

Petition for Relief Pursuant to 18 U.S.C. §922(g)(4) or S.C. Code Ann. §23-31-1040

NOTICE: IF YOU HAVE BEEN CONVICTED OF A FELONY OR A MISDEMEANOR THAT PROHIBITS FIREARM POSSESSION OR USE, OR IF YOU HAVE AN OUTSTANDING RESTRAINING ORDER, THIS PROCESS WILL NOT RESTORE YOUR RIGHTS TO SHIP, TRANSPORT, POSSESS, OR RECEIVE A FIREARM OR AMMUNITION. ALSO, IF YOU HAVE ORDERS (COMMITMENT, GUARDIANSHIP, OR CONSERVATORSHIP) FROM OTHER STATES OR COUNTIES, THIS PETITION WILL NOT ADDRESS THOSE ORDERS. YOU MUST FILE A PETITION IN EACH JURISDICTION.

This information sheet and the attached documents are being provided to you so that your petition for removal of the prohibitions of shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(4) or S.C. Code Ann. § 23-31-1040 may be processed as efficiently as possible.

While you are not required to retain an attorney to assist you with this process, filing a petition does involve specific law and legal matters and it may be to your advantage to seek legal counsel. The Court is unable to provide any legal advice. If you choose not to retain an attorney, the Court will hold you to the same rules and standards as an attorney. If you do not follow applicable rules and meet applicable standards, your petition may not be granted.

Once all required documents are filed, you will be notified in writing of a hearing date. At the hearing, you are required to present documentary and testimonial evidence in support of your petition, including evidence regarding your reputation as developed through character witness statements, testimony, or other character evidence. The Court will follow the South Carolina Rules of Evidence in determining admissibility of any evidence you seek to present.

You are required to file the following items for a hearing to be scheduled:

1. Petition (form attached);
2. Authorization and Release for all medical, including mental health, records (form attached);
3. Certified copies of all medical records, including mental health records (you will be responsible for having your medical providers forward records directly to the Court);
4. Current Evaluation by the Department of Mental Health or a physician specializing in mental health (form attached); and
5. SLED Check Results

You may access the SLED Check Request form by clicking on or going to the following link online: <http://www.sled.state.sc.us/CISystem/Images//Catch/CriminalRecordsCheckForm.pdf>.

It is your responsibility to ensure that all required information and documentation accompanies the petition for relief at the time it is filed with the Court. No hearing will be scheduled until all information is received by the Court. The Court requires that you file the names of all witnesses at least ten (10) days prior to the hearing.

For your reference, please see S.C. Code Ann. § 23-31-1030.

Section 23-31-1030. (A) If a person is prohibited from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. Section 922(g)(4) or Section 23-31-1040 as a result of adjudication as a mental defective or commitment to a mental institution, the person may petition the court that issued the original order to remove the prohibitions. The person may file the petition upon the expiration of any current commitment order; however, the court only may consider petitions for relief due to adjudications and commitments that occurred in this State.

(B) The petition must be accompanied by an authorization and release signed by the petitioner authorizing disclosure of the petitioner's current and past medical records, including mental health records.

(C) If the petition is filed pro se, the court shall provide notice to all parties of record. If the petitioner is represented by counsel, counsel shall provide notice to all parties of record.

(D) Notwithstanding the exclusive jurisdiction of the court to preside over hearings initiated pursuant to this section, the case may be removed to the circuit court upon motion of the petitioner or on motion of the court, made not later than ten days following the date the petition is filed. Upon such motion, the case must be removed to the circuit court where the court shall proceed with the case de novo.

(E)(1) Within ninety days of receiving the petition, unless the court grants an extension upon request of the petitioner, the court shall conduct a hearing which must be presided over by a person other than the person who gathered evidence for use by the court in the hearing.

(2) At the hearing on the petition, the petitioner shall have the opportunity to submit evidence, and a record of the hearing must be made and maintained for review. The court shall consider information and records, which otherwise are confidential or privileged, relevant to the criteria for removing firearm and ammunition prohibitions and shall receive and consider evidence concerning the following:

(a) the circumstances regarding the firearm and ammunitions prohibitions imposed by 18 U.S.C. Section 922(g)(4) and Section 23-31-1040;

(b) the petitioner's record, which must include, at a minimum, the petitioner's mental health and criminal history records;

(c) evidence of the petitioner's reputation developed through character witness statements, testimony, or other character evidence; and

(d) a current evaluation presented by the petitioner conducted by the Department of Mental Health or a physician licensed in this State specializing in mental health specifically addressing whether due to mental defectiveness or mental illness the petitioner poses a threat to the safety of the public or himself or herself.

