

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 2081*
Judiciary I (Civil) Committee Substitute Adopted 6/12/08

Short Title: NICS Reporting/Restoration.

(Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

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

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 The clerk shall also cause to be transmitted to NICS a record where an individual is
16 found not guilty by reason of insanity or found mentally incompetent to proceed to
17 criminal trial. The clerk, upon receipt of documentation that an affected individual has
18 received a relief from disabilities pursuant to G.S. 122C-54.1 or any applicable federal
19 law, shall cause the individual's record in NICS to be updated. The record of
20 involuntary commitment shall be accessible only by an entity having proper access to
21 NICS and shall remain otherwise confidential as provided by this Article. The clerk
22 shall effect the transmissions to NICS required by the subsection according to protocols
23 which shall be established by the Administrative Office of the Courts."

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

26 **"§ 122C-54.1. Restoration process to remove mental commitment bar.**

27 (a) Any individual over the age of 18 may petition for the removal of the mental
28 commitment bar to purchase, possess, or transfer a firearm when the individual no
29 longer suffers from the condition that resulted in the individual's involuntary

1 commitment for either inpatient or outpatient mental health treatment pursuant to
2 Article 5 of this Chapter and no longer poses a danger to self or others for purposes of
3 the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922,
4 G.S. 14-404, and G.S. 14-415.12. The individual may file the petition with a district
5 court judge upon the expiration of any current inpatient or outpatient commitment. No
6 individual who has been found not guilty by reason of insanity may petition a court for
7 restoration under this section.

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

18 (c) The burden is on the petitioner to establish by clear and convincing evidence
19 that the petitioner no longer suffers from the condition that resulted in commitment and
20 no longer poses a danger to self or others for purposes of the purchase, possession, or
21 transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The
22 district attorney shall present any and all relevant information to the contrary. For these
23 purposes, the district attorney may access and use any and all mental health records,
24 juvenile records, and criminal history of the petitioner wherever maintained. The
25 applicant must sign a release for the district attorney to receive any mental health
26 records of the applicant. Upon motion by the petitioner, the court may allow for the in
27 camera inspection of any mental health records. The court may allow the use of the
28 record but restrict it from public disclosure, unless it finds that the public interest would
29 be better served by making the record public. Unless the court closes the hearing in
30 accordance with this subsection, the proceeding shall be open to the public. Upon
31 motion by the petitioner, the court may close the hearing to the public unless the court
32 finds that the public interest would be better served by conducting the hearing in public.
33 The district court shall enter an order that the petitioner does or does not continue to
34 suffer from the condition that resulted in commitment and does or does not continue to
35 pose a danger to self or others for purposes of the purchase, possession, or transfer of
36 firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The court shall
37 include in its order the specific findings of fact on which it bases its decision. The
38 decision of the district court may be appealed to the superior court for a hearing de
39 novo. After a denial by the superior court, the applicant must wait a minimum of one
40 year before reapplying. Attorneys designated by the Attorney General shall be available
41 to represent the State, or assist in the representation of the State, in a restoration
42 proceeding when requested to do so by a district attorney and approved by the Attorney
43 General. An attorney so designated shall have all the powers of the district attorney
44 under this section.

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

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

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

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

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

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

19 **SECTION 5.** Sections 1 through 3 of this act become effective December 1,
20 2008. Section 4 of this act becomes effective July 1, 2008. The remainder of this act is
21 effective when it becomes law.