

Senate Judiciary Committee

Jennifer Horgan 271-3092

SB 162, establishing a procedure for the annulment of a mental health record.

Hearing Date: February 14, 2017

Time Opened: 10:00 a.m.

Time Closed: 10:28 a.m.

Members of the Committee Present: Senators Carson, Lasky, French, Gannon and Hennessey

Members of the Committee Absent : None

Bill Analysis : This bill establishes a procedure for the annulment of a mental health record.

Sponsors :

Sen. Watters

Sen. Bradley

Sen. Fuller Clark

Sen. Hennessey

Rep. Goley

Who supports the bill: Senator Watters; Senator Fuller Clark; Michael Skibbie (Disability Rights Center); Devon Chaffee (American Civil Liberties Union); Ken Norton (NAMI NH); Susan Paschell (NH Community Behavioral Health Association)

Who opposes the bill: No one

Who is neutral on the bill: Zandra Rice Hawkins (Granite State Progress)

Summary of testimony presented in support :

Senator Watters

- This defines a process where someone who has been involuntarily committed may petition to have the mental health record annulled after meeting the criteria outlined in the bill.
- The petition would be filed in the court where the guardianship or commitment was ordered.
- Following the submission of the petition, notice will be sent out to respondents who may wish to come and testify.
- There is an appeals process for both sides.
- There are several provisions regarding the sealing of records, which is similar to what is done in other annulment processes.
- The results of the annulment of a mental health record shall be that the individual is treated as if they had never been involuntarily committed.
- The records would only then be available to that individual whose record it is.
- This would enable the individual to answer 'no' to the question that may be on forms of employment or other forms.
- This is important in looking at the stigma on mental health.
- If an individual has been successfully treated, then they should be able to move forward with their lives.
- A few years ago, introduced a bill about reporting to the National Instant Criminal

Background Check System (NICS), which included an annulment process for people who had recovered and should have their constitutional rights restored by having that removed from their record.

- That bill failed, but most people believed that an annulment process should be in place.
- A further issue with the previous bill was that it amended the criminal justice statutes and that brought forward a lot of concerns.
- This bill only amends mental health statutes in order to avoid that issue.
- There were also questions about whether or not it would be sufficient to satisfy ATF requirements on annulment and that is an open question.
- If the Committee thinks there needs to be an amendment for that purpose, would be open to that.
- In the process three years ago this language was thoroughly examined by the Supreme Court and Attorney General.

Ken Norton (NAMI) (provided written testimony)

- The key part to this bill is that people with mental illness do recover and the duration and severity can differ from individual to individual.
- Approximately 2,100 individuals are admitted to NH Hospital every year
- About half are known to the hospital/have been there before.
- The other half are individuals who may just be dealing with a difficult time in their life, a veteran with PTSD, a woman with postpartum depression, etc.
- All of these individuals carry this stigma forward after being committed.
- Yesterday, there were 50 adults and children waiting in emergency departments around the state, for admission to NH Hospital.
- This back-up is why NH Hospital only does involuntary admissions.
- NH is one of the few states that doesn't report commitments to NICS, but whether the state reports or not, it becomes irrelevant in terms of purchasing a firearm.
- If someone goes to purchase a firearm through a federally registered dealer, the individual has to fill out the federal form 4473, which asks "Have you ever been adjudicated as a mental defective **OR** have you ever been committed to a mental hospital?"
- Anyone that was committed and had been going through a tough time, but are now doing well, not taking medications or in treatment, shouldn't be stigmatized.
- While the media portrays this as an issue in terms of homicides, the number of suicide deaths with a firearm in the US is double homicide deaths with a firearm.
- This allows the courts to determine if someone is in recovery and if they should have their records annulled.
- Does have a concern about medical providers/hospitals not having access to the records in the future.
- There are sufficient protections through the Federal Health Information and Portability Act and other confidentiality requirements that if the court records were sealed, should that person be hospitalized in the future, those providers should have access to that information.
- Senator Gannon asked if it would be safer to have some kind of presumption that the applicant should have to overcome to show that they are not a danger.
 - That is probably something that should be considered because from the judges perspective there is no criteria to make this decision on.
- Senator French asked if mental health records are not kept for people who seek voluntary treatment.

