

Date: November 18, 2009

To: Texas Supreme Court Advisory Committee

Re: NICS Disability De Novo Review Rule

From: David Evans

At our last meeting a subcommittee was appointed to draft a rule to require for de novo review of persons seeking the removal of a firearms disability. Last session the legislature passed §574.088 Texas Mental Health Code, which permits a person who is furloughed from court-ordered mental health services to petition for relief from a firearms disability. (See Exhibit 1.) However the bill did not provide for de novo review, which is a requirement of the federal law. We have attempted to craft a solution within the confines of the rule-making authority of the Supreme Court. An initial draft is attached for your review. (See Exhibit 2.)

The subcommittee consists of Judge David Evans, Justice David Gaultney, Judge David Peeples, Judge Guy Herman, Carl Reynolds, and Mike Lesko with the Department of Public Safety.

Effective: September 1, 2009

Vernon's Texas Statutes and Codes Annotated Currentness

Health and Safety Code (Refs & Annos)

Title 7. Mental Health and Mental Retardation

Subtitle C. Texas Mental Health Code

Chapter 574. Court-Ordered Mental Health Services

Subchapter F. Furlough, Discharge, and Termination of Court-Ordered Mental Health Services

→ **§ 574.088. Relief From Disabilities in Mental Health Cases**

(a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

(1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);

(2) the person's mental history;

(3) the person's criminal history; and

(4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

(1) the person is no longer likely to act in a manner dangerous to public safety; and

(2) removing the person's disability to purchase a firearm is in the public interest.

CREDIT(S)

Added by Acts 2009, 81st Leg., ch. 950, § 2, eff. Sept. 1, 2009.

V. T. C. A., Health & Safety Code § 574.088, TX HEALTH & S § 574.088

Current through the end of the 2009 Regular and First Called Session of the 81st Legislature.

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V.T.C.A., Health & Safety Code § 574.088

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Ex 1 pg 2

NICS Disability De Novo Review Rule (Rule 737 ?)

The following rules are applicable to a petition for relief filed pursuant to Tex. Health & Safety Code Ann. § 574.088.

- A. A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order (Committing Court) for an order stating that the person qualifies for relief from a firearms disability.
- B. The petition must be served on the attorney representing the state in the commitment proceeding.
- C. A petition filed in a court other than the Committing Court must be transferred to the Committing Court.
- D. All proceedings will be conducted in accordance with the Texas Rules of Evidence and Texas Rules of Civil Procedure except where statute or this rule requires otherwise.
- E. The initial proceeding before the Committing Court will be a non-jury trial.
- F. The petitioner must establish entitlement to relief by clear and convincing evidence.
- G. In determining whether to grant relief in any proceeding under this rule, the finder of fact must hear and consider evidence about:
 - 1. The circumstances that led to the imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);
 - 2. The petitioner's mental health history;
 - 3. The petitioner's criminal history;
 - 4. The petitioner's reputation; and
 - 5. Any other evidence relevant to the findings required in section h.
- H. Any judgment granting relief in any proceeding under this rule must contain affirmative findings that:
 - 1. The person is no longer likely to act in a manner dangerous to public safety; and
 - 2. Removing the person's disability to purchase a firearm is in the public interest.
- I. A party may appeal the judgment of the Committing Court denying or granting relief by filing, within (15) fifteen days of the date the court's judgment is signed, a petition for de novo review with the court. If the judgment in the Committing Court is not

appealed by timely filing a petition for novo review, the judgment of the Committing Court is final and is not appealable.

- J. The filing of the petition for de novo review perfects the right to review by trial de novo and suspends the judgment of the Committing Court under Tex. Health & Safety Code § 574.088.
- K. When a petition for de novo review is filed, the judge must forward a copy of the petition for de novo review (1) to the Presiding Judge of the statutory probate courts if the committing court was statutory probate court, a county court or any statutory court exercising probate jurisdiction, or (2) to the Presiding Judge of the administrative region in any other case.
- L. The Presiding Judge shall then assign a judge (Assigned Judge) to hear the petition for de novo review.
- M. The review of the Assigned Judge shall include the papers filed with the clerk of the court in the initial proceeding. The Assigned Judge has the discretion to receive additional evidence and may give deference to the decision of the Committing Court.
- N. The judgment of the Assigned Judge granting or denying a petition for relief is the final judgment in a proceeding filed under this rule.
- O. The judgment of the Assigned Judge granting or denying a petition for relief under this rule may be appealed pursuant to the Texas Rules of Appellate Procedure.
- P. If a petition for relief under this rule is denied, a subsequent petition may be filed no sooner than (5) five years after the date of the final judgment.