

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 464**

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

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[Originating in the Committee on the Judiciary;  
reported February 10, 2011.]

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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 state mental health registry generally; clarifying that only final commitments for treatment be reported to the registry; complying with federal requirements relating to petitions for relief from prohibition against possessing a firearm; increasing information to be provided by petitioners; expanding the factors to be considered by a reviewing court; and expanding the findings a court must make in granting a petition.

*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.**

**§61-7A-2. Definitions.**

1 As used in this article and as the terms are deemed to mean  
2 in 18 U.S.C. §922(g) and section seven, article seven of this  
3 chapter as each exists as of January 31, 2008:  
4 (1) "A person adjudicated as a mental defective" means a  
5 person who has been determined by a duly authorized court,  
6 tribunal, board or other entity to be mentally ill to the point  
7 where he or she has been found to be incompetent to stand  
8 trial due to mental illness or insanity, has been found not  
9 guilty in a criminal proceeding by reason of mental illness or  
10 insanity or has been determined to be unable to handle his or  
11 her own affairs due to mental illness or insanity.

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

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

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

1 (a) Any person who is prohibited from possessing a firearm  
2 pursuant to the provisions of section seven, article seven of  
3 this chapter or by provisions of federal law by virtue solely  
4 of having previously been adjudicated to be mentally  
5 defective or to having a prior involuntary commitment to a  
6 mental institution pursuant to chapter twenty-seven of this  
7 code may petition the circuit court of the county of his or her  
8 residence to regain the ability to lawfully possess a firearm.  
9 Petitioners prohibited from possession of firearms due to a  
10 mental health disability, must include in the petition for  
11 relief from disability: (1) A listing of facilities and location  
12 addresses of all prior mental health treatment received by  
13 petitioner; (2) an authorization, signed by the petitioner, for  
14 release of mental health records to the prosecuting attorney  
15 of the county; and (3) a verified certificate of mental health

16 examination by a licensed psychologist or psychiatrist  
17 occurring within thirty days prior to filing of the petition  
18 which supports that the petitioner is competent and not  
19 likely to act in a manner dangerous to public safety. The  
20 court may only consider petitions for relief due to mental  
21 health adjudications or commitments that occurred in this  
22 state, and only give the relief specifically requested in the  
23 petition. In determining whether to grant the petition, the  
24 court shall receive and consider at a minimum evidence: (i)  
25 Concerning the circumstances regarding the firearms  
26 disabilities imposed by 18 U.S.C. §922(g)(4); (ii) the peti-  
27 tioner's record which must include the petitioner's mental  
28 health and criminal history records; and (iii) the petitioner's  
29 reputation developed through character witness statements,  
30 testimony, or other character evidence. If the court finds by  
31 clear and convincing evidence that the person is competent  
32 and capable of exercising the responsibilities concomitant  
33 with the possession of a firearm, will not be likely to act in  
34 a manner dangerous to public safety, and that granting the  
35 relief will not be contrary to public interest, the court may  
36 enter an order allowing the petitioner to possess a firearm. If  
37 the order denies petitioner's ability to possess a firearm, the  
38 petitioner may appeal the denial, which appeal is to include

39 the record of the circuit court rendering the decision.

40 (b) All proceedings for relief to regain firearm or ammuni-  
 41 tion rights shall be reported or recorded and maintained for  
 42 review.

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

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

60 ~~(b)~~ (e) The circuit clerk of each county shall provide the  
 61 Superintendent of the West Virginia State Police, or his or

62 her designee, and the Administrator of the West Virginia  
63 Supreme Court of Appeals, or his or her designee, with a  
64 certified copy of any order entered pursuant to the provisions  
65 of this section which removes a petitioner's prohibition to  
66 possess firearms. If the order restores the petitioner's ability  
67 to possess a firearm, petitioner's name shall be promptly  
68 removed from the central state mental health registry and  
69 the superintendent or administrator shall forthwith inform  
70 the Federal Bureau of Investigation, the United States  
71 Attorney General, or other federal entity operating the  
72 National Instant Criminal Background Check System of the  
73 court action.

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(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.)