

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1243 Session of 2013

INTRODUCED BY STEPHENS, ADOLPH, BOBACK, R. BROWN, V. BROWN, CALTAGIRONE, CARROLL, DEAN, FABRIZIO, FARRY, GABLER, GINGRICH, GRELL, GROVE, HARPER, W. KELLER, KORTZ, R. MILLER, MOLCHANY, MURT, MUSTIO, O'BRIEN, O'NEILL, PARKER, PASHINSKI, SANTARSIERO, SCHLOSSBERG, STURLA, TOEPEL, TOOHL, TRUITT, VEREB, WATSON, KAMPF, KILLION, HACKETT, JAMES, MIRANDA AND DAVIDSON, APRIL 23, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, SEPTEMBER 23, 2014

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in firearms and other dangerous
3 articles, further providing for persons not to possess, use, <--
4 manufacture, control, sell or transfer firearms and for
5 Pennsylvania State Police AND FOR LIMITATION ON THE <--
6 REGULATION OF FIREARMS AND AMMUNITION.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Sections 6105(f)(1) and (j) and 6111.1(f)(3) <--

10 SECTION 6111.1(F)(3) AND (G)(1) AND (3) of Title 18 of the <--

11 Pennsylvania Consolidated Statutes are amended to read:

12 § 6105. Persons not to possess, use, manufacture, control, sell <--
13 or transfer firearms.

14 * * *

15 (f) Other exemptions and proceedings.—

16 [(1) Upon application to the court of common pleas under
17 this subsection by an applicant subject to the prohibitions—

1 under subsection (c) (4), the court may grant such relief as
2 it deems appropriate if the court determines that the
3 applicant may possess a firearm without risk to the applicant
4 or any other person.]

5 ~~(1) (i) Any person subject to the prohibitions under~~
6 ~~subsection (c) (4), or who is prohibited from possessing~~
7 ~~firearms under 18 U.S.C. § 922(d) (4) or (g) (4) (relating~~
8 ~~to unlawful acts) as a result of actions taken under the~~
9 ~~laws of this Commonwealth, may apply to the court of~~
10 ~~common pleas for relief. The court shall grant relief if~~
11 ~~the court determines by clear and convincing evidence and~~
12 ~~makes findings that the applicant does not present a risk~~
13 ~~of harm to the applicant or any other person, will not be~~
14 ~~likely to act in a manner dangerous to public safety and~~
15 ~~that the granting of the relief would not be contrary to~~
16 ~~the public interest. The court order, whether denying or~~
17 ~~granting relief, shall also be supported by findings of~~
18 ~~fact and conclusions of law. In making its decision, the~~
19 ~~court shall receive and consider evidence relating to the~~
20 ~~following:~~

21 ~~(A) The circumstances of the original~~
22 ~~commitment, appointment of a guardian or other~~
23 ~~finding of incompetency or incapacity.~~

24 ~~(B) The applicant's mental health records,~~
25 ~~including the original commitment application and any~~
26 ~~related order, or other finding of incompetency or~~
27 ~~incapacity and medical records relating to any~~
28 ~~hospitalization resulting from the involuntary~~
29 ~~commitment, if any.~~

30 ~~(C) The applicant's criminal history record.~~

1 ~~(D) The applicant's character and reputation.~~

2 ~~(E) Changes in the applicant's condition or~~
3 ~~circumstances relevant to the relief sought.~~

4 ~~(ii) The application shall be made to the court of~~
5 ~~common pleas in either the applicant's county of~~
6 ~~residence or the county of adjudication or commitment.~~
7 ~~The applicant shall bear the burden of proof. No~~
8 ~~application may be made until two years have elapsed from~~
9 ~~date of the imposition of the disability. The application~~
10 ~~shall be served upon the following parties, who shall~~
11 ~~have standing to appear and contest the application:~~

12 ~~(A) The district attorney of the county where~~
13 ~~the application is filed.~~

14 ~~(B) The Firearms Division of the Pennsylvania~~
15 ~~State Police.~~

16 ~~(C) The county mental health agency where the~~
17 ~~commitment or adjudication occurred.~~