- The mental health records are kept for both voluntary and involuntary. Typically, the individual has control over access to those records through the signing of releases.
- Senator French asked if the language of the bill should include both voluntary and involuntary.
 - Yes, but the bill is really only focused on those involuntary commitments.

Summary of testimony presented in opposition :

None

Neutral Information Presented:

Zanda Rice Hawkins (Granite State Progress) (provided written testimony)

- Very supportive of the underlying intent of the bill.
- This bill seeks a broad mental health annulment to be applied in various circumstances, while the bill in 2014 only sought to restore firearm ownership.
- Has concerns that this will introduce a dangerous and untested process to restoring firearm rights that could have unintended consequences.
- Provided an annotated version of the bill with possible remedies for areas of concern.
- The bill provides for no 'cooling off' period.
- Under this bill an individual could walk out of an involuntary commitment and go directly to petition to have their firearm rights restored.
- Best practices suggest at least three years pass after treatment before a person may seek relief.
- The bill does not provide judges with appropriate evidence to consider when making determinations, as the only documentation required is the petitioner's release form.
- Evidence that could be examined would include documentation of the circumstances surrounding the original commitment, consideration of a person's mental health or criminal record, a review of the individual's reputation through character witnesses, or expert opinions regarding the individual's condition.
- The bill also puts the burden of proof on the respondent to prove that the individual is not a danger to themselves or others, rather than on the petitioner to provide documentation and references that shows they should be granted an annulment.
- Furthermore, because there is no requirement for any evidence or mental health assessment, there is no required respondent.
- If the individual that initiated the original commitment request decides to contest, they will be asked to provide a high burden of proof based on their own opinion rather than on expert testimony.
- The standard of 'clear and convincing evidence' means that they have to show by a high standard that the individual is dangerous to themselves or others, and that the 'danger' would have to be 'potentially serious'.
- The burden of proof should be on the petitioner.
- In IV, all of the documentation is voluntary and a judge may not know to ask about certain acts or even a criminal record if one exists.
- In VII (c), the language jeopardizes the ability for individuals to adequately restore their firearm rights, as the ATF Firearms Transfer Background Checks Form does not give the option for a person having their record annulled.
- ATF requires states to have a Qualifying Mental Health Relief from Disabilities Program for individuals to not check that box.
- This bill does not meet the minimum guidelines for a Qualifying Mental Health Relief

from Disabilities Program.

- The ATF form states that a judge must ‘ receive evidence concerning, and (must) consider... circumstances regarding the (prohibition) applicant’s record, which must include, at a minimum, the 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.’
- If NH institutes an inadequate Qualifying Mental Health Relief from Disabilities Program, then it is possible that an individual who has received an annulment and does not check that box, will have committed a felony.
- There are some easy remedies the Committee could consider.
- The Committee may want to consider other forms where this question may come up.
- Provided a copy of the application for the US Department of Justice’s Certification of Qualifying State Relief from Disabilities Program, in which, Section V offers what is necessary in determining whether to grant relief.
- Best practices indicate that Fatal Gaps laws should include statements from mental health professionals who have examined the petitioner and that some time has passed since the end of the treatment before a person seeks relief.
- There is concern about mental health professionals not wanting to say ‘yes’ or ‘no’ on this; so, in thinking about how to structure a stronger version of the bill, it may be beneficial to have it be around standard evaluations rather than having a mental health professional make that judgment call.
- While mental health is often scapegoated in some tragedies, the more pressing danger is an individual using it on themselves.
- Suicide is the second leading cause of death in the US and more than 50% of those cases involve guns.
- South Carolina’s law requires the examination of the circumstances surrounding the prohibition, the petitioner’s mental health and criminal history records, character evidence, and a current evaluation from the state Department of Health or a licensed physician.
- Would strongly encourage that language be added directing the state to apply for certification for a Qualifying Mental Health Relief from Disabilities Program.
- Wants to ensure that someone who has been told their full rights have been restored, has truly had those rights restored.
- Happy to work on this bill with others to address these concerns.

Future Action: Pending

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Date Hearing Report completed: February 17, 2017