

H. B. 3076

(By Delegates Miley, Ferro and Longstreth)  
(By request of the Supreme Court of Appeals)  
[Introduced February 9, 2011; referred to the  
Committee on the Judiciary.]

A Bill to amend and reenact §61-7A-2 and §61-7A-5 of the Code of  
West Virginia, 1931, as amended, all relating to 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 generally.

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

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

**ARTICLE 7A. STATE MENTAL HEALTH REGISTRY; REPORTING OF PERSONS'  
PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL  
CONDITION TO THE NATIONAL INSTANT CRIMINAL  
BACKGROUND CHECK SYSTEM; LEGISLATIVE FINDINGS;  
DEFINITIONS; REPORTING REQUIREMENTS; REINSTATEMENT  
OF RIGHTS PROCEDURES.**

1 **§61-7A-2. Definitions.**

2 As used in this article and as the terms are deemed to mean in  
3 18 U.S.C. §922(g) and section seven, article seven of this chapter  
4 as each exists as of January 31, 2008:

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

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

17 (3) "Mental institution" means any facility or part of a  
18 facility used for the treatment of persons committed for treatment  
19 of mental illness or addiction.

20 **§61-7A-5. Petition to regain right to possess firearms.**

21 (a) Any person who is prohibited from possessing a firearm  
22 pursuant to the provisions of section seven, article seven of this  
23 chapter or by provisions of federal law by virtue solely of having  
24 previously been adjudicated to be mentally defective or to having

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

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

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

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

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

1 petitioner or his or her legal representative or by order of the  
2 court, and these records may not be published except upon the  
3 authorization of the petitioner or his or her legal representative.

4 ~~(b)~~ (e) The circuit clerk of each county shall provide the  
5 Superintendent of the West Virginia State Police, or his or her  
6 designee, and the Administrator of the West Virginia Supreme Court  
7 of Appeals, or his or her designee, with a certified copy of any  
8 order entered pursuant to the provisions of this section which  
9 removes a petitioner's prohibition to possess firearms. If the  
10 order restores the petitioner's ability to possess a firearm,  
11 petitioner's name shall be promptly removed from the central state  
12 mental health registry and the superintendent or administrator  
13 shall forthwith inform the Federal Bureau of Investigation, the  
14 United States Attorney General, or other federal entity operating  
15 the National Instant Criminal Background Check System of the court  
16 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.