**South Carolina General Assembly**

120th Session, 2013-2014

**S. 413**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Gregory, Campsen, Courson, Hembree, Pinckney, Malloy, Jackson, Hayes, Bennett, Lourie, L. Martin, Fair, Ford, Massey and Johnson

Document Path: l:\council\bills\nbd\11134ac13.docx

Companion/Similar bill(s): 3560, 3564

Introduced in the Senate on February 20, 2013

Currently residing in the Senate Committee on **Judiciary**

Summary: Handguns

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/20/2013 Senate Introduced and read first time ([Senate Journal‑page 20](file:///h:\SJ%20Archive\2013\02-20-13.docx))

2/20/2013 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 20](file:///h:\SJ%20Archive\2013\02-20-13.docx))

2/21/2013 Senate Referred to Subcommittee: Gregory (ch), Hutto, Malloy, Campsen, Bennett, Hembree

4/10/2013 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 19](file:///h:\SJ%20Archive\2013\04-10-13.docx))

4/11/2013 Scrivener's error corrected

4/18/2013 Senate Recommitted to Committee on **Judiciary** ([Senate Journal‑page 22](file:///h:\SJ%20Archive\2013\04-18-13.docx))

**VERSIONS OF THIS BILL**

[2/20/2013](file:///p:\pprever\2013-14\413_20130220.docx)

[4/10/2013](file:///p:\pprever\2013-14\413_20130410.docx)

[4/11/2013](file:///p:\pprever\2013-14\413_20130411.docx)

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 10, 2013

**S. 413**

Introduced by Senators Gregory, Campsen, Courson, Hembree, Pinckney, Malloy, Jackson, Hayes, Bennett, Lourie, L. Martin, Fair, Ford and Massey

S. Printed 4/10/13--S. [SEC 4/11/13 3:07 PM]

Read the first time February 20, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 413) to amend Section 16‑23‑30, Code of Laws of South Carolina, 1976, relating to, among other things, individuals who are prohibited from possessing or acquiring, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 31, Title 23 of the 1976 Code is amended by adding:

“Article 10

NICS: Mental Health Adjudication and Commitment Reporting

Section 23‑31‑1010. As used in this article, and for purposes of 18 U.S.C. Section 922(g)(4):

(1) 'Adjudicated as a mental defective' means a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

(a) is a danger to himself or to others; or

(b) lacks the mental capacity to contract or manage the person’s own affairs.

The term includes:

(a) a finding of insanity by a court in a criminal case; and

(b) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. Sections 850(a) and 876(b).

(2) ‘Committed to a mental institution’ means a formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily, and a commitment to a mental institution for mental defectiveness, mental illness, and other reasons, such as drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

(3) ‘Mental institution’ includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Section 23‑31‑1020. (A) The Judicial Department and the Chief of SLED, or the chief’s designee, shall work in conjunction with the appropriate court of each county in developing procedures for the collection and submission of information of persons who have been adjudicated as a mental defective or who have been committed to a mental institution.

(B) When a court submits this information to SLED, SLED shall transmit the information to the National Instant Criminal Background Check System (NICS) established pursuant to the Brady Handgun Violence Protection Act of 1993, Pub. Law 103-159.

(C) On an ongoing basis the courts shall submit the information to SLED as adjudications and commitments occur. Under no circumstances may the courts or SLED submit information pursuant to this section relating to a person’s diagnosis or treatment.

(D) SLED shall keep information submitted by the courts confidential, and such information may only be disclosed to NICS pursuant to this section, for purposes directly related to the Brady Act, or as provided in subsection (E).

(E) If the court has submitted a person’s name and other identifying information to SLED to be transmitted to NICS, SLED shall review the state concealed weapons permit holders list, and if the review reveals that the person possesses a current concealed weapons permit, the permit must be revoked and surrendered to a sheriff, police department, SLED agent, or by certified mail to the Chief of SLED. If the permit holder fails to return the permit within ten days of being notified of the permit’s revocation, SLED shall retrieve the permit from the permit holder.

