WEST VIRGINIA CODE CHAPTER 61 ARTICLE 7A

WV Legislature

§61-7A-1. Legislative intent.

It is the intention of the Legislature in the enactment of this article to clarify the persons whom it intends to proscribe from the possession of firearms due to mental illness; establish a process in reporting the names of persons proscribed from possession of firearms due to mental illness to the central state mental health registry; authorize reporting by registry to the National Instant Criminal Background Check System; and to prescribe a means for reinstating one's ability to lawfully possess a firearm.

WV Legislature

§61-7A-2. Definitions.

As used in this article and as the terms are deemed to mean in 18 U. S. C. § 922(g) and §61-7-7 of this code as each exists as of January 31, 2008:

(1) "A person adjudicated as a mental defective" means a person who has been determined by a duly authorized court, tribunal, board or other entity to be mentally ill to the point where he or she has been found to be incompetent to stand trial due to mental illness or insanity, has been found not guilty in a criminal proceeding by reason of mental illness or insanity or has been determined to be unable to handle his or her own affairs due to mental illness or insanity. A child under fourteen years of age is not considered "a person adjudicated as a mental defective" for purposes of this article.

(2) "Committed to a mental institution" means to have been involuntarily committed for treatment pursuant to the provisions of §27-5-4(l) of this code. Children under 14 years of age are not considered "committed to a mental institution" for purposes of this article. "Committed to a mental institution" does not mean voluntary admission for mental health treatment.

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

WV Legislature

§61-7A-3. Persons whose names are to be supplied to the central state mental health registry.

(a) The Superintendent of the West Virginia State Police and the Secretary of the Department of Human Services, or their designees, shall cooperate with the circuit clerk of each county and Administrator of the West Virginia Supreme Court of Appeals in compiling and maintaining a database containing the names and identifying information of persons who have been adjudicated to be mentally defective or who have been committed to a mental institution. The registry shall be maintained by the Administrator of the Supreme Court of Appeals or the superintendent of the West Virginia State Police.

(b) The name of any person who has been adjudicated to be mentally defective or who has been committed to a mental institution shall be provided to the Administrator of the Supreme Court of Appeals or the Superintendent of the West Virginia State Police for inclusion in the central state mental health registry. Upon receipt of the information being received by the central state mental health registry it may be transmitted to the National Instant Criminal Background Check System and to county sheriffs;

(c) The Secretary of Department of Human Services and the circuit clerk of each county shall, as soon as practicable after the effective date of this article, supply to the Administrator of the Supreme Court of Appeals or the Superintendent of the West Virginia State Police for inclusion in the central state mental health registry the name and identifying information required by the provisions of subsection (d) of this section of all persons covered by the provisions of this article and shall on an ongoing basis continue to provide such information as it is developed;

(d) The central state mental health registry shall contain the name, address at the time of commitment or adjudication, date of birth, date of commitment or adjudication of all persons who have been adjudicated to be mentally defective or who have been committed to a mental institution.

(e) The central state mental health registry shall provide only such information about a person on the registry to county sheriffs and the National Instant Criminal Background Check System as is necessary to identify registrants; and

(f) On or before January 1, 2010, the central state mental health registry shall contain the name, address at the time of commitment or adjudication, date of birth, date of commitment or adjudication and any other identifying characteristics of all persons who have been adjudicated to be mentally defective or who have been committed to a mental institution . Under no circumstances shall the registry contain information relating to any diagnosis or treatment provided.

(g) To the extent the central state mental health registry contains the names of any children under fourteen years of age on the effective date of this article, the Administrator of the West Virginia Supreme Court of Appeals shall take whatever steps are necessary to remove

WV Legislature

those individuals from the central state mental health registry.

WV Legislature

§61-7A-4. Confidentiality; limits on use of registry information.

(a) Notwithstanding any provision of this code to the contrary, the Superintendent of the State Police, the Secretary of the Department of Human Services, the circuit clerks, and the Administrator of the Supreme Court of Appeals may provide notice to the central state mental health registry and the National Instant Criminal Background Check System established pursuant to Section 103(d) of the Brady Handgun Violence Protection Act, 18 U. S. C. §922, that a person: (i) Has been involuntarily committed to a mental institution ; (ii) has been adjudicated as a mental defective ; or (iii) has regained the ability to possess a firearm by order of a circuit court in a proceeding under section five of this article.

(b) The information contained in the central state mental health registry is to be used solely for the purpose of records checks related to firearms purchases and for eligibility for a state license or permit to possess or carry a concealed firearm.

(c) Whenever a person's name and other identifying information has been added to the central state mental health registry, a review of the state concealed handgun registry shall be undertaken and if such review reveals that the person possesses a current concealed handgun license, the sheriff of the county issuing the concealed handgun license shall be informed of the person's change in status.

WV Legislature

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

(a) Any person who is prohibited from possessing a firearm pursuant to the provisions of §61-7-7 or by provisions of federal law by virtue solely of having previously been adjudicated to be mentally defective or to having a prior involuntary commitment to a mental institution pursuant to §27-5-4(l) of this code may petition the circuit court of the county of his or her residence to regain the ability to lawfully possess a firearm.

(b) Petitioners prohibited from possession of firearms due to a mental health disability, must include in the petition for relief from disability:

(1) A listing of facilities and location addresses of all prior mental health treatment received by petitioner;

(2) An authorization, signed by the petitioner, for release of mental health records to the prosecuting attorney of the county; and

(3) A verified certificate of mental health examination by a physician, psychologist, licensed professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, licensed independent clinical social worker practicing in compliance with the provisions of §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, or a physician assistant practicing in compliance with §30-3E-1 *et seq.* of this code occurring within 30 days prior to filing of the petition which supports that the petitioner is competent and not likely to act in a manner dangerous to public safety: *Provided*, That a licensed professional counselor, a licensed independent clinical social worker, an advanced nurse practitioner with psychiatric certification, or a physician assistant may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed professional counselor, the licensed independent clinical social worker, advanced nurse practitioner with psychiatric certification, or a physician assistant has particularized expertise in the areas of mental health and mental hygiene or substance use disorder sufficient to make the determinations required by the provisions of this subsection.

(c) The court may only consider petitions for relief due to mental health adjudications or commitments that occurred in this state, and only give the relief specifically requested in the petition.

(d) In determining whether to grant the petition, the court shall receive and consider at a minimum evidence:

(1) Concerning the circumstances regarding the firearms disabilities imposed by 18 U.S.C. §922(g)(4);

(2) The petitioner's record which must include the petitioner's mental health and criminal history records; and

WV Legislature

(3) The petitioner's reputation developed through character witness statements, testimony, or other character evidence.

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

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

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

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

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

WV Legislature