

Be it enacted by the General Assembly of the State of South Carolina:

Mental health adjudications and commitments to be reported to the National Instant Criminal Background Check System, appeals to remove prohibition of possessing firearms and ammunition, felony for a person adjudicated as a mental defective or committed to a mental institution to possess firearms or ammunition, confiscation of such firearms or ammunition

SECTION 1. Chapter 31, Title 23 of the 1976 Code is amended by adding:

"Article 10

NICS: Mental Health Adjudication and Commitment Reporting

Section 23-31-1010. As used in this article:

(1) 'Adjudicated as a mental defective' means a determination by a court of competent jurisdiction that a person, as a result of marked subnormal intelligence, mental illness, mental incompetency, mental condition, or mental disease:

- (a) is a danger to himself or to others; or
- (b) lacks the mental capacity to contract or manage the person's own affairs.

The term includes:

- (a) a finding of insanity by a court in a criminal case; and
- (b) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. Sections 850(a) and 876(b).

(2) 'Committed to a mental institution' means a formal commitment of a person to a mental institution by a court of competent jurisdiction. The term includes a commitment to a mental institution involuntarily, and a commitment to a mental institution for mental defectiveness, mental illness, and other reasons, such as drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

(3) 'Mental institution' includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Section 23-31-1020. (A) The Judicial Department and the Chief of SLED, or the chief's designee, shall work in conjunction with a court of competent jurisdiction in developing procedures for the collection and submission of information of persons who have been adjudicated as a mental defective or who have been committed to a mental institution.

(B) When a court submits this information to SLED by court order, SLED shall transmit the information to the National Instant Criminal Background Check System (NICS) established pursuant to the Brady Handgun Violence Protection Act of 1993, Pub. L. (pg. 79) 103-159. (C) The court shall submit the information to SLED by court order within five days from the filing of each order related to adjudications and commitments. Under no circumstances may the court or SLED submit information pursuant to this section relating to a person's diagnosis or treatment.

(D) SLED shall keep information submitted by the court confidential, and that information only may be disclosed to NICS pursuant to this section, for purposes directly related to the Brady Act, or as provided in subsection (E).

(E) If the court, by court order, has submitted a person's name and other identifying information to SLED to be transmitted to NICS, SLED shall review the state concealed weapons permit holders list, and if the review reveals that the person possesses a current concealed weapons permit, the permit must be revoked and surrendered to a sheriff, police department, SLED agent, or by certified mail to the Chief of SLED. If the permit holder fails to return the permit within ten days of being notified of the permit's revocation, SLED shall retrieve the permit from the permit holder.

(F) Information submitted by the court pursuant to this section, which is also contained in court orders or in other state or local agency records, is not affected by this section, and such court orders or other state or local agency records may be disclosed in accordance with existing laws and procedures.

Section 23-31-1030. (A) If a person is prohibited from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. Section 922(g)(4) or Section 23-31-1040 as a result of adjudication as a mental defective or commitment to a mental institution, the person may petition the court that issued the original order to remove the prohibitions. The person may file the petition upon the expiration of any current commitment order; however, the court only may consider petitions for relief due to adjudications and commitments that occurred in this State.

(B) The petition must be accompanied by an authorization and release signed by the petitioner authorizing disclosure of the petitioner's current and past medical records, including mental health records.

(C) If the petition is filed pro se, the court shall provide notice to all parties of record. If the petitioner is represented by counsel, counsel shall provide notice to all parties of record.

(D) Notwithstanding the exclusive jurisdiction of the court to preside over hearings initiated pursuant to this section, the case may be removed to the circuit court upon motion of the petitioner or on motion of the court, made not later than ten days following the date the petition is filed. Upon such motion, the case must be removed to the circuit court where the court shall proceed with the case de novo.

(E)(1) Within ninety days of receiving the petition, unless the court grants an extension upon request of the petitioner, the court shall conduct a hearing which must be presided over by a person other than the person who gathered evidence for use by the court in the hearing.

(2) At the hearing on the petition, the petitioner shall have the opportunity to submit evidence, and a record of the hearing must be made and maintained for review. The court shall consider information and

records, which otherwise are confidential or privileged, relevant to the criteria for removing firearm and ammunition prohibitions and shall receive and consider evidence concerning the following:

- (a) the circumstances regarding the firearm and ammunitions prohibitions imposed by 18 U.S.C. Section 922(g)(4) and Section 23-31-1040;
- (b) the petitioner's record, which must include, at a minimum, the petitioner's mental health and criminal history records;
- (c) evidence of the petitioner's reputation developed through character witness statements, testimony, or other character evidence; and
- (d) a current evaluation presented by the petitioner conducted by the Department of Mental Health or a physician licensed in this State specializing in mental health specifically addressing whether due to mental defectiveness or mental illness the petitioner poses a threat to the safety of the public or himself or herself.

(F) The hearing must be closed to the public, and the petitioner's mental health records must be restricted from public disclosure. However, upon motion by the petitioner, the hearing may be open to the public, and the court may allow for the in camera inspection of the petitioner's mental health records and for the use of these records, but these records must be restricted from public disclosure.

(G)(1) The court shall make findings of fact regarding the following and shall remove the firearm and ammunition prohibitions if the petitioner proves by a preponderance of the evidence that:

- (a) the petitioner is no longer required to participate in court-ordered psychiatric treatment;
- (b) the petitioner is determined by the Department of Mental Health or by a physician licensed in this State specializing in mental health to be not likely to act in a manner dangerous to public safety; and
- (c) granting the petitioner relief will not be contrary to the public interest.