(F) Information submitted by the courts pursuant to this section, which is also contained in court orders or in other state or local agency records, is not affected by this section, and such court orders or other state or local agency records may be disclosed in accordance with existing laws and procedures.

Section 23‑31‑1030. (A) If a person is prohibited from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. Section 922(g)(4) or Section 23-31-1040 as a result of adjudication as a mental defective or commitment to a mental institution, the person may petition the court that issued the original order to remove the prohibitions. The person may file the petition upon the expiration of any current commitment order; however, the court only may consider petitions for relief due to adjudications and commitments that occurred in South Carolina.

(B) The petition must be accompanied by a fifty dollar filing fee and an authorization and release signed by the petitioner, authorizing disclosure of petitioner’s current and past medical records, including mental health records.

(C) The petitioner shall serve the petition on and notify parties in the court’s discretion.

(D)(1) Within ninety days of receiving the petition, unless the court grants an extension upon the petitioner’s request, the court shall conduct a hearing which must be presided over by a person other than the person who gathered evidence for use by the court in the hearing.

(2) At the hearing on the petition, the petitioner shall have the opportunity to submit evidence, and a record of the hearing must be made and maintained for review. The court shall consider information and records, which otherwise are confidential or privileged, relevant to the criteria for removing firearms and ammunition prohibitions, and shall receive and consider evidence concerning the following:

(a) the circumstances regarding the firearms and ammunitions prohibitions imposed by 18 U.S.C. Section 922(g)(4) and Section 23-31-1040;

(b) the petitioner’s record, which must include, at a minimum, the petitioner’s mental health and criminal history records;

(c) the petitioner’s reputation developed, at a minimum, through character witness statements, testimony, or other character evidence; and

(d) a current evaluation presented by the petitioner conducted by the Department of Mental Health or a physician licensed in this State specializing in mental health specifically addressing whether due to mental defectiveness or mental illness the petitioner poses a threat to the safety of the public or himself.

(E) Unless the court finds that the public interest would be better served, the hearing must be closed to the public and the petitioner's mental health records must be restricted from public disclosure. However, if the court determines the hearing should be open to the public, upon motion by the petitioner the court may allow for the in camera inspection of the petitioner's mental health records and for the use of such records, but such records must be restricted from public disclosure.

(F)(1) The court shall make findings of fact regarding the following, and shall remove the firearms and ammunition prohibitions, if the petitioner proves by a preponderance of the evidence that:

(a) the petitioner is no longer required to participate in court‑ordered psychiatric treatment;

(b) the petitioner is determined by the Department of Mental Health or by a physician licensed in this State specializing in mental health to benot likely to act in a manner dangerous to public safety or himself; and

(c) granting the petitioner relief will not be contrary to public interest.

(2) Notwithstanding subsection (F)(1), the court must not remove the firearms and ammunition prohibitions, if, by a preponderance of the evidence, it is proven that the petitioner has engaged in acts of violence subsequent to the petitioner’s last adjudication as a mental defective or last commitment to a mental institution, unless the petitioner, by clear and convincing evidence, proves that the person is not likely to act in a manner dangerous to public safety or himself.

(G) If the petitioner is denied relief and the firearms and ammunition prohibitions are not removed, the petitioner may appeal to the circuit court for de novo review. In conducting the review, the circuit court:

(1) shall review the record;

(2) may give deference to the decision of the court denying the petitioner relief; and

(3) may receive additional evidence as necessary to conduct an adequate review.

(H) Medical records, psychological reports, and other treatment records which have been submitted to the court or admitted into evidence pursuant to this section must be part of the record, but must be sealed and opened only by court order.

(I) If a court issues an order removing the firearms and ammunition prohibitions pursuant to this section, the court shall provide SLED with a certified copy of the order. SLED promptly shall inform NICS of the court’s action removing the firearms and ammunition prohibitions.

Section 23-31-1040. (A) It is unlawful for a person who has been adjudicated as a mental defective or who has been committed to a mental institution to ship, transport, possess, or receive a firearm or ammunition.

