

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 288
PROPOSED COMMITTEE SUBSTITUTE S288-PCS25249-TJ-21

Short Title: Amend Laws Regarding Mental Commitment Bars.

(Public)

Sponsors:

Referred to:

March 16, 2015

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE PROCESS FOR INDIVIDUALS TO REMOVE FIREARM
3 DISABILITIES AFTER RESTORATION TO COMPETENCY.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 122C-54.1 reads as rewritten:

6 "**§ 122C-54.1. Restoration process to remove ~~mental commitment bar~~ firearm disabilities.**

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

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

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

28 (e)(2) The burden is on the petitioner to establish by a preponderance of the
29 evidence that the petitioner will not be likely to act in a manner dangerous to
30 public safety and that the granting of the relief would not be contrary to the
31 public interest. The district attorney shall present any and all relevant
32 information to the contrary. For these purposes, the district attorney may
33 access and use any and all mental health records, juvenile records, and
34 criminal history of the petitioner wherever maintained. The applicant must
35 sign a release for the district attorney to receive any mental health records of
36 the applicant. This hearing shall be closed to the public, unless the court



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1 finds that the public interest would be better served by conducting the
2 hearing in public. If the court determines the hearing should be open to the
3 public, upon motion by the petitioner, the court may allow for the in camera
4 inspection of any mental health records. The court may allow the use of the
5 record but shall restrict it from public disclosure, unless it finds that the
6 public interest would be better served by making the record public. The
7 district court shall enter an order that the petitioner is or is not likely to act in
8 a manner dangerous to public safety and that the granting of the relief would
9 or would not be contrary to the public interest.

10 (3) The court shall include in its order the specific findings of fact on which it
11 bases its decision. In making its determination, the court shall consider the
12 circumstances regarding the firearm disabilities from which relief is sought,
13 the petitioner's mental health and criminal history records, the petitioner's
14 reputation, developed at a minimum through character witness statements,
15 testimony, or other character evidence, and any changes in the petitioner's
16 condition or circumstances since the original determination or finding
17 relevant to the relief sought. The decision of the district court may be
18 appealed to the superior court for a hearing de novo. After a denial by the
19 superior court, the applicant must wait a minimum of one year before
20 reapplying. Attorneys designated by the Attorney General shall be available
21 to represent the State, or assist in the representation of the State, in a
22 restoration proceeding when requested to do so by a district attorney and
23 approved by the Attorney General. An attorney so designated shall have all
24 the powers of the district attorney under this section.

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

29 (d) For relief from an adjudication of incompetence described in subdivision (6) of
30 G.S. 122C-54(d1), the individual shall file a petition for restoration to competency as provided
31 in G.S. 35A-1130. Following the entry of an order restoring competency, the individual may
32 submit a written request to the clerk who exercised jurisdiction in the incompetency proceeding
33 to update the individual's record in NICS. Upon verification by the clerk that the individual has
34 been restored to competency, the clerk shall update the individual's record in NICS."

35 **SECTION 2.** This act becomes effective October 1, 2015.