

Amendment No. 2 to HB2249

Fitzhugh
Signature of Sponsor

AMEND Senate Bill No. 2236

House Bill No. 2249*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 16, Chapter 10, Part 2, is amended by adding the following new section thereto:

§ 16-10-213.

(a) For purposes of this section:

(1) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state or by a court, board, commission or other lawful authority in any other state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the mental capacity to contract or manage such person's own affairs;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

(2) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or title 33, chapter 7;

(3) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by a

licensed professional of mental retardation or mental illness, including but not limited to, a psychiatric ward in a general hospital; and

(4) "Treatment resource" means any public or private facility, service, or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers.

(b) Those circuit courts and criminal courts wherein commitments to a mental institution are ordered pursuant to title 33, chapter 6 or title 33, chapter 7 or persons are adjudicated as mental defective shall enter a standing and continuing order instructing the clerk to collect and report January 1, April 1, July 1, and October 1 of every year beginning January 1, 2010, information described in subsection (c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution for the purposes of complying with the NICS Improvement Amendments Act of 2007, Public Law 110-180, as enacted and as may be amended in the future.

(c) The following information shall be collected and reported to the federal bureau of investigation-NICS Index and the department of safety, pursuant to subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual was judicially committed; and

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(d) The information in subdivisions (c)(1) through (c)(5) above, the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to the provisions of such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

SECTION 2. Tennessee Code Annotated, Title 16, Chapter 11, Part 2, is amended by adding the following new section thereto:

§ 16-11-206.

(a) For purposes of this section:

(1) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state or by a court, board, commission or other lawful authority in any other state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the mental capacity to contract or manage such person's own affairs;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

(2) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or title 33, chapter 7;

(3) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by a licensed professional of mental retardation or mental illness, including but not limited to, a psychiatric ward in a general hospital; and

(4) "Treatment resource" means any public or private facility, service, or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers.

(b) Those chancery courts wherein commitments to a mental institution are ordered pursuant to title 33, chapter 6 or title 33, chapter 7 or persons are adjudicated as a mental defective shall enter a standing and continuing order instructing the clerk to collect and report January 1, April 1, July 1, and October 1 of every year beginning January 1, 2010, information described in subsection (c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution for the purposes of complying with the NICS Improvement Amendments Act of 2007, Public Law 110-180, as enacted and as may be amended in the future.

(c) The following information shall be collected and reported to the federal bureau of investigation-NICS Index and the department of safety, pursuant to subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual was judicially committed; and

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(d) The information in subdivisions (c)(1) through (c)(5) above, the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to the provisions of such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

SECTION 3. Tennessee Code Annotated, Section 16-15-303, is amended by adding the following new section thereto:

(g)

(1) For purposes of this subsection (g):

(A) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(i) A determination by a court in this state or by a court, board, commission or other lawful authority in any other state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(a) Is a danger to such person or to others; or

(b) Lacks the mental capacity to contract or manage such person's own affairs;

(ii) A finding of insanity by a court in a criminal proceeding;

or

(iii) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

(B) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or title 33, chapter 7;

(C) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by a licensed professional of mental retardation or mental illness, including but not limited to, a psychiatric ward in a general hospital;

(D) "Treatment resource" means any public or private facility, service, or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers.

(2) In addition to the duties prescribed in this part, the clerks of the general sessions courts wherein commitments to a mental institution are ordered pursuant to title 33, chapter 6 or title 33, chapter 7 or persons are adjudicated as a mental defective shall collect and report January 1, April 1, July 1, and October 1 of every year beginning January 1, 2010, information described in subsection (c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution for the purposes of complying with the NICS Improvement Amendments Act of 2007, Public Law 110-180, as enacted and as may be amended in the future.

(3) The following information shall be collected and reported to the federal bureau of investigation-NICS Index and the department of safety, pursuant to subdivision (g)(2):

(A) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited

to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(B) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(C) Date judicial commitment ordered or adjudication as a mental defective was made;

(D) Private or state hospital or treatment resource to which the individual was judicially committed; and

(E) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(4) The information in subdivisions (g)(3)(A) through (g)(3)(E) above, the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to the provisions of such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

SECTION 4. Tennessee Code Annotated, Title 16, Chapter 16, Part 1, is amended by adding the following new section thereto:

§ 16-16-120.

