronic monitoring.

23 If condition (5) is imposed, the defendant must execute a secured appearance bond under
24 subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may
25 elect to execute an appearance bond under subdivision (4). If the defendant is required to
26 provide fingerprints pursuant to G.S. 15A-502(a1) or ~~(a2), (a5)~~, or a DNA sample pursuant to
27 G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been
28 taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial
29 official shall make the collection of the fingerprints or DNA sample a condition of pretrial
30 release. The judicial official may also place restrictions on the travel, associations, conduct, or
31 place of abode of the defendant as conditions of pretrial release. The judicial official may
32 include as a condition of pretrial release that the defendant abstain from alcohol consumption,
33 as verified by the use of a continuous alcohol monitoring system, of a type approved by the
34 Division of Adult Correction of the Department of Public Safety, and that any violation of this
35 condition be reported by the monitoring provider to the district attorney."

36 **SECTION 15.** Sections 6, 7, 8, and 14 of this act become effective on October 1,
37 2015. Sections 1, 4, and 13 of this act become effective on January 1, 2016. The remainder of
38 this act is effective when it becomes law.