

**Relief from Disabilities Program Criteria
under the
NICS Improvement Amendments Act of 2007**



United States Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives



NICS Improvement Amendments Act of 2007 Relief Program Requirement for States

- Section 105
 - State relief from disabilities program is required as condition for participation in grant programs.
 - State must certify to the satisfaction of the Attorney General that it has a qualifying relief from disabilities program.
 - ATF Form 3210.12



Relief from Disabilities Program Criteria

1. Actual relief from disabilities program under State law.
 - State law either:
 - Sets out a relief from disabilities program by statute; or
 - Delegates authority to an agency of the State to promulgate regulations to provide for a relief from disabilities program.



Relief from Disabilities Program Criteria

2. Program permits a person adjudicated as a mental defective, or committed to mental institution, to apply to State for relief from disabilities imposed by subsections (d)(4) and (g)(4) of 18 U.S.C. § 922.



Relief from Disabilities Program Criteria

3. A State court, board, commission or other lawful authority must consider the applicant's petition for relief.
 - The lawful authority may only consider applications for relief due to mental health adjudications that occurred in the same State.



Relief from Disabilities Program Criteria

4. Relief shall be granted pursuant to State law and in accordance with principles of due process.
 - Due process in this context includes:
 - Opportunity for the applicant to present evidence;
 - Independent decision maker—someone other than the individual who created the record.
 - A record of the matter must be created and maintained for review.



Relief from Disabilities Program Criteria

5. In determining whether to grant relief, the lawful authority must receive evidence concerning and consider the following:
 - Circumstances regarding the firearms disabilities imposed by 18 U.S.C. § 922(g)(4); and
 - Applicant's record
 - Which must include, at a minimum, applicant's mental health and criminal history records; and
 - Applicant's reputation
 - Developed, at a minimum, through character witness statements, testimony, or other character evidence.



Relief from Disabilities Program Criteria

6. Relief shall be granted if circumstances regarding the disabilities and the applicant's record and reputation are such that:
 - the applicant will not be likely to act in a manner dangerous to public safety;
 - and the granting of relief would not be contrary to the public interest.



Relief from Disabilities Program Criteria

7. Once a finding is made, if relief is denied the State must provide for *de novo* judicial review:
 - Applicant may petition a court of appropriate jurisdiction to review the denial
 - Including the record of the denying court, board, commission or other lawful authority.
 - Reviewing court may, but is not required to, give deference to the decision of the lawful authority that denied the application for relief.
 - If cases of denial by a lawful authority other than a State court, the reviewing court must have discretion to receive additional evidence necessary to conduct an adequate review.



Relief from Disabilities Program Criteria

8. Once a finding is made, if relief is granted:
 - Adjudication or commitment is deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of 18 U.S.C § 922.
 - State must update, correct, modify or remove the record from any database that the Federal or State government maintains and makes available to NICS.



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