(a) For purposes of this section:

(1) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state or by a court, board, commission or other lawful authority in any other state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the mental capacity to contract or manage such person's own affairs;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

(2) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or title 33, chapter 7;

(3) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by a licensed professional of mental retardation or mental illness, including but not limited to, a psychiatric ward in a general hospital;

(4) "Treatment resource" means any public or private facility, service, or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers.

(b) Those county or probate courts wherein commitments to a mental institution are ordered pursuant to title 33, chapter 6 or title 33, chapter 7 or persons are adjudicated as a mental defective shall enter a standing and continuing order instructing the clerk to collect and report January 1, April 1, July 1, and October 1 of every year beginning January 1, 2010, information described in subsection (c) regarding individuals who have been adjudicated as a mental defective or judicially committed to a mental institution for the purposes of complying with the NICS Improvement Amendments Act of 2007, Public Law 110-180, as enacted and as may be amended in the future.

(c) The following information shall be collected and reported to the federal bureau of investigation-NICS Index and the department of safety, pursuant to subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual was judicially committed; and

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(d) The information in subdivisions (c)(1) through (c)(5) above, the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to the provisions of such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

SECTION 5. Tennessee Code Annotated, Section 33-3-115, is amended by deleting the section in its entirety and substituting instead the following:

§ 33-3-115.

(a) Any clerk of court that maintains records of an adjudication as a mental defective or a judicial commitment to a mental institution pursuant to chapter 6 or chapter 7 shall disclose the following information set out in subsection (b) solely for the purposes of complying with §§ 39-17-1316, 39-17-1351, 39-17-1352 and the NICS Improvement Amendments Act of 2007, Public Law 110-180, as enacted and as may be amended in the future.

(b) The following information shall be collected and reported to the federal bureau of investigation-NICS Index, and the department of safety, pursuant to subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual was judicially committed; and

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(c) The information in subdivisions (b)(1) through (b)(5) above, the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to the provisions of such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

(d) For purposes of this section, the following definitions shall apply:

(1) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or title 33, chapter 7;

(2) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state or by a court, board, commission or other lawful authority in any other state that a person, as a

result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the mental capacity to contract or manage such person's own affairs;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to 50a and 72b of the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 850a, 876b;

SECTION 6. Tennessee Code Annotated, Title 33, Chapter 3, Part 1, is amended by adding the following new section thereto:

§ 33-3-116.

A violation of §§ 33-3-103 -- 33-3-115 is a Class C misdemeanor.

SECTION 7. Tennessee Code Annotated, Title 33, Chapter 6, Part 4, is amended by deleting the section in its entirety and substituting the following:

§ 33-6-413.

(a) The chief officer, upon admission of the person, shall notify the judge of the general sessions court where the hospital or treatment resource is located, by telephone or in person, and shall provide the information from the certificates of need and such other information as the court may desire, that is in the possession of the hospital or treatment resource, bearing on the condition of the person. If the general sessions court finds that there is probable cause to believe that the defendant is subject to admission to a hospital or treatment resource under § 33-6-403, the court may order the defendant admitted for not more than five (5) days from the date of the order, excluding Saturdays, Sundays, and holidays, for emergency diagnosis, evaluation and treatment pending a probable cause hearing under § 33-6-422. If the court does not order the defendant admitted, the defendant shall be released.

(b) The court shall cause a notice containing the information described in this subsection (b) to be mailed to the defendant, the defendant's attorney, the chief officer of the hospital or treatment resource, and the parent, legal guardian, conservator, spouse or adult next of kin of the defendant. The notice shall contain the following information:

(1) The time and place of the probable cause hearing;

(2) The defendant's rights, including but not limited to, right to counsel, right to waive a hearing, right to confront and cross-examine witnesses, right to be protected from compelled self-incrimination;

(3) The status of the defendant if judicially committed, including but not limited to:

(A) The person's prohibition of purchasing a firearm under § 39-17-1316;

(B) The person's prohibition of obtaining a handgun carry permit under § 39-17-1351; and

(C) The suspension or revocation of a handgun carry permit under § 39-17-1352 once judicially committed to a hospital or treatment resource pursuant to this title;

(4) The person's right to appeal the prohibition against purchasing a firearm pursuant to § 39-17-1316; and

(5) The person's right to appeal the denial of a handgun carry permit pursuant to §§ 39-17-1352, 39-17-1353, and 39-17-1354.

