

Cherokee Nation Code Annotated

Title 21: Crimes and Punishments

Part VI. Crimes Against Public Peace

Chapter 53: Manufacturing, Selling and Wearing Weapons

§ 1290.27. Notice to Federal Bureau of Investigation and Oklahoma State Bureau of Investigation—Petition to remove disability—Hearing—Scope of relief

Cite as: 21 CNCA § 1290.27

A. When a court adjudicates a person mentally incompetent or orders the involuntary commitment of a person due to a mental illness, condition or disorder under the laws of this state by which a person becomes subject to the provisions of Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, the clerk of the court shall forward a certified copy of the order or adjudication to the Federal Bureau of Investigation or its successor agency for the sole purpose of inclusion in the National Instant Criminal Background Check System database and to the Oklahoma State Bureau of Investigation. The clerk of the court shall also notify the person of the prohibitions contained within the provisions of Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, paragraph 3 of Section 1290.10 or paragraph 3 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes.

B. When a court adjudicates a person mentally incompetent or orders the involuntary commitment of a person due to a mental illness, condition or disorder under the laws of this state by which a person becomes subject to the provisions of Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, paragraph 3 of Section 1290.10 or paragraph 3 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes, or when a person is otherwise disqualified from eligibility for a handgun license under paragraph 6 or 7 of Section 1290.10 of Title 21 of the Oklahoma Statutes or paragraph 4 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes, the person may petition the court in which the adjudication or commitment proceedings occurred or the district court of the county in which the person currently resides to remove the disability.

C. On filing of the petition, the court shall set a hearing. Not less than thirty (30) days prior to a hearing on the matter, a copy of the petition for relief shall be served upon the district attorney for that county. The court shall receive and consider evidence in a closed hearing.

D. The court shall receive evidence on and consider the following before granting or denying the petition:

1. Psychological or psychiatric evidence from the petitioner and in support of the petition;
2. The circumstances that resulted in the firearm disabilities;
3. The petitioner's criminal history records provided by the state, if any;

4. The petitioner's mental health records;
5. The reputation of the petitioner based on character witness statements, testimony or other character evidence;
6. Whether the petitioner is a danger to self or others;
7. Changes in the condition or circumstances of the petitioner since the original adjudication of mental incompetency or involuntary commitment for a mental illness, condition or disorder relevant to the relief sought; and;
8. Any other evidence deemed admissible by the court.

E. The court shall grant the relief requested if the petitioner proves by clear and convincing evidence that:

1. The petitioner is not likely to act in a manner that is dangerous to the public safety; and
2. Granting the relief requested is not contrary to the public interest.

F. At the conclusion of the hearing, the court shall issue findings of fact and conclusions of law. A record shall be kept of the proceedings, but shall remain confidential and be disclosed only to a court or the parties. No records of the proceedings pursuant to this subsection shall be open to public inspection except by order of the court or to a person's attorney of record. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo.

G. If the court grants the petition for relief, the original adjudication of mental incompetency or order of involuntary commitment due to a mental illness, condition or disorder of the petitioner is deemed not to have occurred for purposes of applying Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, paragraph 3, 6 or 7 of Section 1290.10, or paragraph 3 or 4 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes.

H. The clerk of the court shall promptly forward to the Federal Bureau of Investigation or its successor agency for the sole purpose of inclusion in the National Instant Criminal Background Check System database and the Department of Mental Health and Substance Abuse Services and the Oklahoma State Bureau of Investigation, a certified copy of the order granting such relief under this section. The Department of Mental Health and Substance Abuse Services and the Oklahoma State Bureau of Investigation shall as soon thereafter as is practicable, but in no case later than ten (10) business days, update, correct, modify, or remove the record of the person in any databases that these agencies use or refer to for the purposes of handgun licensing, or make available to the National

Instant Criminal Background Check System and notify the United States Attorney that the basis for such record being made available no longer applies.

I. In lieu of sending a certified copy of a court order or document, the court clerk may transmit the information required by this section by using an electronic method or data exchange which is authorized by the Federal Bureau of Investigation, the Department of Mental Health and Substance Abuse Services and the Oklahoma State Bureau of Investigation.

Historical Data

LA 28-20, eff. December 14, 2020.