



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

## **Enhanced Reporting Requirements Related to Firearms Laws** [Report Pursuant to Section 17.2.(b) of S.L. 2013-369/H937]

October 1, 2013



# Enhanced Reporting Requirements Related to Firearms Laws

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## INTRODUCTION

Section 17.2.(b) of S.L. 2013-369 (H937 – Amend Various Firearms Laws) requires the North Carolina Administrative Office of the Courts (NCAOC) to report to the Joint Legislative Oversight Committee on Justice and Public Safety by October 1, 2013, on the “progress towards implementation of the requirement in G.S. 14-404(c1), as enacted by subsection (a) of this section, and with any recommendation for legislation relating to that requirement.”

G.S. 14-404(c1) reads as follows:

- (c1) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of any of the judicial findings, court orders, or other factual matters, relevant to any of the disqualifying conditions specified in subsection (c) of this section, the clerk of superior court shall cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS). The record shall include a reference to the relevant statutory provision of G.S. 14-404 that precludes the issuance of a permit. The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under this subsection begins upon receipt by the clerk of a copy of the judicial determination or finding.

The disqualifying conditions set out in G.S. 14-404(c) are as follows:

- (c) A permit may not be issued to the following persons:
  - (1) One who is under an indictment or information for or has been convicted in any state, or in any court of the United States, of a felony (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade). However, a person who has been convicted of a felony in a court of any state or in a court of the United States and (i) who is later pardoned, or (ii) whose firearms rights have been restored pursuant to G.S. 14-415.4, may obtain a permit, if the purchase or receipt of a pistol permitted in this Article does not violate a condition of the pardon or restoration of firearms rights.
  - (2) One who is a fugitive from justice.
  - (3) One who is an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug (as defined in 21 U.S.C. § 802).
  - (4) One who has been adjudicated mentally incompetent or has been committed to any mental institution.
  - (5) One who is an alien illegally or unlawfully in the United States.
  - (6) One who has been discharged from the Armed Forces of the United States under dishonorable conditions.



- (7) One who, having been a citizen of the United States, has renounced his or her citizenship.
- (8) One who is subject to a court order that:
  - a. Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;
  - b. Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner of the person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
  - c. Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

## ANALYSIS

House Bill 937 passed the General Assembly in the final days of the session, and NCAOC did not have the opportunity to provide input and consultation regarding the new reporting requirements for the clerks prior to passage of the bill. As a result, numerous technical and legal issues exist related to implementation of the expanded reporting requirements.

First, NCAOC works closely with the National Instant Criminal Background Check System (hereinafter, NICS) to ensure that the information submitted to NICS is in a usable automated format. NICS is a national system that checks available records relevant to an individual's eligibility to possess firearms and explosives in accordance with federal law. Upon passage of the legislation, NCAOC consulted with a NICS representative who identified certain technical and logistical issues that impede implementation of the legislation as enacted.

The NICS representative stressed that NICS does not want any duplication of information that it already receives from another source. NCAOC already submits information related to G.S. 14-404(c)(4) to NICS, while NICS currently receives information related to the qualifying conditions set forth in G.S. 14-404(c)(2), (c)(5), (c)(6), (c)(7), and (c)(8) from other sources. Therefore, only the disqualifying conditions in G.S. 14-404(c)(1) and (c)(3) are appropriate for consideration regarding enhanced reporting to NICS.

Regarding G.S. 14-404(c)(1), NICS already receives information if someone has been *convicted* of a felony, but does not have information for someone "under an indictment or information" in felony cases. NCAOC's Automated Criminal/Infractions System (ACIS) has indicators for bills of information and bills of indictment and can tell if a process is not disposed. Therefore, NCAOC could provide this information to NICS, but would need to develop appropriate technology updates to capture this information in a usable format for submission to NICS.



Regarding G.S. 14-404(c)(3), NICS already receives information on those who are convicted of drug offenses, if those individuals have been arrested and fingerprinted. The larger problem with the mandate to report pursuant to G.S. 14-404(c)(3) is that NCAOC has no way to identify those who are “unlawful users of” or “addicted to” these drugs, because North Carolina drug offenses do not require the offender to be a “user” or an “addict” as an element of the crime. In addition, “users” or “addicts” could easily be convicted of offenses not related to drugs. For these reasons, NCAOC is not able to provide NICS with information that accurately identifies “unlawful users of” or those “addicted to” the specified drugs, independent of a conviction for a specified drug offense.

In addition, the language in H937 presents several legal challenges to implementation. The new G.S. 14-404(c1) requires the clerks to send information to NICS “after receiving notice of any of the judicial findings, court orders, or other factual matters, relevant to any of the disqualifying conditions specified in subsection (c) of this section.” This language is legally ambiguous and does not provide specific guidance to clerks concerning which documents should be sent to NICS. More specifically, it is unclear how the clerk would determine which events or other factual matters are “relevant” to the disqualifying conditions in 14-404(c). For example, would a clerk be required to analyze the information contained in a confidential juvenile report to find “relevant” information contained in the report?

Moreover, in their record keeping capacity, the clerks of courts’ duties are purely ministerial; the new legislation as enacted would require clerks to go beyond that role and read pleadings and filings, looking for information material to any of the disqualifying conditions. G.S. 7A-102 specifically provides that “(a) deputy clerk is authorized to certify the existence and correctness of any record in the clerk’s office, to take the proofs and examinations of the witnesses touching the execution of a will as required by G.S. 31-17, and **to perform any other ministerial act** which the clerk may be authorized and empowered to do, in his own name and without reciting the name of his principal.” (Emphasis added.) The legislation seems to require action that exceeds that authority.

## SUMMARY

NCAOC looks forward to working with the General Assembly to make the necessary changes regarding the reporting requirements during the 2014 legislative session. In the meantime, NCAOC reports as follows:

- Regarding the **disqualifying condition in G.S. 14-404(c)(1)**, NCAOC – in consultation with NICS – continues to evaluate its ability to provide this information and to determine the required technological enhancements necessary to allow appropriate reporting to NICS.
- Regarding the **disqualifying condition in G.S. 14-404(c)(3)**, NCAOC is not able to provide information that accurately identifies “unlawful users of” or those “addicted to” the specified drugs.



- Regarding the **disqualifying conditions in G.S. 14-404(c)(2), (c)(5), (c)(6), (c)(7), and (c)(8)**, NICS indicates that it already receives this information from other sources and does not want a duplicate submission of this information.
- Regarding the **disqualifying condition in G.S. 14-404(c)(4)**, NCAOC already provides this data to NICS.

The sponsors of H937 have indicated that they are willing to work with NCAOC during the 2014 session to address the technical and legal issues created by H937. Because the effective date of the enhanced reporting requirement is not until July 1, 2014, NCAOC welcomes the opportunity to address these issues prior to implementation of any technological enhancements related to the new legislation.