(B) A person who violates this section is guilty of a f elony, and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(C) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use the firearm or ammunition within the agency, transfer the firearm or ammunition to another law enforcement agency for the lawful use of that agency, trade the firearm or ammunition with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy the firearm or ammunition. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which the firearm or ammunition may be involved are finally determined. If SLED seized the firearm or ammunition, SLED may keep the firearm or ammunition for use by SLED’s forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies pursuant to this section.

(D) At the time the person is adjudicated as a mental defective or is committed to a mental institution, the court shall provide to the person or the person’s representative, as appropriate, a written form that conspicuously informs the person or the person’s representative, as appropriate, of the provisions of this section.

Section 23-31-1050. As used in Section 23-31-1030 and Section 23-31-1040:

(1) 'Ammunition' means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in a firearm other than an antique firearm. The term does not include:

(a) a shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing; or

(b) an unloaded, non-metallic shotgun hull or casing not having a primer.

(2) 'Antique firearm' means:

(a) a firearm, including a firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; and

(b) a replica of a firearm described in subitem (2)(a) if such replica:

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3) 'Firearm' means a weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of such weapon; a firearm muffler or firearm silencer; or a destructive device; but the term does not include an antique firearm. In the case of a licensed collector, the term means only curios and relics.

(4) 'Firearm frame or receiver' means that part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

(5) 'Firearm muffler or firearm silencer' means a device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.”

SECTION 2. Section 44‑22‑100 of the 1976 Code is amended to read:

“Section 44‑22‑100. (A) Certificates, applications, records, and reports made for the purpose of this chapter or Chapter 9, Chapter 11, Chapter 13, ~~Article 1 of~~ Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter 24, Chapter 25, Chapter 27, or Chapter 52, ~~of this title~~ and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed unless:

(1) the individual identified or ~~his~~ the individual’s guardian consents;

(2) a court directs that disclosure is necessary for the conduct of proceedings before ~~it~~ the court and that failure to make the disclosure is contrary to ~~the~~ public interest;

(3) disclosure is required for research conducted or authorized by the department or the Department of Alcohol and Other Drug Abuse Services and with the patient’s consent;

(4) disclosure is necessary to cooperate with law enforcement, health, welfare, and other state or federal agencies, or when furthering the welfare of the patient or ~~his~~ the patient’s family; ~~or~~

(5) disclosure is necessary to make reports to the Judicial Department or SLED for the limited purpose of providing notice to the federal National Instant Criminal Background Check System (NICS), established pursuant to the Brady Handgun Violence Prevention Act of 1993, Pub.L. 103-159, and in accordance with Article 10, Chapter 31, Title 23; or

(6) disclosure is necessary to carry out the provisions of this chapter or Chapter 9, Chapter 11, Chapter 13, ~~Article 1 of~~ Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter 24, Chapter 25, Chapter 27, or Chapter 52 ~~of this title~~.

(B) Nothing in this section:

(1) precludes disclosure, upon proper inquiry, of information as to a patient’s current medical condition to members of ~~his~~ the patient’s family, or the Governor’s ombudsman office; or

(2) requires the release of records of which disclosure is prohibited or regulated by federal law.

(C) A person who violates this section is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both.”

SECTION 3. Courts required to submit information to SLED pursuant to this act concerning individuals who have been adjudicated as a mental defective or who have been committed to a mental institution shall, from the effective date of this act forward, submit information as the information arises and in accordance with procedures developed as required by this act and have one year from this act's effective date to submit retroactive information on such individuals going back a minimum of ten years or if records are not available as far back as ten years, as far back as records exist.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect ninety days after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

CHAUNCEY K. GREGORY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department

The department indicates that this bill will have a fiscal impact on the General Fund of the State, but due to the lack of clearly defined responsibilities in the bill, the department is unable to provide an estimated cost to the agency.

The State Law Enforcement Division

SLED indicates that this bill will have a fiscal impact on the General Fund of the State of $142,800 of which $123,300 would be recurring cost for Personal Services/Fringe Benefits for 3.00 new State Funded FTE’s.(Administrative Assistant II). The balance of $19,500 would be non-recurring cost for computer equipment and software for the 3 works stations to handle the information transfer responsibilities.

