

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE DRS35099-MG-23A (01/26)

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

Sponsors: Senator Cook (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT NARROWING THE TYPES OF INCOMPETENCY FINDINGS THAT MUST BE  
3 REPORTED TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK  
4 SYSTEM AND AMENDING THE PROCESS FOR INDIVIDUALS TO REMOVE  
5 FIREARMS DISABILITIES AFTER RESTORATION TO COMPETENCY.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 122C-54(d1)(6) reads as rewritten:

8 "(6) A finding that an individual lacks the capacity to manage the individual's  
9 own affairs due to marked subnormal ~~intelligence or intelligence~~, mental  
10 illness, ~~incompetency, condition, or disease or incompetency.~~"

11 **SECTION 2.** G.S. 122C-54.1 reads as rewritten:

12 "**§ 122C-54.1. Restoration process to remove ~~mental commitment bar~~ firearms**  
13 **disabilities.**

14 (a) Any individual over the age of 18 may petition for the removal of the disabilities  
15 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  
16 a determination or finding required to be transmitted to the National Instant Criminal  
17 Background Check System by subdivisions (1) through (6) of subsection (d1) of G.S. 122C-54.  
18 ~~The individual may file the petition with a district court judge upon the expiration of any~~  
19 ~~current inpatient or outpatient commitment.~~

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

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

35 (e)(2) The burden is on the petitioner to establish by a preponderance of the  
36 evidence that the petitioner will not be likely to act in a manner dangerous to



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1 public safety and that the granting of the relief would not be contrary to the  
2 public interest. The district attorney shall present any and all relevant  
3 information to the contrary. For these purposes, the district attorney may  
4 access and use any and all mental health records, juvenile records, and  
5 criminal history of the petitioner wherever maintained. The applicant must  
6 sign a release for the district attorney to receive any mental health records of  
7 the applicant. This hearing shall be closed to the public, unless the court  
8 finds that the public interest would be better served by conducting the  
9 hearing in public. If the court determines the hearing should be open to the  
10 public, upon motion by the petitioner, the court may allow for the in camera  
11 inspection of any mental health records. The court may allow the use of the  
12 record but shall restrict it from public disclosure, unless it finds that the  
13 public interest would be better served by making the record public. The  
14 district court shall enter an order that the petitioner is or is not likely to act in  
15 a manner dangerous to public safety and that the granting of the relief would  
16 or would not be contrary to the public interest. The court shall include in its  
17 order the specific findings of fact on which it bases its decision. In making  
18 its determination, the court shall consider the circumstances regarding the  
19 firearm disabilities from which relief is sought, the petitioner's mental health  
20 and criminal history records, the petitioner's reputation, developed at a  
21 minimum through character witness statements, testimony, or other character  
22 evidence, and any changes in the petitioner's condition or circumstances  
23 since the original determination or finding relevant to the relief sought. The  
24 decision of the district court may be appealed to the superior court for a  
25 hearing de novo. After a denial by the superior court, the applicant must wait  
26 a minimum of one year before reapplying. Attorneys designated by the  
27 Attorney General shall be available to represent the State, or assist in the  
28 representation of the State, in a restoration proceeding when requested to do  
29 so by a district attorney and approved by the Attorney General. An attorney  
30 so designated shall have all the powers of the district attorney under this  
31 section.

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

36 (d) For relief from an adjudication of incompetence described in subdivision (6) of  
37 G.S. 122C-54(d1), the individual shall file a petition for restoration to competency as provided  
38 in G.S. 35A-1130. If restored to competency, the individual may submit a written request to the  
39 clerk who exercised jurisdiction in the incompetency proceeding to update the individual's  
40 record in NICS. Upon verification by the clerk that the individual has been restored to  
41 competency, the clerk shall update the individual's record in NICS."

42 **SECTION 3.** This act becomes effective October 1, 2015.