(F) The hearing must be closed to the public, and the petitioner's mental health records must be restricted from public disclosure. However, upon motion by the petitioner, the hearing may be open to the public, and the court may allow for the in camera inspection of the petitioner's mental health records and for the use of these records, but these records must be restricted from public disclosure.

(G)(1) The court shall make findings of fact regarding the following and shall remove the firearm and ammunition prohibitions if the petitioner proves by a preponderance of the evidence that:

(a) the petitioner is no longer required to participate in court-ordered psychiatric treatment;

(b) the petitioner is determined by the Department of Mental Health or by a physician licensed in this State specializing in mental health to be not likely to act in a manner dangerous to public safety; and

(c) granting the petitioner relief will not be contrary to the public interest.

(2) Notwithstanding item (1), the court must not remove the firearm and ammunition prohibitions if, by a preponderance of the evidence, it is proven that the petitioner has engaged in acts of violence subsequent to the petitioner's last adjudication as a mental defective or last commitment to a mental institution, unless the petitioner, by clear and convincing evidence, proves that he is not likely to act in a manner dangerous to public safety.

(H) If the petitioner is denied relief and the firearm and ammunition prohibitions are not removed, the petitioner may appeal to the circuit court for de novo review. In conducting its review, the circuit court:

- (1) shall review the record;
- (2) may give deference to the decision of the court denying the petitioner relief; and
- (3) may receive additional evidence as necessary to conduct an adequate review.

(I) Medical records, psychological reports, and other treatment records which have been submitted to the court or admitted into evidence under this section must be part of the record, but must be sealed and opened only on order of the court.

(J) If a court issues an order pursuant to this section that removes the firearm and ammunition prohibitions that prohibited the petitioner from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. Section 922(g)(4) or Section 23-31-1040, arising from adjudication as a mental defective or commitment to a mental institution, the court shall provide SLED with a certified copy of the order that may be transmitted through electronic means. SLED promptly shall inform the NICS of the court action removing these firearm and ammunition prohibitions.

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF)
)
)
IN THE MATTER OF)
)

IN THE
CASE NUMBER:
**PETITION FOR RELIEF PURSUANT TO
S.C. Code Ann. §23-31-1040**

Petitioner

1. Petitioner: _____
2. Other names that I have used during my lifetime (include alias, nickname, maiden name, etc.):

3. In accordance with S.C. Code Ann. § 23-31-1030, I request that the Court conduct a relief hearing to determine whether I should be granted relief from the prohibition of shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(4) or S.C. Code Ann. § 23-31-1040 as a result of adjudication as a mental defective or commitment to a mental institution.

4. I am currently prohibited from shipping, transporting, possessing, or receiving a firearm because (check all that apply):

I was adjudicated as a "mental defective" (means a determination by a court that a person, as a result of marked subnormal intelligence, mental illness, mental incompetency, mental condition, or mental disease is (1) a danger to self or others or (2) lacks the mental capacity to contract or manage the person's own affairs). Date of Order: _____ (Attach copy of Order(s), if available)

I was committed to a mental institution (this term includes in-patient or out-patient facilities for mental health treatment or drug or alcohol abuse). (Attach copy of Order(s), if available)

5. My order(s) of commitment or incapacity expired or ended on the following date(s):

If your commitment order has not expired, stop here. You are not eligible to file a petition until the order expires.

6. Marital Status (single, married, divorced, widowed/widower): _____

7. Spouse's name (if applicable): _____

8. Are you an unlawful user of, addicted to, or recovering from any addiction to drugs or alcohol? _____

If yes, please explain:

9. Have you ever been arrested, are you under indictment for, or have you ever been convicted of a crime? _____ If yes, explain the charge(s) and note your arrest/conviction date, city and county:

10. Have you ever been subject to a court order restraining you from having contact with someone, including but not limited to an Order of Protection from Domestic Abuse? _____

If yes, please explain:

Date of Expiration of Order: _____

11. Have you ever been convicted in any court of domestic violence or other abuse?

_____ If yes, please explain: _____

12. Have you ever been on probation? _____ Are you currently on probation? _____

Have you ever violated any terms of probation?