Department of Mental Health

The department reports there is no fiscal impact on the General Fund of the State or on federal and/or other funds.

**SPECIAL NOTES:**

The Board of Economic Advisors is the appropriate entity to address any revenue impact associated with this bill.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND SECTION 16‑23‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO, AMONG OTHER THINGS, INDIVIDUALS WHO ARE PROHIBITED FROM POSSESSING OR ACQUIRING A HANDGUN, SO AS TO ALSO PROHIBIT A PERSON ADJUDICATED MENTALLY INCAPACITATED OR COMMITTED TO A MENTAL INSTITUTION FROM POSSESSING OR ACQUIRING A HANDGUN; TO AMEND SECTION 44‑22‑100, RELATING TO THE CONFIDENTIALITY OF MENTAL HEALTH COMMITMENT AND TREATMENT RECORDS, SO AS TO AUTHORIZE REPORTING INFORMATION IN THESE RECORDS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) TO BE UTILIZED IN DETERMINING IF A PERSON IS DISQUALIFIED FROM PURCHASING A FIREARM; AND BY ADDING ARTICLE 10, CHAPTER 31, TITLE 23 SO AS TO ESTABLISH A CONFIDENTIAL PROCESS FOR COMPILING AND TRANSMITTING INFORMATION ON PERSONS WHO HAVE BEEN ADJUDICATED MENTALLY INCAPACITATED OR COMMITTED TO A MENTAL INSTITUTION, THEREBY BEING DISQUALIFIED FROM POSSESSING OR ACQUIRING A HANDGUN AND TO REQUIRE THE STATE LAW ENFORCEMENT DIVISION (SLED) TO TRANSMIT THIS INFORMATION TO NICS; TO REQUIRE SLED TO CROSS CHECK THE NAMES SENT TO NICS WITH SLED’S DATABASE FOR CONCEALED WEAPONS PERMITS TO ASCERTAIN IF ANY PERMITS MUST BE REVOKED; AND TO ESTABLISH A JUDICIAL PROCESS FOR PERSONS PROHIBITED FROM POSSESSING FIREARMS, DUE SOLELY TO AN ADJUDICATION AS MENTALLY INCAPACITATED OR COMMITMENT TO A MENTAL INSTITUTION, TO OBTAIN REMOVAL OF THE DISQUALIFICATIONS THAT PROHIBITED THEM FROM POSSESSING FIREARMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑23‑30(A)(1) of the 1976 Code, as last amended by 192 of 2008, is further amended to read:

(1) a person who:

(a) has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions, or the District of Columbia; ~~or who~~

(b) is a fugitive from justice; ~~or~~

(c) is a habitual drunkard or a drug addict; ~~or who~~

(d) has been adjudicated mentally incompetent;

(e) has been adjudicated mentally incapacitated or committed to a mental institution, both as defined in Section 23‑31‑1010;”

SECTION 2. Section 44‑22‑100 of the 1976 Code is amended to read:

“Section 44‑22‑100. (A) Certificates, applications, records, and reports made for the purpose of this chapter or Chapter 9, Chapter 11, Chapter 13, ~~Article 1 of~~ Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter 24, Chapter 25, Chapter 27, or Chapter 52 ~~of this title~~ and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought must be kept confidential and must not be disclosed unless:

(1) the individual identified or his guardian consents;

(2) a court directs that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure is contrary to the public interest;

(3) disclosure is required for research conducted or authorized by the department or the Department of Alcohol and Other Drug Abuse Services and with the consent of the patient;

(4) disclosure is necessary to cooperate with law enforcement, health, welfare, and other state or federal agencies or when furthering the welfare of the patient or his family; ~~or~~

(5) disclosure is necessary to make reports to the Judicial Department or State Law Enforcement Division for the limited purpose of providing notice to the federal National Instant Criminal Background Check System, established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U. S. C. Section 922, and in accordance with Article 10, Chapter 31, Title 23; or

(6) disclosure is necessary to carry out the provisions of this chapter or Chapter 9, Chapter 11, Chapter 13, ~~Article 1 of~~ Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter 24, Chapter 25, Chapter 27, or Chapter 52 ~~of this title~~.

