

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL DRS35015-MG-7 (12/01)

Short Title: Amend Laws Regarding Mental Commitment Bars. (Public)

Sponsors: Senators Cook and Randleman (Primary Sponsors).

Referred to:

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. 14-409.42 reads as rewritten:

6 "**§ 14-409.42. 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 a  
9 determination or finding required to be transmitted to the National Instant Criminal Background  
10 Check System by subdivisions (1) through (6) of subsection (a) of G.S. 14-409.43. ~~The individual  
11 may file the petition with a district court judge upon the expiration of any current inpatient or  
12 outpatient commitment.~~

13 (b) For relief from a determination or finding described in subdivisions (1) through (5) of  
14 subsection (a) of G.S. 14-409.43, the individual may file the petition with a district court judge  
15 upon the expiration of any current inpatient or outpatient commitment. The following process  
16 applies to all petitions involving a determination or finding described in subdivisions (1) through  
17 (5) of subsection (a) of G.S. 14-409.43:

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 finding  
20 or in the district court of the county of the petitioner's residence. The clerk of  
21 court upon receipt of the petition shall schedule a hearing using the regularly  
22 scheduled commitment court time and provide notice of the hearing to the  
23 petitioner and the attorney who represented the State in the underlying case, or  
24 that attorney's successor. Copies of the petition must be served on the director  
25 of the relevant inpatient or outpatient treatment facility and the district attorney  
26 in the petitioner's current county of residence.

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



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

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

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

27 (d) For relief from an adjudication of incompetence described in subdivision (6) of  
28 subsection (a) of G.S. 14-409.43, the individual shall file a petition for restoration to competency  
29 as provided in G.S. 35A-1130. Following the entry of an order restoring competency, the  
30 individual may submit a written request to the clerk who exercised jurisdiction in the  
31 incompetency proceeding to update the individual's record in NICS. Upon verification by the clerk  
32 that the individual has been restored to competency, the clerk shall update the individual's record  
33 in NICS."

34 **SECTION 2.** This act becomes effective October 1, 2017.