**Petition for Relief Pursuant to 18 U.S.C. §922(g)(4) or S.C. Code Ann. §23-31-1040**

**NOTICE: IF YOU HAVE BEEN CONVICTED OF A FELONY OR A MISDEMEANOR THAT PROHIBITS FIREARM POSSESSION OR USE, OR IF YOU HAVE AN OUTSTANDING RESTRAINING ORDER, THIS PROCESS WILL NOT RESTORE YOUR RIGHTS TO SHIP, TRANSPORT, POSSESS, OR RECEIVE A FIREARM OR AMMUNITION. ALSO, IF YOU HAVE ORDERS (COMMITMENT, GUARDIANSHIP, OR CONSERVATORSHIP) FROM OTHER STATES OR COUNTIES, THIS PETITION WILL NOT ADDRESS THOSE ORDERS. You must file a petition in EACH JURISDICTION.**

This information sheet and the attached documents are being provided to you so that your petition for removal of the prohibitions of shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(4) or S.C. Code Ann. § 23-31-1040 may be processed as efficiently as possible.

While you are not required to retain an attorney to assist you with this process, filing a petition does involve specific law and legal matters and it may be to your advantage to seek legal counsel. The Court is unable to provide any legal advice. If you choose not to retain an attorney, the Court will hold you to the same rules and standards as an attorney. If you do not follow applicable rules and meet applicable standards, your petition may not be granted.

Once all required documents are filed, you will be notified in writing of a hearing date. At the hearing, you are required to present documentary and testimonial evidence in support of your petition, including evidence regarding your reputation as developed through character witness statements, testimony, or other character evidence. The Court will follow the South Carolina Rules of Evidence in determining admissibility of any evidence you seek to present.

You are required to file the following items for a hearing to be scheduled:

1. Petition (form attached);
2. Authorization and Release for all medical, including mental health, records (form attached);
3. Certified copies of all medical records, including mental health records (you will be responsible for having your medical providers forward records directly to the Court);
4. Current Evaluation by the Department of Mental Health or a physician specializing in mental health (form attached); and
5. SLED Check (request form attached).

It is your responsibility to ensure that all required information and documentation accompanies the petition for relief at the time it is filed with the Court. No hearing will be scheduled until all information is received by the Court. The Court requires that you file the names of all witnesses at least ten (10) days prior to the hearing.

For your reference, please see S.C. Code Ann. § 23-31-1030.

 **Section 23‑31‑1030.** (A) If a person is prohibited from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. Section 922(g)(4) or Section 23‑31‑1040 as a result of adjudication as a mental defective or commitment to a mental institution, the person may petition the court that issued the original order to remove the prohibitions. The person may file the petition upon the expiration of any current commitment order; however, the court only may consider petitions for relief due to adjudications and commitments that occurred in this State.

 (B) The petition must be accompanied by an authorization and release signed by the petitioner authorizing disclosure of the petitioner’s current and past medical records, including mental health records.

 (C) If the petition is filed pro se, the court shall provide notice to all parties of record. If the petitioner is represented by counsel, counsel shall provide notice to all parties of record.

 (D) Notwithstanding the exclusive jurisdiction of the court to preside over hearings initiated pursuant to this section, the case may be removed to the circuit court upon motion of the petitioner or on motion of the court, made not later than ten days following the date the petition is filed. Upon such motion, the case must be removed to the circuit court where the court shall proceed with the case de novo.

 (E)(1) Within ninety days of receiving the petition, unless the court grants an extension upon request of the petitioner, the court shall conduct a hearing which must be presided over by a person other than the person who gathered evidence for use by the court in the hearing.

 (2) At the hearing on the petition, the petitioner shall have the opportunity to submit evidence, and a record of the hearing must be made and maintained for review. The court shall consider information and records, which otherwise are confidential or privileged, relevant to the criteria for removing firearm and ammunition prohibitions and shall receive and consider evidence concerning the following:

 (a) the circumstances regarding the firearm and ammunitions prohibitions imposed by 18 U.S.C. Section 922(g)(4) and Section 23‑31‑1040;

 (b) the petitioner’s record, which must include, at a minimum, the petitioner’s mental health and criminal history records;

 (c) evidence of the petitioner’s reputation developed through character witness statements, testimony, or other character evidence; and

 (d) a current evaluation presented by the petitioner conducted by the Department of Mental Health or a physician licensed in this State specializing in mental health specifically addressing whether due to mental defectiveness or mental illness the petitioner poses a threat to the safety of the public or himself or herself.

 (F) The hearing must be closed to the public, and the petitioner’s mental health records must be restricted from public disclosure. However, upon motion by the petitioner, the hearing may be open to the public, and the court may allow for the in camera inspection of the petitioner’s mental health records and for the use of these records, but these records must be restricted from public disclosure.