(B) Nothing in this section:

(1) precludes disclosure, upon proper inquiry, of information as to a patient’s current medical condition to members of his family, or the Governor’s ombudsman office; or

(2) requires the release of records of which disclosure is prohibited or regulated by federal law.

(C) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both.”

SECTION 3. Chapter 31, Title 23 of the 1976 Code is amended by adding:

“Article 10

Reporting Disqualifications from Firearm Purchase and Possession

and

Judicial Removal of Disqualifications

Section 23‑31‑1010. As used in this article, and for the purposes of 18 U. S. C. Section 922(d)(4) and (g)(4):

(1) ‘A person adjudicated as mentally incapacitated’ means a person with intellectual disability or a mental illness, condition, or disease who has been determined to be a danger to himself or herself or others or to lack the mental capacity to manage his or her own affairs by a court, board, commission or other lawful authority, and includes a person who has been found to be:

(a) in need of court‑ordered involuntary inpatient or outpatient treatment pursuant to Chapter 17, Chapter 20, or Chapter 24;

(b) not guilty by reason of insanity pursuant to Section 17‑24‑40;

(c) guilty but mentally ill pursuant to Section 17‑24‑70;

(d) incapable of standing trial pursuant to Section 44‑23‑430; or

(e) an ‘incapacitated person’ as defined in Section 62‑5‑101.

(2) ‘Committed to a mental institution’ means to have been involuntarily committed for treatment by a court pursuant to the provisions of Chapter 17, Chapter 20, or Chapter 24.

(3) ‘Mental institution’ means a facility or part of a facility used for the treatment of persons involuntarily committed for treatment pursuant to the provisions of Chapter 17, Chapter 20, or Chapter 24.

Section 23‑31‑1020. (A) The Judicial Department and the Chief of the State Law Enforcement Division, or his designee, shall cooperate with the appropriate court of each county in compiling and maintaining a database containing the names and identifying information of persons who have been adjudicated to be mentally incapacitated or who have been committed to a mental institution. The database must be maintained by the State Law Enforcement Division.

(B) The name and identifying information of any person who has been adjudicated to be mentally incapacitated or who has been committed to a mental institution must be provided to the Judicial Department or the State Law Enforcement Division, or both, for inclusion in the database. Upon receipt of the information, it must be transmitted to the National Instant Criminal Background Check System.

(C) Commencing upon the effective date of this article, the appropriate court of each county shall supply to the Judicial Department or the State Law Enforcement Division, or both, for inclusion in the database the name and available identifying information required by the Judicial Department of all persons who are adjudicated to be mentally incapacitated or who are committed to a mental institution and on an ongoing basis shall continue to provide this information as adjudications and commitments occur. Under no circumstances may the database contain information relating to a person’s diagnosis or treatment.

(D) The information within the database provided for in this article must be kept confidential and may only be disclosed to the National Instant Criminal Background Check System established pursuant to Section 103(d) of the Brady Handgun Violence Protection Act, 18 U. S. C. Section 922, or for purposes directly related to that act.

(E) Notwithstanding subsection (D), if a person’s name and other identifying information has been added to the database provided for in this article, the State Law Enforcement Division shall review the State concealed weapons permit holders database and if the review reveals that the person possesses a current concealed weapons permit, the permit must be revoked and the sheriff in the county of the permit issuance must be informed of the revocation.

(F) Information within the database provided for in this article which is also contained in court orders or in other state or local agency records is not affected by this section, and these court orders or other state or local agency records may be disclosed in accordance with existing laws and procedures.

Section 23‑31‑1030.(A) A person who is disqualified from possessing, purchasing, transferring, shipping, or receiving a firearm under 18 U.S.C. Section 922 (d)(4) or (g)(4) or Section 16‑23‑30(A)(1)(e) or Section 23‑31‑215, as a result of adjudication as mentally incapacitated or commitment to a mental institution, may petition the court that issued the original order to remove all such disqualifications. The person may file the petition upon the expiration of any current inpatient or outpatient commitment order.