18 ~~(iii) Any party shall have the right of appeal to~~
19 ~~Superior Court. Appeal shall be subject to a de novo~~
20 ~~standard of review. A person may only file a subsequent~~
21 ~~application under this paragraph after three years have~~
22 ~~elapsed from the conclusion of the prior proceeding,~~
23 ~~including any appeal, which resulted in a denial under~~
24 ~~this paragraph.~~

25 ~~(iv) Notwithstanding any law to the contrary, the~~
26 ~~judges of the courts of common pleas, mental health~~
27 ~~review officers and county mental health and mental~~
28 ~~retardation administrators shall disclose to the district~~
29 ~~attorney of the county where the application is filed and~~
30 ~~to the Pennsylvania State Police any records in their~~

~~possession which are to be received by a court consistent
with subparagraph (i) when such request is made in
conjunction with a proceeding under this paragraph. The
district attorney of the county where the application is
filed and the Pennsylvania State Police may, in their
discretion, disclose the information to any person or
entity whenever necessary in accordance with this
paragraph.~~

~~* * *~~

~~(j) Copy of order to State Police.~~

~~(1) If [the court grants relief from the disabilities
imposed under this section] a court grants any relief
authorized by this section, a copy of the order shall be sent
by the prothonotary or Clerk of Court within ten days of the
entry of the order to the Pennsylvania State Police and shall
include the name, date of birth and Social Security number of
the individual.~~

~~(2) In all cases of relief authorized under this
section, the Pennsylvania State Police shall, upon the
expiration of any applicable appeal period, take all steps
necessary to comply with the order, including, when required,
notifying the Attorney General of the United States, the
Federal Bureau of Investigation and the National Instant
Check System, regarding the order.~~

§ 6111.1. Pennsylvania State Police.

* * *

(f) Notification of mental health adjudication, treatment,
commitment, drug use or addiction.--

* * *

(3) Notwithstanding any law to the contrary, the

1 Pennsylvania State Police [may] shall, within ~~48~~ 72 hours of <--
2 receipt, disclose, electronically or otherwise, to the United
3 States Attorney General or a designee, any record relevant to
4 a determination of whether a person is disqualified from
5 possessing or receiving a firearm under 18 U.S.C. § 922 (g)
6 (3) or (4) or an applicable state statute[.], AND ANY RECORD <--
7 RELEVANT TO A DETERMINATION OF WHETHER A PERSON IS NOT
8 DISQUALIFIED OR IS NO LONGER DISQUALIFIED FROM POSSESSING OR
9 RECEIVING A FIREARM UNDER 18 U.S.C. § 922(G) (3) OR (4) OR AN
10 APPLICABLE STATE STATUTE.

11 (G) REVIEW BY COURT.--

12 (1) UPON RECEIPT OF A COPY OF THE ORDER OF A COURT OF
13 COMPETENT JURISDICTION WHICH VACATES A FINAL ORDER OR AN
14 INVOLUNTARY CERTIFICATION ISSUED BY A MENTAL HEALTH REVIEW
15 OFFICER, THE PENNSYLVANIA STATE POLICE SHALL, AFTER
16 DISCLOSING RELEVANT RECORDS UNDER SUBSECTION (F) (3), EXPUNGE
17 ALL RECORDS OF THE INVOLUNTARY TREATMENT RECEIVED UNDER
18 SUBSECTION (F).

19 * * *

20 (3) THE PENNSYLVANIA STATE POLICE, AFTER DISCLOSING
21 RELEVANT RECORDS UNDER SUBSECTION (F) (3), SHALL EXPUNGE ALL
22 RECORDS OF AN INVOLUNTARY COMMITMENT OF AN INDIVIDUAL WHO IS
23 DISCHARGED FROM A MENTAL HEALTH FACILITY BASED UPON THE
24 INITIAL REVIEW BY THE PHYSICIAN OCCURRING WITHIN TWO HOURS OF
25 ARRIVAL UNDER SECTION 302(B) OF THE MENTAL HEALTH PROCEDURES
26 ACT AND THE PHYSICIAN'S DETERMINATION THAT NO SEVERE MENTAL
27 DISABILITY EXISTED PURSUANT TO SECTION 302(B) OF THE MENTAL
28 HEALTH PROCEDURES ACT. THE PHYSICIAN SHALL PROVIDE SIGNED
29 CONFIRMATION OF THE DETERMINATION OF THE LACK OF SEVERE
30 MENTAL DISABILITY FOLLOWING THE INITIAL EXAMINATION UNDER