 (G)(1) The court shall make findings of fact regarding the following and shall remove the firearm and ammunition prohibitions if the petitioner proves by a preponderance of the evidence that:

 (a) the petitioner is no longer required to participate in court‑ordered psychiatric treatment;

 (b) the petitioner is determined by the Department of Mental Health or by a physician licensed in this State specializing in mental health to benot likely to act in a manner dangerous to public safety; and

 (c) granting the petitioner relief will not be contrary to the public interest.

 (2) Notwithstanding item (1), the court must not remove the firearm and ammunition prohibitions if, by a preponderance of the evidence, it is proven that the petitioner has engaged in acts of violence subsequent to the petitioner’s last adjudication as a mental defective or last commitment to a mental institution, unless the petitioner, by clear and convincing evidence, proves that he is not likely to act in a manner dangerous to public safety.

 (H) If the petitioner is denied relief and the firearm and ammunition prohibitions are not removed, the petitioner may appeal to the circuit court for de novo review. In conducting its review, the circuit court:

 (1) shall review the record;

 (2) may give deference to the decision of the court denying the petitioner relief; and

 (3) may receive additional evidence as necessary to conduct an adequate review.

 (I) Medical records, psychological reports, and other treatment records which have been submitted to the court or admitted into evidence under this section must be part of the record, but must be sealed and opened only on order of the court.

 (J) If a court issues an order pursuant to this section that removes the firearm and ammunition prohibitions that prohibited the petitioner from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. Section 922(g)(4) or Section 23‑31‑1040, arising from adjudication as a mental defective or commitment to a mental institution, the court shall provide SLED with a certified copy of the order that may be transmitted through electronic means. SLED promptly shall inform the NICS of the court action removing these firearm and ammunition prohibitions.

STATE OF SOUTH CAROLINA ) IN THE

 )

 ) CASE NUMBER:

COUNTY OF       )

 )

IN THE MATTER OF ) **PETITION FOR RELIEF PURSUANT TO** ) **S.C. Code Ann. §23-31-1040**

Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Petitioner:
2. Other names that I have used during my lifetime (include alias, nickname, maiden name,etc.):

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1. In accordance with S.C. Code Ann. § 23-31-1030, I request that the Court conduct a relief hearing to determine whether I should be granted relief from the prohibition of shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(4) or S.C. Code Ann. § 23-31-1040 as a result of adjudication as a mental defective or commitment to a mental institution.
2. I am currently prohibited from shipping, transporting, possessing, or receiving a firearm because (check all that apply):

[ ]  I was adjudicated as a “mental defective” (means a determination by a court that a person, as a result of marked subnormal intelligence, mental illness, mental incompetency, mental condition, or mental disease is (1) a danger to self or others or (2) lacks the mental capacity to contract or manage the person’s own affairs). Date of Order:       (Attach copy of Order(s), if available)

[ ]  I was committed to a mental institution (this term includes in-patient or out-patient facilities for mental health treatment or drug or alcohol abuse). (Attach copy of Order(s), if available)

1. My order(s) of commitment or incapacity expired or ended on the following date(s):

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**If your commitment order has not expired, stop here. You are not eligible to file a petition until the order expires.**

1. Marital Status (single, married, divorced, widowed/widower):
2. Spouse’s name (if applicable):
3. Are you an unlawful user of, addicted to, or recovering from any addiction to drugs or alcohol?

If yes, please explain:

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1. Have you ever been arrested, are you under indictment for, or have you ever been convicted of a crime?       If yes, explain the charge(s) and note your arrest/conviction date, city and county:

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1. Have you ever been subject to a court order restraining you from having contact with someone, including but not limited to an Order of Protection from Domestic Abuse?

If yes, please explain:

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Date of Expiration of Order:

1. Have you ever been convicted in any court of domestic violence or other abuse?

     If yes, please explain:

1. Have you ever been on probation?       Are you currently on probation?

Have you ever violated any terms of probation?

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 Name of probation officer:

 Contact information for probation officer:

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1. Have you ever served in the military? If so, please list your occupational classification, length of service, any discipline history, and type and date of discharge:

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1. Current place of employment, title, and length of time in position, if applicable:

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1. I am seeking the removal of the prohibitions of shipping, transporting, possessing, or receiving a firearm and/or ammunition for the following reasons (attach additional documents if needed):

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1. My current and past medical providers, including all mental health providers, and their contact information are listed below. I understand that I must file an authorization and release so that these providers may provide my medical records to the Court.

