

## **IC 33-23-15**

### Chapter 15. NICS Appeals

#### **IC 33-23-15-1**

##### **Application of chapter**

Sec. 1. This chapter applies to the following:

- (1) A person civilly committed under IC 12-26-6-8.
- (2) A person found to be mentally ill and either dangerous or gravely disabled under IC 12-26-7-5.
- (3) A person found guilty but mentally ill under IC 35-36-2-5.
- (4) A person found not responsible by reason of insanity under IC 35-36-2-4.
- (5) A person found incompetent to stand trial under IC 35-36-3-1.
- (6) A confined offender who is determined to be mentally ill and has been involuntarily transferred to and accepted by the division of mental health and addiction under IC 11-10-4-3.

*As added by P.L.110-2009, SEC.11.*

#### **IC 33-23-15-2**

##### **Petition for review; evidence; findings by court or department of correction**

Sec. 2. (a) If a person described in section 1 of this chapter:

- (1) has been released from commitment; or
- (2) successfully completes a treatment or rehabilitation program;

the person may petition the court (if the adjudication leading to the person's commitment, rehabilitation, or treatment program was from a court) or the department of correction (if the determination leading to the person's rehabilitation or treatment program was from a psychiatrist employed by or retained by the department of correction) to determine whether the person is prohibited from possessing a firearm because the person is not a proper person under IC 35-47-1-7(11) through IC 35-47-1-7(13).

(b) In determining whether the person is prohibited from possessing a firearm because the person is not a proper person under IC 35-47-1-7(11) through IC 35-47-1-7(13), the court or department of correction shall consider the following evidence:

- (1) The facts and circumstances leading to the person being included in the category of persons to whom this chapter applies.
- (2) The person's mental health and criminal history records.
- (3) Evidence concerning the person's reputation, including the testimony of character witnesses.
- (4) A recent mental health evaluation by a psychiatrist or psychologist licensed to practice in Indiana.

(c) If the court or the department of correction, after considering the evidence described in subsection (b), finds by clear and convincing evidence that:

- (1) the person is not a danger to the person or to others;

(2) the person is not likely to act in a manner dangerous to public safety; and

(3) the requested relief would not be contrary to public interest; the court or department of correction shall transmit its findings to the department of state court administration, and any other information required by the division of state court administration, for transmission to the NICS in accordance with IC 33-24-6-3.

(d) A determination under this section may be appealed only in accordance with section 3 of this chapter.

*As added by P.L.110-2009, SEC.11. Amended by P.L.127-2011, SEC.2.*

### **IC 33-23-15-3**

#### **Judicial review of decision**

Sec. 3. (a) A person who receives an adverse decision under section 2 of this chapter may seek review of the decision by filing, not later than thirty (30) days after receiving the adverse decision, an action for review:

(1) in the court of conviction, if the adverse decision was made by the department of correction; or

(2) in a circuit or superior court in a county adjacent to the county in which the court rendered the adverse decision, if the adverse decision was made by a court.

(b) The court hearing an action for review filed under this section shall conduct the review hearing de novo. The hearing shall be conducted in accordance with section 2 of this chapter.

(c) The determination of a court under this section is a final appealable order.

*As added by P.L.110-2009, SEC.11. Amended by P.L.1-2010, SEC.131.*