

HOUSE BILL 1304

By Littleton

AN ACT to amend Tennessee Code Annotated, Title 16, Chapter 10; Title 16, Chapter 11; Title 16, Chapter 15; Title 16, Chapter 16 and Section 39-17-1351, relative to relief from disabilities in mental health cases.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 16, Chapter 10, Part 2, is amended by adding the following as a new, appropriately designated section:

(a) A person who is subject to 18 U.S.C. § 922(d)(4) and (g)(4) because the person has been adjudicated as a mental defective or judicially committed to a mental institution, as defined in § 16-10-213, may petition the circuit or criminal court that entered the judicial commitment or adjudication order for relief from the firearm disabilities imposed by the adjudication or judicial commitment.

(b) A copy of the petition for relief shall also be served on the district attorney general of the judicial district in which the original judicial commitment or adjudication occurred. The district attorney general may appear, support, object to, or present evidence relevant to the relief sought by the petitioner.

(c) The court shall receive and consider evidence in an open proceeding, including evidence offered by the petitioner, concerning:

- (1) The circumstances that led to the imposition of the firearms disability under 18 U.S.C. § 922 (d)(4) and (g)(4);
- (2) The petitioner's mental health records;
- (3) The petitioner's criminal history;
- (4) The petitioner's reputation; and

(5) Changes in the petitioner's condition or circumstances relevant to the relief sought.

(d) The court shall grant the petition for relief if it finds by a preponderance of the evidence and enters into the record the following:

(1) The petitioner is no longer likely to act in a manner that is dangerous to public safety; and

(2) Granting the relief would not be contrary to the public interest.

(e) A record of the proceedings shall be made by a certified court reporter or by court-approved electronic means. Except in matters resulting in criminal adjudication, the means of recording is to be provided by the petitioner.

(f) The petitioner may appeal a final order denying the requested relief, and the review on appeal, if granted, shall be de novo.

(g) A person may file a petition for relief under this section no more than once every two (2) years.

(h) Relief from a firearm disability granted under this section has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication as a mental defective or judicial commitment to a mental institution from which relief is granted.

(i) When the court issues an order granting a petition of relief under subsection (d), the court clerk shall, as soon as practicable but no later than thirty (30) days after issuance, forward a copy of the order to the Tennessee bureau of investigation (TBI).

The TBI, upon receipt of the order, shall:

(1) Immediately forward a copy of the order to the department of safety;

(2) Update the National Instant Criminal Background Check System database and transmit the corrected records to the federal bureau of investigation; and

(3) Remove and destroy all records relating to the petition for relief from any database over which the TBI exercises control.

(j) The TBI and the department of safety shall not use or permit the use of the records or information obtained or retained pursuant to this section for any purpose not specified in this section.

SECTION 2. Tennessee Code Annotated, Title 16, Chapter 11, Part 2, is amended by adding the following as a new, appropriately designated section:

(a) A person who is subject to 18 U.S.C. § 922(d)(4) and (g)(4) because the person has been adjudicated as a mental defective or judicially committed to a mental institution, as defined in § 16-11-206, may petition the chancery court that entered the judicial commitment or adjudication order or the chancery court where the petitioner resides for relief from the firearm disabilities imposed by the adjudication or judicial commitment.

(b) A copy of the petition for relief shall also be served on the district attorney general of the judicial district in which the original judicial commitment or adjudication occurred. The district attorney general may appear, support, object to, or present evidence relevant to the relief sought by the petitioner.

(c) The court shall receive and consider evidence in an open proceeding, including evidence offered by the petitioner, concerning:

- (1) The circumstances that led to the imposition of the firearms disability under 18 U.S.C. § 922(d)(4) and (g)(4);
- (2) The petitioner's mental health records;
- (3) The petitioner's criminal history;
- (4) The petitioner's reputation; and

(5) Changes in the petitioner's condition or circumstances relevant to the relief sought.

(d) The court shall grant the petition for relief if it finds by a preponderance of the evidence and enters into the record the following:

(1) The petitioner is no longer likely to act in a manner that is dangerous to public safety; and

(2) Granting the relief would not be contrary to the public interest.

(e) A record of the proceedings, to be provided by the petitioner, shall be made by a certified court reporter or by court-approved electronic means.

(f) The petitioner may appeal a final order denying the requested relief, and the review on appeal, if granted, shall be de novo.

(g) A person may file a petition for relief under this section no more than once every two (2) years.

(h) Relief from a firearm disability granted under this section has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication as a mental defective or judicial commitment to a mental institution from which relief is granted.

(i) When the court issues an order granting a petition of relief under subsection (d), the court clerk shall, as soon as practicable but no later than thirty (30) days after issuance, forward a copy of the order to the Tennessee bureau of investigation (TBI).

The TBI, upon receipt of the order, shall:

(1) Immediately forward a copy of the order to the department of safety;

(2) Update the National Instant Criminal Background Check System database and transmit the corrected records to the federal bureau of investigation; and

(3) Remove and destroy all records relating to the petition for relief from any database over which the TBI exercises control.

(j) The TBI and the department of safety shall not use or permit the use of the records or information obtained or retained pursuant to this section for any purpose not specified in this section.

