

House Study Bill 637 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
PUBLIC SAFETY BILL)

A BILL FOR

1 An Act relating to adjudications of persons with mental illness
2 and providing an effective date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 229.24, subsection 1, Code 2009, is
2 amended to read as follows:

3 1. ~~All~~ Except as otherwise provided in this section,
4 all papers and records pertaining to any involuntary
5 hospitalization or application for involuntary hospitalization
6 of any person under this chapter, whether part of the permanent
7 record of the court or of a file in the department of human
8 services, are subject to inspection only upon an order of the
9 court for good cause shown. ~~Nothing in this~~ This section shall
10 not prohibit a hospital from complying with the requirements
11 of this chapter and of chapter 230 relative to financial
12 responsibility for the cost of care and treatment provided a
13 patient in that hospital, ~~nor~~ or from properly billing any
14 responsible relative or third-party payer for such care and
15 treatment.

16 Sec. 2. Section 229.24, Code 2009, is amended by adding the
17 following new subsection:

18 NEW SUBSECTION. 4. The clerk of the district court shall
19 provide to the department of public safety notice of all
20 adjudications of persons involuntarily committed to a mental
21 institution for inpatient or outpatient or other appropriate
22 treatment by reason of serious mental impairment under this
23 chapter. This notice shall only be used by the department to
24 submit information to the national instant criminal background
25 check system maintained by the federal bureau of investigation
26 and shall otherwise remain confidential.

27 Sec. 3. NEW SECTION. **229.46 Application for relief from**
28 **federal firearms prohibitions.**

29 1. A person who has been adjudicated seriously mentally
30 impaired under this chapter and, as a result of such
31 adjudication, is subject to a federal firearms prohibition
32 pursuant to 18 U.S.C. § 922(g)(4), may apply to the district
33 court for relief from the prohibition. The application for
34 relief must comply with all of the following:

35 a. Be filed no earlier than ten years from the adjudication

1 of serious mental impairment.

2 *b.* State facts upon which relief is sought, including
3 that the applicant no longer suffers from the mental health
4 condition that was the basis for the adjudication.

5 *c.* Describe the treatment that has been received since the
6 adjudication including all sources of treatment.

7 2. A hearing on the application shall be held by the court
8 not less than forty-five days after the application has been
9 filed. The applicant shall have the burden of establishing the
10 facts which warrant granting the application.

11 3. The court shall receive evidence and shall consider the
12 circumstances regarding the firearms disability imposed by 18
13 U.S.C. § 922(g)(4), the applicant's record, which must include,
14 at a minimum, mental health and criminal history records and
15 the applicant's reputation developed through character witness
16 statements, testimony, or other character evidence.

17 4. If the court finds that the applicant will not be
18 likely to act in a manner dangerous to the public safety
19 and that granting relief will not be contrary to the public
20 interest, the court may grant such relief from federal firearms
21 disability.

22 5. If the court denies the application for relief, the
23 applicant may apply for de novo judicial review to the supreme
24 court.

25 6. Following denial of an application and the denial of all
26 subsequent appeals, a subsequent application for relief may be
27 filed no earlier than three years from the date of the order
28 denying the applicant's previous application but only if new
29 facts are alleged to support the application.

30 **Sec. 4. NEW SECTION. 724.31 Persons subject to mental and**
31 **substance abuse health-related orders, commitments, or findings**
32 **— disabilities — restoration of rights — reports.**

33 1. Subsequent to the issuance of a court order listed in
34 subsection 2, a court shall determine whether the person who is
35 the subject of the order is a person to whom the provisions of

1 18 U.S.C. § 922(d)(4) and (g)(4) apply, and if so, shall inform
2 the person of the applicable prohibitions and shall order
3 the person not to possess, receive, or transport or cause to
4 transport firearms or ammunition. The court shall also order
5 the person to make immediate arrangements for the disposition
6 of any firearms or ammunition owned or possessed by the person.
7 The clerk of the district court shall forward a copy of the
8 prohibition and disposition order to the department of public
9 safety, which in turn shall forward a copy of the order to the
10 federal bureau of investigation or its successor agency for
11 inclusion in the national instant criminal background check
12 system.

13 2. A court order that does any of the following is subject
14 to this section:

15 a. Orders commitment or treatment pursuant to section
16 125.84.

17 b. Orders commitment pursuant to section 222.31.

18 c. Orders commitment or treatment pursuant to section
19 229.14.

20 d. Finds a defendant incompetent to stand trial pursuant to
21 section 812.5.