SECTION 8. Tennessee Code Annotated, Section 39-17-1301, is amended by adding the following new appropriately designated subdivisions thereto:

() "Adjudication as a mental defective or adjudicated as a mental defective"

means:

(A) A determination by a court in this state or by a court, board, commission or other lawful authority in any other state that a person, as a result

of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the mental capacity to contract or manage such person's own affairs;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to 10 U.S.C. §§ 850a, 876b;

() "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or title 33, chapter 7;

() "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by a licensed professional of mental retardation or mental illness, including but not limited to, a psychiatric ward in a general hospital;

SECTION 9. Tennessee Code Annotated, Section 39-17-1316(a)(1), is amended by deleting the existing subdivision in its entirety and substituting instead the following:

(a)

(1) Any person appropriately licensed by the federal government may stock and sell firearms to persons desiring such; however, sales to persons who have been convicted of the offense of stalking, as prohibited by § 39-17-315, who are addicted to alcohol, who are ineligible to receive firearms under 18 U.S.C. § 922, or who have been judicially committed to a mental institution pursuant to title 33 or adjudicated as a mental defective are prohibited. For purposes of this subdivision (a)(1), the offense of violation of a protective order as prohibited by § 39-13-113 shall be considered a "misdemeanor crime of domestic violence" for purposes of 18 U.S.C. § 921.

SECTION 10. Tennessee Code Annotated, Section 39-17-1316 (n), is amended by deleting the subsection in its entirety and substituting the following language:

(n) The director of the Tennessee bureau of investigation is authorized to make and issue all rules and regulations necessary to carry out the provisions of this section, including but not limited to, rules and regulations for:

(1) Reporting to the federal bureau of investigation-NICS Index by court clerks of the names of individuals who have been judicially committed to a mental institution or treatment resource pursuant to title 33, chapter 6 or title 33, chapter 7 as well as those individuals who may have been adjudicated as a mental defective; and

(2) The removal of the prohibition of an individual's ability to purchase a firearm due to being judicially committed to a mental institution under title 33, chapter 6 or title 33, chapter 7 or the individual's adjudication as a mental defective.

SECTION 11. Tennessee Code Annotated, Section 39-17-1351(c)(12), is amended by deleting the subdivision in its entirety and substituting instead the following:

(12) That the applicant has not been adjudicated as a mental defective; has not been judicially committed to or hospitalized in a mental institution pursuant to title 33; has not had a court appoint a conservator for the applicant by reason of a mental defect; has not been judicially determined to be disabled by reason of mental illness, developmental disability or other mental incapacity; and has not, within seven (7) years from the date of application, been found by a court to pose an immediate substantial likelihood of serious harm, as defined in title 33, chapter 6, part 5, because of mental illness;

SECTION 12. Tennessee Code Annotated, Section 39-17-1351(i), is amended by deleting the subsection in its entirety and substituting instead the following:

(i) The department shall deny a permit application if it determines from information contained in the criminal history record checks conducted by the Tennessee

and federal bureaus of investigation pursuant to subsection (h), from information received from the clerks of court regarding individuals adjudicated as a mental defective or judicially committed to a mental institution pursuant to title 33, or from other information that comes to the attention of the department, that the applicant does not meet the eligibility requirements of this section. The department shall not be required to confirm the applicant's eligibility for a permit beyond the information received from the Tennessee and federal bureaus of investigation, the clerks of court and the sheriffs, if any.

SECTION 13. Tennessee Code Annotated, Section 39-17-1351, is amended by adding the following as a new subsection:

(w) The commissioner of the department of safety is authorized to make and issue all rules and regulations necessary to carry out the provisions of this section including, but not limited to, rules and regulations for reporting by court clerks to the department of safety the names of individuals who have been judicially committed to a mental institution pursuant to title 33, chapter 6 or title 33, chapter 7 as well as those individuals who may have been adjudicated as a mental defective.

SECTION 14. Tennessee Code Annotated, Section 39-17-1352 (a), is amended by adding the following as a new subdivision:

(8) Has been judicially committed to a mental institution pursuant to title 33, chapter 6 or title 33, chapter 7 or has been adjudicated as a mental defective.

SECTION 15. For purposes of promulgating rules and regulations to effectuate the purposes of this act, this act shall take effect upon becoming law; for all other purposes, this act shall take effect January 1, 2010, the public welfare requiring it.