SECTION 3. Tennessee Code Annotated, Title 16, Chapter 15, Part 4, is amended by adding the following as a new, appropriately designated section:

(a) A person who is subject to 18 U.S.C. § 922(d)(4) and (g)(4) because the person has been adjudicated as a mental defective or judicially committed to a mental institution, as defined in § 16-15-303, may petition the general sessions court that entered the judicial commitment or adjudication order for relief from the firearm disabilities imposed by the adjudication or judicial commitment.

(b) A copy of the petition for relief shall also be served on the district attorney general of the judicial district in which the original judicial commitment or adjudication occurred. The district attorney general may appear, support, object to, or present evidence relevant to the relief sought by the petitioner.

(c) The court shall receive and consider evidence in an open proceeding, including evidence offered by the petitioner, concerning:

(1) The circumstances that led to the imposition of the firearms disability under 18 U.S.C. § 922(d)(4) and (g)(4);

(2) The petitioner's mental health records;

(3) The petitioner's criminal history;

(4) The petitioner's reputation; and

(5) Changes in the petitioner's condition or circumstances relevant to the relief sought.

(d) The court shall grant the petition for relief if it finds by a preponderance of the evidence and enters into the record the following:

(1) The petitioner is no longer likely to act in a manner that is dangerous to public safety; and

(2) Granting the relief would not be contrary to the public interest.

(e) A record of the proceedings, to be provided by the petitioner, shall be made by a certified court reporter or by court-approved electronic means.

(f) The petitioner may appeal a final order denying the requested relief, and the review on appeal, if granted, shall be de novo.

(g) A person may file a petition for relief under this section no more than once every two (2) years.

(h) Relief from a firearm disability granted under this section has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication as a mental defective or judicial commitment to a mental institution from which relief is granted.

(i) When the court issues an order granting a petition of relief under subsection (d), the court clerk shall, as soon as practicable but no later than thirty (30) days after issuance, forward a copy of the order to the Tennessee bureau of investigation (TBI).

The TBI, upon receipt of the order, shall:

(1) Immediately forward a copy of the order to the department of safety;

(2) Update the National Instant Criminal Background Check System database and transmit the corrected records to the federal bureau of investigation; and

(3) Remove and destroy all records relating to the petition for relief from any database over which the TBI exercises control.

(j) The TBI and the department of safety shall not use or permit the use of the records or information obtained or retained pursuant to this section for any purpose not specified in this section.

SECTION 4. Tennessee Code Annotated, Title 16, Chapter 16, Part 1, is amended by adding the following as a new, appropriately designated section:

(a) A person who is subject to 18 U.S.C. § 922(d)(4) and (g)(4) because the person has been adjudicated as a mental defective or judicially committed to a mental institution, as defined in § 16-16-120, may petition the county or probate court that entered the judicial commitment or adjudication order for relief from the firearm disabilities imposed by the adjudication or judicial commitment.

(b) A copy of the petition for relief shall also be served on the district attorney general of the judicial district in which the original judicial commitment or adjudication occurred. The district attorney general may appear, support, object to, or present evidence relevant to the relief sought by the petitioner.

(c) The court shall receive and consider evidence in an open proceeding, including evidence offered by the petitioner, concerning:

- (1) The circumstances that led to the imposition of the firearms disability under 18 U.S.C. § 922(d)(4) and (g)(4);
- (2) The petitioner's mental health records;
- (3) The petitioner's criminal history;
- (4) The petitioner's reputation; and
- (5) Changes in the petitioner's condition or circumstances relevant to the relief sought.

(d) The court shall grant the petition for relief if it finds by a preponderance of the evidence and enters into the record the following:

(1) The petitioner is no longer likely to act in a manner that is dangerous to public safety; and

(2) Granting the relief would not be contrary to the public interest.

(e) A record of the proceedings, to be provided by the petitioner, shall be made by a certified court reporter or by court-approved electronic means.

(f) The petitioner may appeal a final order denying the requested relief, and the review on appeal, if granted, shall be de novo.

(g) A person may file a petition for relief under this section no more than once every two (2) years.

(h) Relief from a firearm disability granted under this section has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication as a mental defective or judicial commitment to a mental institution from which relief is granted.

(i) When the court issues an order granting a petition of relief under subsection (d), the court clerk shall, as soon as practicable but no later than thirty (30) days after issuance, forward a copy of the order to the Tennessee bureau of investigation (TBI). The TBI, upon receipt of the order, shall:

(1) Immediately forward a copy of the order to the department of safety;

(2) Update the National Instant Criminal Background Check System database and transmit the corrected records to the federal bureau of investigation; and

(3) Remove and destroy all records relating to the petition for relief from any database over which the TBI exercises control.



(j) The TBI and the department of safety shall not use or permit the use of the records or information obtained or retained pursuant to this section for any purpose not specified in this section.

SECTION 5. Tennessee Code Annotated, Section 39-17-1351(j), is amended by adding the following as a new, appropriately designated subdivision:

The applicant, who was adjudicated as a mental defective or judicially committed to a mental institution, as defined in § 39-17-1301, has had the applicant's firearm disability removed by an order of the court pursuant to title 16, and either a copy of that order has been provided to the department by the TBI or a certified copy of that court order has been provided to the department by the applicant.

SECTION 6. This act shall take effect July 1, 2015, the public welfare requiring it.