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**VERIFICATION**

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned’s knowledge, information and belief; and hereby submits to the Court’s jurisdiction in this matter. The undersigned understands that submitting false information in this Petition or failing to provide required information may result in denial of the Petition and may subject the undersigned to criminal and/or civil liability.

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| SWORN to before me this |       |  | Signature: |  |
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| Notary Public for South Carolina |  |  | Telephone (O): |       |
| My Commission Expires: |       |  | (H): |       |
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**AUTHORIZATION FOR USE/DISCLOSURE OF HEALTH INFORMATION TO**

**(Pursuant to S.C. Code Ann. §23-31-1030)**

      **Court,**      **, S.C.**

Name of Court Location of Court

Petitioner Name

Address

Date of Birth

 SS#

I request and authorize the disclosure of ALL of my Protected Health Information (PHI) related to my treatment or care (including all information pertaining to my Medical, Psychiatric, and/or Alcohol and Drug Diagnoses, Clinical History, Evaluation, Assessment and Treatment information; Admission and Discharge Dates, Individualized Treatment Plan, Progress Summaries; Lab, Treatment, Testing and other Clinical Reports or Summaries; Physician's Medication Orders; family or other personal history; HIV, AIDS, ARC/other infectious disease) in the possession of ANY healthcare provider, to be provided to the above-named Court for the purpose of my Petition to the Court requesting Relief from Disability pursuant to S.C. Code § 23-31-1030.

I understand and agree that my PHI disclosed may include medical, psychiatric, mental health, alcohol and drug, infectious disease, including STD information, and related information. I understand that this PHI is protected by federal and state confidentiality law including, 45 CFR Part 160 (HIPAA); S. C. Code § 44-22-100 (SCDMH Patient or Client or person subject to commitment); and if applicable, 42 CFR Part 2 (Alcohol and Drug Program).

I also understand that I am responsible for ensuring that my healthcare providers transmit certified copies of ALL of my PHI records directly to the Court. In addition to authorizing disclosure of my records, I also authorize the Court to receive related oral or written information pertaining to my care or treatment as may be needed for the Court to consider my Petition. I waive any right to limit disclosure of my PHI to the Court for this purpose as I understand that the Court requires all information to consider my Petition.

I also agree to pay the applicable healthcare provider (and/or healthcare provider’s agent, if applicable) for all costs associated with retrieving, copying and providing to the above-named Court, a certified copy of my complete healthcare record. (See attached Affidavit to be signed by healthcare provider’s medical records director/agent and provided to the Court along with copies of my healthcare record.)

This Authorization is valid for (the earlier date) one year from the date below OR when the above information is provided to the Court.

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Signature Date

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Signature of Witness Date

Printed Name of Witness

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|       **Court** **Case Number:**      **County of:**       | **Petition for Relief (S.C. Code Ann. §23-31-1030)** |

**EVALUATION BY DEPARTMENT OF MENTAL HEALTH OR SOUTH CAROLINA LICENSED PHYSICIAN SPECIALIZING IN MENTAL HEALTH**

As provided for in named person’s Petition for Relief

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|      NAME OF PERSON EXAMINED     PLACE OF EXAMINATION |      DOB |      COUNTY OF RESIDENCE     HOUR AND DATE OF EXAMINATION |

I, THE UNDERSIGNED AGENT OF THE DEPARTMENT OF MENTAL HEALTH OR A LICENSED PHYSICIAN SPECIALIZING IN MENTAL HEALTH, have examined the above-named person in connection with the person’s Petition for Relief pursuant to S.C. Code Ann. §23-31-1030 (Petition) and have reviewed the complete copy of the person’s medical records, including mental health records, as included in the Petition, and am of the opinion, that said person (in accord with §§ 23-31-1030 (D)(2)(d) and (F)(1)(b) (Initial as applicable):

     POSES A THREAT TO THE SAFETY OF THE PUBLIC OR TO HIMSELF OR HERSELF DUE TO MENTAL DEFECTIVENESS OR MENTAL ILLNESS, OR IS OTHERWISE LIKELY TO ACT IN A MANNER DANGEROUS TO PUBLIC SAFETY.

      DOES NOT POSE A THREAT TO THE SAFETY OF THE PUBLIC OR TO HIMSELF OR HERSELF DUE TO MENTAL DEFECTIVENESS OR MENTAL ILLNESS, AND OTHERWISE IS NOT LIKELY TO ACT IN A MANNER DANGEROUS TO PUBLIC SAFETY.

**My opinion is based upon the following (as applicable, add additional pages if needed):**

Specific diagnosis or condition:

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By my signature below, I also understand that I may be subpoenaed to testify at the hearing related to the named person’s Petition before this Court.

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