Name of probation officer: _____

Contact information for probation officer:

13. Have you ever served in the military? If so, please list your occupational classification, length of service, any discipline history, and type and date of discharge:

14. Current place of employment, title, and length of time in position, if applicable:

15. I am seeking the removal of the prohibitions of shipping, transporting, possessing, or receiving a firearm and/or ammunition for the following reasons (attach additional documents if needed):

16. My current and past medical providers, including all mental health providers, and their contact information are listed below. I understand that I must file an authorization and release so that these providers may provide my medical records to the Court.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief; and hereby submits to the Court's jurisdiction in this matter. The undersigned understands that submitting false information in this Petition or failing to provide required information may result in denial of the Petition and may subject the undersigned to criminal and/or civil liability.

SWORN to before me this _____
day of _____, 20 _____.

Signature: _____
Name: _____
Address: _____

Notary Public for South Carolina
My Commission Expires: _____

Telephone (O): _____
(H): _____

Attorney: _____
Address: _____
E-mail: _____
Telephone (O): _____

_____ Court

Petition for Relief (S.C. Code Ann. §23-31-1030)

Case Number: _____

County of: _____

**EVALUATION BY DEPARTMENT OF MENTAL HEALTH OR SOUTH CAROLINA LICENSED
PHYSICIAN SPECIALIZING IN MENTAL HEALTH**
As provided for in named person's Petition for Relief

NAME OF PERSON EXAMINED

DOB

COUNTY OF RESIDENCE

PLACE OF EXAMINATION

HOUR AND DATE OF EXAMINATION

I, THE UNDERSIGNED AGENT OF THE DEPARTMENT OF MENTAL HEALTH OR A LICENSED PHYSICIAN SPECIALIZING IN MENTAL HEALTH, have examined the above-named person in connection with the person's Petition for Relief pursuant to S.C. Code Ann. §23-31-1030 (Petition) and have reviewed the complete copy of the person's medical records, including mental health records, as included in the Petition, and am of the opinion, that said person (in accord with §§ 23-31-1030 (D)(2)(d) and (F)(1)(b) (Initial as applicable):

POSES A THREAT TO THE SAFETY OF THE PUBLIC OR TO HIMSELF OR HERSELF DUE TO MENTAL DEFECTIVENESS OR MENTAL ILLNESS, OR IS OTHERWISE LIKELY TO ACT IN A MANNER DANGEROUS TO PUBLIC SAFETY.

DOES NOT POSE A THREAT TO THE SAFETY OF THE PUBLIC OR TO HIMSELF OR HERSELF DUE TO MENTAL DEFECTIVENESS OR MENTAL ILLNESS, AND OTHERWISE IS NOT LIKELY TO ACT IN A MANNER DANGEROUS TO PUBLIC SAFETY.

My opinion is based upon the following (as applicable, add additional pages if needed):

Specific diagnosis or condition:

Specific symptoms:

Specific behaviors:

Specific history:

Other factors:

By my signature below, I also understand that I may be subpoenaed to testify at the hearing related to the named person's Petition before this Court.

SIGNATURE OF EXAMINER

SC LICENSE NUMBER

TYPED OR PRINTED NAME

PHONE NUMBER

ADDRESS

HOW TO OBTAIN A SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED) CRIMINAL HISTORY REPORT

REQUEST METHOD

To obtain a SLED Report, you must submit a request to the South Carolina Law Enforcement Division by using one of the following methods:

Telephone Request: (803) 737-9000
Mail: South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, SC 29221-1398
Web: www.sled.sc.gov

INFORMATION NEEDED

According to South Carolina State Law, the following information is necessary to process a criminal history search:

1. FULL name (including middle initial and suffixes as well as maiden and other names used)
2. Social Security Number (individual must agree to the use of their social security number for name search)
3. Date of Birth

You must enclose a self-addressed stamped envelope with your request.

COST

There is a **\$25.00** fee per name, excluding maiden and alias names. The payment must be in the form of a money order, cashier's check or certified check payable to SLED. **Personal checks are not accepted.**