22 3. a. A person who is the subject of a court order listed
23 in subsection 2 may petition the court that issued the order or
24 the court in the county where the person resides to cancel the
25 order and to restore the person's right to possess, receive,
26 or transport or cause to transport firearms or ammunition. A
27 copy of the petition shall also be served on the director of
28 human services and the county attorney at the county attorney's
29 office of the county in which the original order, commitment,
30 or finding occurred and the director or the county attorney may
31 appear, support, object to, and present evidence relevant to
32 the relief sought by the petitioner. In such a case, the court
33 shall receive evidence concerning all of the following:

34 (1) The circumstances surrounding the original issuance of
35 the prohibition and disposition order pursuant to subsection 1.

1 (2) The petitioner's mental health and criminal history.

2 (3) The petitioner's reputation and character.

3 (4) Any changes in the petitioner's condition or
4 circumstances relevant to the relief sought.

5 *b.* The court shall grant a petition filed pursuant to
6 paragraph "a" if the court finds by a preponderance of the
7 evidence that the petitioner will not be likely to act in a
8 manner dangerous to the person's self or others and that the
9 granting of the relief would not be contrary to the public
10 interest. The petitioner may appeal a denial of the requested
11 relief and the review shall be de novo. A person may file a
12 petition for relief under this subsection not more than once
13 every two years.

14 *c.* If a court issues an order granting a petition for relief
15 under paragraph "b", the clerk of the district court shall
16 immediately forward a copy of the order to the department of
17 public safety which, upon receipt, shall immediately forward a
18 copy of the order to the federal bureau of investigation or its
19 successor agency for inclusion in the national instant criminal
20 background check system.

21 Sec. 5. EFFECTIVE DATE. This Act takes effect January 1,
22 2011.

23 EXPLANATION

24 This bill relates to adjudications of persons with mental
25 illness and provides a delayed effective date.

26 The bill requires the clerk of the district court to provide
27 to the department of public safety notice of all adjudications
28 of persons involuntarily committed to a mental institution
29 for inpatient or outpatient or other appropriate treatment by
30 reason of serious mental impairment under Code chapter 229.
31 This notice shall only be used by the department to submit
32 information to the national instant criminal background check
33 system maintained by the federal bureau of investigation.

34 The bill provides that a person who has been adjudicated
35 seriously mentally impaired under Code chapter 229 and, as a

1 result, is subject to a federal firearms prohibition under
2 federal law, may apply to the district court for relief from
3 such prohibition if certain requirements are met.

4 The bill provides that subsequent to a court order that
5 orders commitment or treatment pursuant to Code section
6 125.84 (chemical substance abuse), Code section 222.31 (mental
7 retardation), Code section 229.14 (mental health), or that
8 finds a defendant incompetent to stand trial pursuant to Code
9 section 812.5, a court shall make a finding as to whether
10 the person who is the subject of the order is subject to a
11 federal firearms prohibition under federal law (18 U.S.C. §
12 922(d)(4) or (g)(4)), and if so, shall inform the person of
13 the applicable prohibitions and shall order the person not to
14 possess, receive, or transport or cause to transport a firearm
15 or offensive weapon. The court shall also order the person to
16 make immediate arrangements for the disposition of any firearms
17 or ammunition owned or possessed by the person. The clerk of
18 the district court shall forward a copy of the order to the
19 department of public safety, which in turn shall forward a copy
20 of the order to the federal bureau of investigation or its
21 successor agency for inclusion in the national instant criminal
22 background check system.

23 A person who is the subject of any of the underlying orders
24 may petition the court that issued the order or the court in
25 the county where the person resides to cancel the order and to
26 restore the person's right to possess, receive, or transport
27 or cause to transport a firearm or offensive weapon. A copy
28 of the petition shall also be served on the director of human
29 services and the county attorney at the county attorney's
30 office of the county in which the original order, commitment,
31 or finding occurred and the director or the county attorney may
32 appear, support, object to, and present evidence relevant to
33 the relief sought by the petitioner. The court shall grant a
34 petition if the court finds by a preponderance of the evidence
35 that the petitioner will not be likely to act in a manner

1 dangerous to the person's self or others and that the granting
2 of the relief would not be contrary to the public interest.
3 The petitioner may appeal a denial of the requested relief and
4 the review shall be de novo. A person may file a petition for
5 relief not more than once every two years. When a court issues
6 an order granting a petition for relief, the clerk of the
7 district court shall immediately forward a copy of the order
8 to the department of public safety which, upon receipt, shall
9 immediately forward a copy of the order to the federal bureau
10 of investigation or its successor agency for inclusion in the
11 national instant criminal background check system.

12 The bill takes effect January 1, 2011.