

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 11-134—HB 6490

Judiciary Committee

Public Safety and Security Committee

Finance, Revenue and Bonding Committee

**AN ACT ESTABLISHING A PROCEDURE FOR RELIEF FROM
CERTAIN FEDERAL FIREARMS PROHIBITIONS**

SUMMARY: Federal law prohibits anyone who has been “adjudicated as a mental defective” or “committed to a mental institution” from shipping, transporting, receiving, or possessing firearms or ammunition, unless the person’s firearm privileges are restored under a federally approved program. This act establishes a court procedure for restoring such privileges lost because of a state adjudication or commitment. The procedure is similar to the federal procedure for restoring firearm privileges lost as a result of federal adjudications or commitments.

Under the act, anyone seeking to regain firearm privileges must petition the probate court for relief, and the court must hear any such petition filed in accordance with the act. The court must grant relief if it finds by clear and convincing evidence that (1) the petitioner will not likely act in a manner dangerous to public safety and (2) granting relief is not contrary to the public interest. The act allows petitioners and the Department of Public Safety (DPS) commissioner to appeal the probate court’s decision to the Superior Court.

EFFECTIVE DATE: July 1, 2011

RELIEF FROM FEDERAL FIREARMS DISABILITY PROGRAM

Petitioning for Relief

Under the act, anyone seeking relief from federal firearms disabilities must submit a petition to the probate court along with certain releases (described below) and information supporting the petition, including:

1. certified copies of medical records detailing his or her psychiatric history where applicable, including records on the specific adjudication or commitment that is the subject of the petition;
2. certified copies of medical records from all of his or her current treatment providers, if he or she is being treated;
3. a certified copy of all criminal history information on file with the State Police Bureau of Identification and the FBI pertaining to the petitioner, or a copy of the response from these bureaus indicating that they have no criminal history information on file;
4. evidence of his or her reputation, which may include notarized letters of reference from current and past employers, family members, or friends; affidavits from the petitioner; or other character evidence; and

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5. any other information or documents the court specifically requests, which documents must be certified copies of original documents.

Releases and Petition

The petitioner must authorize the release of all of his or her records that may relate to the petition. This includes health, mental health, military, immigration, juvenile court, civil court, and criminal records, on forms the probate court administrator prescribes. The releases must authorize the DPS commissioner to obtain any of these records for use at the probate court hearing or in any appeal from the probate court's decision.

The petitioner must ensure that the petition contains all required information when it is submitted to the court. After receiving the petition, the court will consider additional information only if it requests it from the petitioner. Information it specifically requests must be received within 15 days of the request for it to be considered. The court may extend the deadline for good cause. Failure to provide the requested information by the deadline may result in the petition being denied.

The petitioner must provide the DPS commissioner with a copy of the petition and all supporting documents submitted to the probate court and certify to the probate court that he or she did so.

Hearings

Once a petition is filed, the probate court must set a date, time, and place for a hearing, and notify (1) the petitioner; (2) the DPS commissioner; (3) the court that rendered the adjudication or commitment; (4) the conservator appointed for the petitioner, if any; and (5) anyone it determines has an interest in the matter. The commissioner and anyone the probate court determines has an interest in the matter may present relevant information at the hearing and on any appeal.

The court must record the hearing. The recording must be transcribed only if the decision is appealed. A copy of the transcript must be furnished free to any appellant whom the court determines cannot pay for it. The Judicial Department must pay for it.

In determining whether to grant relief, the court must consider:

1. the circumstances of the firearms disability;
2. the petitioner's record, including his or her mental health and criminal history record, if any;
3. the petitioner's reputation, as demonstrated through character witness statements, testimony, or other character evidence; and
4. any other relevant information provided by the petitioner, DPS commissioner, or anyone the probate court determines has an interest in the matter.

The petitioner has the burden of establishing, and the court must find, by clear and convincing evidence, that (1) the petitioner will not be likely to act in a manner dangerous to public safety and (2) granting the relief will not be contrary to the public interest. "Clear and convincing" means that it is highly probably or reasonably certain. This is a greater burden of proof than preponderance of the

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evidence, but less than evidence beyond a reasonable doubt (*Black's Law Dictionary*, 7th edition.) The probate court must include in its decision the specific findings of fact on which it bases its decision.

The probate court proceedings are closed to the public and the court's records of the proceedings are disclosable only to the petitioner or his or her counsel and the DPS commissioner. But the probate court may, after notice to the parties and a hearing, disclose the records for good cause.

Appeals. The petitioner or the commissioner may appeal the probate court's final decision to the Superior Court. Any review of the probate court's decision must be "de novo," which means that the court must take an independent look at the evidence.

Enforcement of any decision granting relief must be stayed until the period for taking an appeal expires or, if an appeal is taken, until the court renders a final decision. If the court grants relief and no appeal is taken or an appeal is taken and the decision is upheld, the court must notify the DPS commissioner of its decision.

Updating Records. As soon as practicable after the court notifies the commissioner that it has granted relief, he must (1) coordinate the removal of or cancellation of the pertinent record in the National Instant Criminal Background Check System (NICS) and (2) notify the U.S. attorney general that the basis for the firearms disability no longer applies. (NICS is the federal database used in determining if prospective gun buyers are disqualified from acquiring or possessing firearms under state or federal law.)

BACKGROUND

Definitions

Federal law prohibits a person from transporting, receiving, possessing, or shipping firearms if he or she has been "adjudicated as a mental defective" or "committed to a mental institution." It also prohibits selling or otherwise providing any firearm or ammunition to these people (18 USC §§ 922(d)(4) & 922(g)(4)).

Under federal regulations, "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, incompetence, condition, or disease (1) is a danger to himself or herself or others or (2) lacks the mental capacity to contract or manage his or her own affairs. The term includes a finding of incompetence to stand trial or not guilty by reason of insanity or lack of mental responsibility. "Committed to a mental institution" means a formal commitment by a court, board, commission, or other lawful authority. It includes people involuntarily committed for mental health issues or other reasons, such as drug use, but not those admitted voluntarily or for observation (27 CFR § 478.11).

Federal Firearms Disabilities

In 2008, Congress passed the NICS Improvement Amendments Act (PL 110-

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108) to increase the number and types of records submitted to NICS on people prohibited by state or federal law from possessing or acquiring firearms. The act (1) requires states to meet specified goals for submitting more complete records to NICS and authorizes grants to help states comply and financial penalties (grant reduction) for noncompliance, (2) allows people disqualified on mental health grounds to petition for restoration of their firearm privileges under a federally approved state program, and (3) provides financial incentives to states that implement such programs and meet other requirements.

OLR Tracking: VR:KM:PF:df