

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 464**

4 (By Senators Palumbo, Wills and Kessler (Acting President))

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 10, 2011.]

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11 A Bill to amend and reenact §61-7A-2 and §61-7A-5 of the Code of
12 West Virginia, 1931, as amended, all relating to the state
13 mental health registry generally; clarifying that only final
14 commitments for treatment be reported to the registry;
15 complying with federal requirements relating to petitions for
16 relief from prohibition against possessing a firearm;
17 increasing information to be provided by petitioners;
18 expanding the factors to be considered by a reviewing court;
19 and expanding the findings a court must make in granting a
20 petition.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §61-7A-2 and §61-7A-5 of the Code of West Virginia, 1931,
23 as amended, be amended and reenacted, all to read as follows:

24 **ARTICLE 7A. STATE MENTAL HEALTH REGISTRY; REPORTING OF PERSONS'**
25 **PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL**

1 **CONDITION TO THE NATIONAL INSTANT CRIMINAL**
2 **BACKGROUND CHECK SYSTEM; LEGISLATIVE FINDINGS;**
3 **DEFINITIONS; REPORTING REQUIREMENTS; REINSTATEMENT**
4 **OF RIGHTS PROCEDURES.**

5 **§61-7A-2. Definitions.**

6 As used in this article and as the terms are deemed to mean in
7 18 U.S.C. §922(g) and section seven, article seven of this chapter
8 as each exists as of January 31, 2008:

9 (1) "A person adjudicated as a mental defective" means a
10 person who has been determined by a duly authorized court,
11 tribunal, board or other entity to be mentally ill to the point
12 where he or she has been found to be incompetent to stand trial due
13 to mental illness or insanity, has been found not guilty in a
14 criminal proceeding by reason of mental illness or insanity or has
15 been determined to be unable to handle his or her own affairs due
16 to mental illness or insanity.

17 (2) "Committed to a mental institution" means to have been
18 involuntarily committed for treatment pursuant to the provisions of
19 chapter twenty-seven of this code by virtue of a final order of
20 commitment.

21 (3) "Mental institution" means any facility or part of a
22 facility used for the treatment of persons committed for treatment
23 of mental illness or addiction.

24 **§61-7A-5. Petition to regain right to possess firearms.**

25 (a) Any person who is prohibited from possessing a firearm

1 pursuant to the provisions of section seven, article seven of this
2 chapter or by provisions of federal law by virtue solely of having
3 previously been adjudicated to be mentally defective or to having
4 a prior involuntary commitment to a mental institution pursuant to
5 chapter twenty-seven of this code may petition the circuit court of
6 the county of his or her residence to regain the ability to
7 lawfully possess a firearm. Petitioners prohibited from possession
8 of firearms due to a mental health disability, must include in the
9 petition for relief from disability: (1) A listing of facilities
10 and location addresses of all prior mental health treatment
11 received by petitioner; (2) an authorization, signed by the
12 petitioner, for release of mental health records to the prosecuting
13 attorney of the county; and (3) a verified certificate of mental
14 health examination by a licensed psychologist or psychiatrist
15 occurring within thirty days prior to filing of the petition which
16 supports that the petitioner is competent and not likely to act in
17 a manner dangerous to public safety. The court may only consider
18 petitions for relief due to mental health adjudications or
19 commitments that occurred in this state, and only give the relief
20 specifically requested in the petition. In determining whether to
21 grant the petition, the court shall receive and consider at a
22 minimum evidence: (i) Concerning the circumstances regarding the
23 firearms disabilities imposed by 18 U.S.C. §922(g)(4); (ii) the
24 petitioner's record which must include the petitioner's mental
25 health and criminal history records; and (iii) the petitioner's
26 reputation developed through character witness statements,

1 testimony, or other character evidence. If the court finds by
2 clear and convincing evidence that the person is competent and
3 capable of exercising the responsibilities concomitant with the
4 possession of a firearm, will not be likely to act in a manner
5 dangerous to public safety, and that granting the relief will not
6 be contrary to public interest, the court may enter an order
7 allowing the petitioner to possess a firearm. If the order denies
8 petitioner's ability to possess a firearm, the petitioner may
9 appeal the denial, which appeal is to include the record of the
10 circuit court rendering the decision.

11 (b) All proceedings for relief to regain firearm or ammunition
12 rights shall be reported or recorded and maintained for review.

13 (c) The prosecuting attorney or one of his or her assistants
14 shall represent the state in all proceedings for relief to regain
15 firearm rights and provide the court the petitioner's criminal
16 history records.

17 (d) The written petition, certificate, mental health or
18 substance abuse treatment records and any papers or documents
19 containing substance abuse or mental health information of the
20 petitioner, filed with the circuit court, are confidential. These
21 documents may not be open to inspection by any person other than
22 the prosecuting attorney or one of his or her assistants only for
23 purposes of representing the state in and during these proceedings
24 and by the petitioner and his or her counsel. No other person may
25 inspect these documents, except upon authorization of the
26 petitioner or his or her legal representative or by order of the

1 court, and these records may not be published except upon the
2 authorization of the petitioner or his or her legal representative.
3 ~~(b)~~ (e) The circuit clerk of each county shall provide the
4 Superintendent of the West Virginia State Police, or his or her
5 designee, and the Administrator of the West Virginia Supreme Court
6 of Appeals, or his or her designee, with a certified copy of any
7 order entered pursuant to the provisions of this section which
8 removes a petitioner's prohibition to possess firearms. If the
9 order restores the petitioner's ability to possess a firearm,
10 petitioner's name shall be promptly removed from the central state
11 mental health registry and the superintendent or administrator
12 shall forthwith inform the Federal Bureau of Investigation, the
13 United States Attorney General, or other federal entity operating
14 the National Instant Criminal Background Check System of the court
15 action.

(NOTE: The purpose of this bill is to amend the procedure for petitioning to regain the right to possess firearms to comply with the minimum criteria to establish qualifying mental health relief from firearms disabilities under the NICS Improvement Act of 2007 (NIAA) Public Law 110-180, Section 105, enacted on January 8, 2008, to allow the removal of individuals from the federal NICS Index who have been adjudicated in West Virginia to regain their right to possess firearms.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)