1 SECTION 302 (B) OF THE MENTAL HEALTH PROCEDURES ACT TO THE
2 PENNSYLVANIA STATE POLICE.

3 * * *

4 SECTION 2. SECTION 6120 (B) OF TITLE 18 IS AMENDED AND THE <--
5 SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:

6 § 6120. LIMITATION ON THE REGULATION OF FIREARMS AND
7 AMMUNITION.

8 * * *

9 (A.2) RELIEF.--A PERSON ADVERSELY AFFECTED BY AN ORDINANCE,
10 A RESOLUTION, REGULATION, RULE, PRACTICE OR ANY OTHER ACTION
11 PROMULGATED OR ENFORCED BY A COUNTY, MUNICIPALITY OR TOWNSHIP
12 PROHIBITED UNDER SUBSECTION (A) OR 53 PA.C.S. § 2962 (G)
13 (RELATING TO LIMITATION ON MUNICIPAL POWERS) MAY SEEK
14 DECLARATORY OR INJUNCTIVE RELIEF AND ACTUAL DAMAGES IN AN
15 APPROPRIATE COURT.

16 (A.3) REASONABLE EXPENSES.--A COURT SHALL AWARD REASONABLE
17 EXPENSES TO A PERSON ADVERSELY AFFECTED IN AN ACTION UNDER
18 SUBSECTION (A.2) FOR ANY OF THE FOLLOWING:

19 (1) A FINAL DETERMINATION BY THE COURT IS GRANTED IN
20 FAVOR OF THE PERSON ADVERSELY AFFECTED.

21 (2) THE REGULATION IN QUESTION IS RESCINDED, REPEALED OR
22 OTHERWISE ABROGATED AFTER SUIT HAS BEEN FILED UNDER
23 SUBSECTION (A.2) BUT BEFORE THE FINAL DETERMINATION BY THE
24 COURT.

25 (B) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
26 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
27 SUBSECTION:

28 "DEALER." THE TERM SHALL INCLUDE ANY PERSON ENGAGED IN THE
29 BUSINESS OF SELLING AT WHOLESALE OR RETAIL A FIREARM OR
30 AMMUNITION.

1 "FIREARMS." THIS TERM SHALL HAVE THE MEANING GIVEN TO IT IN
2 SECTION 5515 (RELATING TO PROHIBITING OF PARAMILITARY TRAINING)
3 BUT SHALL NOT INCLUDE AIR RIFLES AS THAT TERM IS DEFINED IN
4 SECTION 6304 (RELATING TO SALE AND USE OF AIR RIFLES).

5 "PERSON ADVERSELY AFFECTED." ANY OF THE FOLLOWING:

6 (1) A RESIDENT OF THIS COMMONWEALTH WHO MAY LEGALLY
7 POSSESS A FIREARM UNDER FEDERAL AND STATE LAW.

8 (2) A PERSON WHO OTHERWISE HAS STANDING UNDER THE LAWS
9 OF THIS COMMONWEALTH TO BRING AN ACTION UNDER SUBSECTION
10 (A.2).

11 (3) A MEMBERSHIP ORGANIZATION, IN WHICH A MEMBER IS A
12 PERSON DESCRIBED UNDER PARAGRAPHS (1) OR (2).

13 "POLITICAL SUBDIVISION." THE TERM SHALL INCLUDE ANY HOME
14 RULE CHARTER MUNICIPALITY, COUNTY, CITY, BOROUGH, INCORPORATED
15 TOWN, TOWNSHIP OR SCHOOL DISTRICT.

16 "REASONABLE EXPENSES." THE TERM INCLUDES, BUT IS NOT LIMITED
17 TO, ATTORNEY FEES, EXPERT WITNESS FEES, COURT COSTS AND
18 COMPENSATION FOR LOSS OF INCOME.

19 Section 2 3. This act shall take effect in 60 days.

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