

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Bring the State's Laws into Compliance with the National Instant Criminal Background Check System**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 15 MRSA §393, sub-§1, ¶E**, as amended by PL 2009, c. 651, §1, is further amended to read:

E. Has been:

- (1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm, as defined under Title 34-B, section 3801, subsection 4-A, paragraphs A to C;
- (2) Found not criminally responsible by reason of insanity with respect to a criminal charge; or
- (3) Found not competent to stand trial with respect to a criminal charge;
- (4) Admitted involuntarily to a hospital pursuant to Title 34-B, section 3863; or
- (5) Found by a Probate Court to be incapacitated as defined in Title 18-A, section 5-101 and therefore lacking the capacity to contract or manage the person's own affairs.

**Sec. 2. 15 MRSA §393, sub-§4-A**, as enacted by PL 2007, c. 670, §9 and affected by §24, is amended to read:

**4-A. Application for relief.** Except as otherwise provided, a person subject to the federal prohibition against possession of firearms pursuant to 18 United States Code, Section 922(g)(4) as a result of being adjudicated a mental defective or ~~committed to any psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B, section 3864~~subject to the provisions of subsection 1, paragraph E may, after the expiration of 5 years from the date of final discharge from commitment, apply to the commissioner for relief from the disability.

~~Relief is not available under this subsection for a person found not criminally responsible by reason of insanity or incompetent to stand trial in a criminal case or a person adjudged by a Probate Court to lack the capacity to contract or manage the person's own affairs.~~

A. An application under this subsection must be on a form developed by the commissioner. The application must include the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make and model of the firearm sought to be possessed; reason for the request; date, place and docket number of commitment; name of institution to which applicant was committed; names of providers that provided mental health treatment for the applicant; date of discharge from commitment; release for all mental health records; and any other information determined by the commissioner to be of assistance. The application must be accompanied by certified or attested copies of the commitment from which the applicant seeks relief and the report of an independent psychologist or psychiatrist licensed to practice in this State specifically addressing the factors set forth in paragraph E. In reviewing the application, the commissioner shall also receive and consider the circumstances regarding the disability, the applicant's mental health and criminal history records and the applicant's reputation, which must be developed, at a minimum, through character witness statements and any other character evidence. The commissioner may establish a roster of psychologists and psychiatrists qualified and interested in doing these evaluations. The psychologist or psychiatrist must be available for cross-examination. The psychologist or psychiatrist listed on the roster is an employee for the purposes of the Maine Tort Claims Act for evaluations under this paragraph.

B. The commissioner has the independent authority to establish the following, to be paid by the applicant:

(1) Application fee; and

(2) Fees for evaluations required by paragraph A.

C. Upon receipt of a completed application, the commissioner shall notify persons who received notice of the commitment pursuant to Title 34-B, section 3864, subsection 3, paragraph A, subparagraph (2) and the district attorney, chief of police and, sheriff and Probate Court, if the applicant was found to be incapacitated, in the municipality and county where the applicant resides of the filing of the application, with a request to provide to the commissioner any information relevant to the factors in paragraph E.

D. Upon receipt of a completed application, the commissioner shall review the application and determine whether the person has made a prima facie showing of the elements of paragraph E. If the commissioner determines that the person has made a prima facie showing, the commissioner shall schedule a hearing.

E. The burden of proof is on the applicant to prove, by clear and convincing evidence, that the circumstances that led to the involuntary commitment to a hospital have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest.

F. If the commissioner finds by clear and convincing evidence that the circumstances that led to the involuntary commitment have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest, the commissioner may ~~shall~~ grant relief.

G. Notwithstanding any other provision of law, and except as indicated in this paragraph, all applications for relief pursuant to this subsection and documents made a part of the application, refusals and any information of record collected by the commissioner during the process of determining whether an applicant qualifies for relief are confidential and may not be made available for public inspection or copying unless:

- (1) The applicant waives this confidentiality in writing or on the record of any hearing; or
- (2) A court of record so orders. Proceedings relating to the grant or denial of relief are not public proceedings under Title 1, chapter 13.

The commissioner shall make a permanent record, in the form of a summary, of the final decision regarding each application. The summary must include the name of the applicant and indicate whether the application for relief was granted or denied. The information contained in this summary is available for public inspection.

H. An applicant may appeal the denial of an application for relief under this subsection within 30 days of receipt of the written notice of decision by filing a complaint in the District Court for de novo review in the district where the Department of Public Safety has its principal office. Hearings are closed unless otherwise agreed to by the applicant. A party aggrieved by a decision of the District Court may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

**Sec. 3. 25 MRSA §1541, sub-§3, ¶C**, as amended by PL 2009, c. 651, §2, is further amended to read:

C. The commanding officer shall report to the Federal Bureau of Investigation, National Instant Criminal Background Check System a court's finding, upon the commanding officer's receipt of an abstract from a court that a person has been:

- (1) Committed involuntarily to a hospital pursuant to Title 34-B, section 3863 or an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm, as defined under Title 34-B, section 3801, subsection 4-A, paragraphs A to D;
- (2) Found not criminally responsible by reason of insanity with respect to a criminal charge; or

(3) Found not competent to stand trial with respect to a criminal charge.

The commanding officer may adopt rules to implement the requirements of this paragraph. Rules adopted pursuant to this paragraph are routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A.

## **SUMMARY**

This bill amends current law regarding the possession of firearms to create a comprehensive system for the restoration of the right to possess firearms by persons with mental illness who prove that they are no longer a danger to themselves or others. The change will qualify Maine for federal funding under the National Instant Criminal Background Check System pursuant to the federal NICS Improvement Amendments Act of 2007.

The bill expands the list of those who can apply to have the right to possess a firearm restored to include persons who have been admitted to a hospital pursuant to the Maine Revised Statutes, Title 34-B, section 3863 and persons found by a Probate Court to lack the capacity to contract or manage their own affairs. Existing law permits application for restoration by persons who are committed involuntarily to a hospital pursuant to Title 34-B, section 3864; persons who are found not criminally responsible by reason of insanity with respect to a criminal charge; and persons who are found not competent to stand trial with respect to a criminal charge.

The bill requires that the Commissioner of Public Safety, when reviewing applications for restoration, at a minimum consider mental health and criminal history records and the applicant's reputation developed through character witnesses and any other character evidence. The bill also removes the Commissioner of Public Safety's discretion to grant restoration if the applicant satisfies the statutory criteria that the person is not likely to act in a manner that is dangerous to public safety and that the restoration would not be contrary to public interest.