(2) Notwithstanding item (1), the court must not remove the firearm and ammunition prohibitions if, by a preponderance of the evidence, it is proven that the petitioner has engaged in acts of violence subsequent to the petitioner's last adjudication as a mental defective or last commitment to a mental institution, unless the petitioner, by clear and convincing evidence, proves that he is not likely to act in a manner dangerous to public safety.

(H) If the petitioner is denied relief and the firearm and ammunition prohibitions are not removed, the petitioner may appeal to the circuit court for de novo review. In conducting its review, the circuit court:

- (1) shall review the record;
- (2) may give deference to the decision of the court denying the petitioner relief; and
- (3) may receive additional evidence as necessary to conduct an adequate review.

(I) Medical records, psychological reports, and other treatment records which have been submitted to

the court or admitted into evidence under this section must be part of the record, but must be sealed and opened only on order of the court.

(J) If a court issues an order pursuant to this section that removes the firearm and ammunition prohibitions that prohibited the petitioner from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. Section 922(g)(4) or Section 23-31-1040, arising from adjudication as a mental defective or commitment to a mental institution, the court shall provide SLED with a certified copy of the order that may be transmitted through electronic means. SLED promptly shall inform the NICS of the court action removing these firearm and ammunition prohibitions.

Section 23-31-1040. (A) It is unlawful for a person who has been adjudicated as a mental defective or who has been committed to a mental institution to ship, transport, possess, or receive a firearm or ammunition.

(B) A person who violates this section is guilty of a felony, and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(C) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use the firearm or ammunition within the agency, transfer the firearm or ammunition to another law enforcement agency for the lawful use of that agency, trade the firearm or ammunition with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy the firearm or ammunition. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which the firearm or ammunition may be involved are finally determined. If SLED seized the firearm or ammunition, SLED may keep the firearm or ammunition for use by SLED's forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies pursuant to this section. A law enforcement agency that receives a firearm or ammunition pursuant to this subsection may administratively release the firearm or ammunition to an innocent owner. If possession of the firearm or ammunition is necessary for legal proceedings, the firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally concluded. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this subsection which resulted in the firearm's or ammunition's confiscation. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this subsection.

(D) At the time the person is adjudicated as a mental defective or is committed to a mental institution, the court shall provide to the person or the person's representative, as appropriate, a written form that conspicuously informs the person or the person's representative, as appropriate, of the provisions of this section.

Section 23-31-1050. As used in Section 23-31-1030 and Section 23-31-1040:

(1) 'Ammunition' means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in a firearm other than an antique firearm. The term does not include:

- (a) a shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing; or
- (b) an unloaded, nonmetallic shotgun hull or casing not having a primer.

(2) 'Antique firearm' means:

- (a) a firearm, including a firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; and
- (b) a replica of a firearm described in subitem (a) if such replica:
 - (i) is not designed or redesigned for using rimfire or conventional centerfire-fixed ammunition; or
 - (ii) uses rimfire or conventional centerfire-fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3) 'Firearm' means a weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of such weapon; a firearm muffler or firearm silencer; or a destructive device; but the term does not include an antique firearm. In the case of a licensed collector, the term means only curios and relics.

(4) 'Firearm frame or receiver' means that part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

(5) 'Firearm muffler or firearm silencer' means a device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

Section 23-31-1060. Nothing in this article affects a court's duty to conduct a hearing on the issue of a person's fitness to stand trial pursuant to Section 44-23-430. A solicitor shall not dismiss charges against a person prior to such hearing based solely on the person's fitness to stand trial."

Confidentiality of mental health records and exceptions

SECTION 2. Section 44-22-100 of the 1976 Code is amended to read:

"Section 44-22-100. (A) Certificates, applications, records, and reports made for the purpose of this chapter or Chapter 9, Chapter 11, Chapter 13, Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter

24, Chapter 25, Chapter 27, or Chapter 52, and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed unless:

- (1) the individual identified or the individual's guardian consents;
- (2) a court directs that disclosure is necessary for the conduct of proceedings before the court and that failure to make the disclosure is contrary to public interest;
- (3) disclosure is required for research conducted or authorized by the department or the Department of Alcohol and Other Drug Abuse Services and with the patient's consent;
- (4) disclosure is necessary to cooperate with law enforcement, health, welfare, and other state or federal agencies, or when furthering the welfare of the patient or the patient's family;
- (5) disclosure to a court of competent jurisdiction is necessary for the limited purpose of providing a court order to SLED in order to submit information to the federal National Instant Criminal Background Check System (NICS), established pursuant to the Brady Handgun Violence Prevention Act of 1993, Pub.L. 103-159, and in accordance with Article 10, Chapter 31, Title 23; or
- (6) disclosure is necessary to carry out the provisions of this chapter or Chapter 9, Chapter 11, Chapter 13, Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter 24, Chapter 25, Chapter 27, or Chapter 52.

(B) Nothing in this section:

- (1) precludes disclosure, upon proper inquiry, of information as to a patient's current medical condition to members of the patient's family, or the Governor's Office of Ombudsman; or
- (2) requires the release of records of which disclosure is prohibited or regulated by federal law.

(C) A person who violates this section is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both."

Prospective and retroactive requirements for courts to submit mental health adjudication and commitment information

SECTION 3. A court required to submit information to SLED pursuant to this act concerning individuals who have been adjudicated as a mental defective or who have been committed to a mental institution shall, from the effective date of this act forward, submit information by court order within five days from the filing of each order and in accordance with procedures developed as required by this act and have one year from this act's effective date to submit retroactive information by court order on such individuals going back a minimum of ten years or, if records are not available as far back as ten years, as far back as records exist.

Severability

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the

constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 5. This act takes effect ninety days after approval by the Governor.

Ratified the 2nd day of May, 2013.

Approved the 3rd day of May, 2013.
