STATE RELIEF FROM DISABILITIES PROGRAMS
UNDER THE NICS IMPROVEMENT AMENDMENTS ACT OF 2007

The following *minimum* criteria must be satisfied for a State to establish a qualifying mental health relief from firearms disabilities program under the NICS Improvement Amendments Act of 2007 (NIAA), Public Law 110-180, Section 105 (enacted January 8, 2008):

1. State Law [NIAA § 105(a)(2)]: The relief program must be established by State statute, or administrative regulation or order pursuant to State law.

2. Application [NIAA § 105(a)(1)]: The relief program must allow a person who has been formally adjudicated as a mental defective[1] or committed involuntarily to a mental institution[2] to *apply or petition* for relief from Federal firearms prohibitions (disabilities) imposed under 18 U.S.C. §§ 922(d)(4) and (g)(4).

3. Lawful Authority [NIAA § 105(a)(2)]: 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.

4. Due Process [NIAA § 105(a)(2)]: The petition for relief must be considered by the lawful authority in accordance with principles of due process, as follows:

    a. The applicant must have the opportunity to submit his or her own evidence to the lawful authority considering the relief application.
    b. An independent decision maker—someone other than the individual who gathered the evidence for the lawful authority acting on the application—shall review the evidence.
    c. A record of the matter must be created and maintained for review.

5. Proper Record [NIAA § 105(a)(2)]: In determining whether to grant relief, the lawful authority must receive evidence concerning and consider the following:

    a. the *circumstances* regarding the firearms disabilities imposed by 18 U.S.C. § 922(g)(4);
    b. the applicant's *record*, which must include, *at a minimum*, the applicant's mental health *and* criminal history records; and
    c. the applicant's *reputation*, developed, *at a minimum*, through character witness statements, testimony, or other character evidence.

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[1] Federal regulations at 27 C.F.R. § 478.11 define the term "adjudicated as a mental defective" as: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or others; or (2) Lacks the mental capacity to contract or manage his own affairs. The term shall include—(1) A finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

[2] Federal regulations at 27 C.F.R. § 478.11 define the term "committed to a mental institution" as: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

6. Proper Findings [NIAA § 105(a)(2)]: In granting relief, the authority must issue findings that:

    a. the applicant will not be likely to act in a manner dangerous to **public safety**; and
    b. granting the relief will not be contrary to the **public interest**.

7. De Novo Judicial Review of a Denial [NIAA § 105(a)(3)]: The State must also provide for *de novo* judicial review of relief application denials. *De novo* judicial review includes the following principles:

    a. If relief is denied, the applicant may petition the State court of appropriate jurisdiction to *review the denial*, including the record of the denying court, board, commission, or other lawful authority.
    b. Judicial review is *de novo*, in that the reviewing court may, but is not required to give deference to the decision of the lawful authority that denied the application for relief.
    c. The reviewing State court must have discretion to receive additional evidence necessary to conduct an adequate review.

Note: In addition to the above-mentioned requirements, NIAA § 102(c)(1)(B) requires a State, on being made aware that the basis under which the record was made available does not apply, or no longer applies, shall, as soon as practicable—

    a. update, correct, modify, or remove the record from any database that the Federal or State government maintains and makes available to NICS, consistent with the rules pertaining to the database; and
    b. notify the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.
    c. It is recommended that the State have a written procedure (*e.g.* State law, regulation, or administrative order) to provide for these NIAA requirements.