

§ 14-409.42. Restoration process to remove mental commitment bar.

(a) Any individual over the age of 18 may petition for the removal of the disabilities pursuant to 18 U.S.C. § 922(d)(4) and (g)(4), G.S. 14-415.3, and G.S. 14-415.12 arising out of a determination or finding required to be transmitted to the National Instant Criminal Background Check System by subdivisions (1) through (6) of subsection (a) of G.S. 14-409.43. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment.

(b) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination or finding or in the district court of the county of the petitioner's residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the attorney who represented the State in the underlying case, or that attorney's successor. Copies of the petition must be served on the director of the relevant inpatient or outpatient treatment facility and the district attorney in the petitioner's current county of residence.

(c) The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. The district attorney shall present any and all relevant information to the contrary. For these purposes, the district attorney may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney to receive any mental health records of the applicant. This hearing shall be closed to the public, unless the court finds that the public interest would be better served by conducting the hearing in public. If the court determines the hearing should be open to the public, upon motion by the petitioner, the court may allow for the in camera inspection of any mental health records. The court may allow the use of the record but shall restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public. The district court shall enter an order that the petitioner is or is not likely to act in a manner dangerous to public safety and that the granting of the relief would or would not be contrary to the public interest. The court shall include in its order the specific findings of fact on which it bases its decision. In making its determination, the court shall consider the circumstances regarding the firearm disabilities from which relief is sought, the petitioner's mental health and criminal history records, the petitioner's reputation, developed at a minimum through character witness statements, testimony, or other character evidence, and any changes in the petitioner's condition or circumstances since the original determination or finding relevant to the relief sought. The decision of the district court may be appealed to the superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying. Attorneys designated by the Attorney General shall be available to represent the State, or assist in the representation of the State, in a restoration proceeding when requested to do so by a district attorney and approved by the Attorney General. An attorney so designated shall have all the powers of the district attorney under this section.

(d) Upon a judicial determination to grant a petition under this section, the clerk of superior court in the county where the petition was granted shall forward the order to the National Instant Criminal Background Check System (NICS) for updating of the respondent's record. (2008-210, s. 2; 2013-369, s. 9; 2015-195, ss. 11(b), (m).)