

Commitments Listserv
E-blast
November 12, 2008

Collateral Consequences of Commitment: Prohibition on Purchase/Possession of Firearms

Please give your undivided attention to the first pieces of new legislation affecting commitments in quite some time. They are G.S. 122C-54(d)(1) and the new 122C-54.1. Both go into effect December 1, 2008. This legislation creates collateral consequences for our commitment clients; and, creates additional responsibility for us to fully advise our clients as to these consequences.

N.C.G.S. 122C-54 (d)(1) makes exception to the confidentiality law surrounding involuntary commitments and requires the Clerk of Superior Court to notify the National Instant Criminal Background Check System (NICS) of any individual who:

Is involuntarily committed to inpatient mental health treatment;

Is involuntarily committed to outpatient mental health treatment *and found to be a danger to self or others*;

Is acquitted of a crime by reason of insanity;

Is deemed incapable of proceeding to trial on a criminal charge.

N.C.G.S. 122C-54.1 provides a restoration procedure for individuals, over 18, involuntarily committed to have the block removed from their ability to purchase, possess or transfer a firearm. Individuals who have been reported to NICS will be required to file a petition with the District Court in their county of residence or in the county where the most recent commitment was entered. Individuals committed out of State will file in the county of residence. The petitioner must prove that he no longer suffers from the “condition requiring commitment” and that he is no longer a danger to himself or others relative to firearms. If relief is granted, the clerk of court shall notify NICS that the individual’s prohibition against firearms has been lifted.

History: Early in 2008, Congress passed the NICS Improvement Act which provided that a state may establish procedures which restore an individual’s right to firearms after removal of those rights pursuant to 18 U.S.C. 922(g)(4). Then, in May, 2008, Sen. Basnight introduced SB-2081 in conjunction with an AG task force on campus safety. The task force recommended that the General Assembly require the Clerks of Court to notify NICS of a commitment block. Previously, there was no statutory requirement that Clerks report this information. The task force also recommended that there be a state process to grant relief to individuals who had been previously involuntarily committed and were seeking to purchase a gun.

That’s the new, here’s the review:

NICS was established by the Brady Handgun Violence Prevention Act, Public Law 103-159, 107 Stat. 1536 and it is maintained by the Federal Bureau of Investigation via 28 C.F.R. 25.3. Local law enforcement access NICS through their NCIC terminal to determine whether an individual applying for a purchase or concealed carry permit is eligible. Local licensed firearm dealers access NICS directly to inquire of a purchaser’s eligibility.

**Commitments Listserv
E-blast
November 12, 2008
Page 2**

Under 18 U.S.C. 922(g)(4), it is unlawful for any person adjudicated as a mental defective or who has been committed to a mental institution to purchase, possess, transfer or receive any firearm or ammunition. Previously, by federal statute, application for relief from the commitment prohibition was made to the U.S. Attorney General; however, no federal funds were ever appropriated for that office to consider such applications.

The County Sheriff grants or denies applications for purchase and concealed carry permits pursuant to N.C.G.S. 14-404 and N.C.G.S. 14-415.12 and may do so for almost any reason (irrespective of commitment).

Please contact me with any questions.

Ben Turnage
Special Counsel
Cherry Hospital
201 Stevens Mill Road
Goldsboro, NC 27530
(919) 731-3437

Ben.M.Turnage@nccourts.org