(B) The petition must be accompanied by an authorization and release signed by the petitioner, authorizing disclosure of petitioner’s current and past medical records, including records of mental health and substance abuse treatment.

(C) The petitioner shall pay a fifty dollar fee to the court and shall serve his petition on and notice parties in the discretion of the court.

(D) At the hearing on the petition, the court shall receive and consider evidence concerning the following:

(1) the circumstances regarding firearms disqualifications imposed by 18 U.S.C. Section 922(d)(4) and (g)(4) or Section 16‑23‑30(A)(1)(e) and Section 23‑31‑215;

(2) the petitioner’s record, which must include, at a minimum, the petitioner’s mental health and criminal history records; and

(3) the petitioner’s reputation developed through character witness statements, testimony, or other character evidence.

(4) a current evaluation presented by the petitioner conducted by the Department of Mental Health or a physician licensed in this State specializing in mental health specifically addressing whether due to mental incapacity or mental illness the petitioner poses a threat to the safety of the public or himself or herself.

(E) In order to protect the public, the probate court shall consider information and records which otherwise are confidential or privileged relevant to the criteria for removing all disqualifications from possessing, purchasing, transferring, shipping, or receiving a firearm under 18 U.S.C. Section 922 (d)(4) or (g)(4) or Section 16‑23‑30(A)(1)(e) or Section 23‑31‑215, as a result of adjudication as mentally incapacitated or commitment to a mental institution in this State.

(F) The hearing must be closed to the public, unless the court finds that the public interest would be better served by conducting the hearing in public. If the court determines the hearing should be open to the public, upon motion by the petitioner, the court may allow for the en camera inspection of any mental health records. The court may allow the use of the record but shall restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public.

(G) Except as provided in subsection (I), the court shall remove all disqualifications from possessing, purchasing, transferring, shipping, or receiving a firearm under 18 U.S.C. Section 922 (d)(4) or (g)(4) or Section 16‑23‑30(A)(1)(e) or Section 23‑31‑215 arising from adjudication as mentally incapacitated or commitment to a mental institution if the petitioner proves by a preponderance of the evidence that:

(1) the petitioner is no longer required to participate in court‑ordered inpatient or outpatient psychiatric treatment;

(2) the petitioner is determined by the Department of Mental Health or by a physician licensed in this State specializing in mental health to benot likely to act in a manner dangerous to public safety;

(3) granting the petitioner relief will not be contrary to the public interest.

(H) The court when entering its order must make findings as to whether the petitioner will or will not be likely to act in a manner dangerous to public safety and as to whether granting the relief sought will or will not be contrary to the public interest. The court shall include in its order the specific findings of fact on which it bases its decision. The decision of the court may be appealed by either the petitioner or an interested party pursuant to the provisions of Section 14‑8‑200.

(I) If a preponderance of the evidence in the record supports a finding that the petitioner has engaged in acts of violence subsequent to the petitioner’s last adjudication as mentally incompetent or last commitment to a mental institution, the petitioner bears the burden of proving by clear and convincing evidence that he or she is not likely to act in a manner dangerous to public safety.

(J) Medical records, psychological reports, and other treatment records which have been submitted to the court or admitted into evidence under this section must be part of the record, but must be sealed and opened only on order of the court.

(K) The court issuing an order pursuant to this section that removes all disqualifications prohibiting the petitioner from possessing, purchasing, transferring, shipping, or receiving a firearm under 18 U.S.C. Section 922 (d)(4) or (g)(4) or pursuant to Section 16‑23‑30(A)(1)(e) or Section 23‑31‑215, arising from adjudication as mentally incapacitated or commitment to a mental institution, shall provide the State Law Enforcement Division with a certified copy of the order. The State Law Enforcement Division promptly shall inform the National Instant Criminal Background Check System of the court action removing these disqualifications.”

SECTION 4. This act takes effect upon approval by the Governor.

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