

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 321 Session of
2001

INTRODUCED BY TARTAGLIONE, MELLOW, O'PAKE, SCHWARTZ, MUSTO,
KITCHEN, COSTA AND BOSCOLA, FEBRUARY 6, 2001

REFERRED TO JUDICIARY, FEBRUARY 6, 2001

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further prohibiting the purchase of
3 firearms.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 6105 of Title 18 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 6105. Persons not to purchase, possess, use, manufacture,
9 control, sell or transfer firearms.

10 (a) Offense defined.--

11 (1) A person who has been convicted of an offense
12 enumerated in subsection (b), within or without this
13 Commonwealth, regardless of the length of sentence or whose
14 conduct meets the criteria in subsection (c) shall not
15 possess, use, control, sell, transfer or manufacture or
16 obtain a license to possess, use, control, sell, transfer or
17 manufacture a firearm in this Commonwealth.

18 (1.1) A person who is the subject of an active

protection from abuse order issued pursuant to 23 Pa.C.S. § 6108 (relating to relief) shall be prohibited from acquiring or purchasing any firearm during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order.

(2) A person who is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm under paragraph (1) or subsection (b) or (c) shall have a reasonable period of time, not to exceed 60 days from the date of the imposition of the disability under this subsection, in which to sell or transfer that person's firearms to another eligible person who is not a member of the prohibited person's household.

(a.1) Penalty.--Any person convicted of a felony enumerated under subsection (b) or a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, who violates subsection (a) commits a felony of the second degree.

(b) Enumerated offenses.--The following offenses shall apply to subsection (a):

Section 908 (relating to prohibited offensive weapons).

Section 911 (relating to corrupt organizations).

Section 912 (relating to possession of weapon on school property).

Section 2502 (relating to murder).

Section 2503 (relating to voluntary manslaughter).

Section 2504 (relating to involuntary manslaughter) if the offense is based on the reckless use of a firearm.

1 Section 2702 (relating to aggravated assault).

2 Section 2703 (relating to assault by prisoner).

3 Section 2704 (relating to assault by life prisoner).

4 Section 2709 (relating to harassment and stalking) if the

5 offense relates to stalking.

6 Section 2901 (relating to kidnapping).

7 Section 2902 (relating to unlawful restraint).

8 Section 2910 (relating to luring a child into a motor

9 vehicle).

10 Section 3121 (relating to rape).

11 Section 3123 (relating to involuntary deviate sexual

12 intercourse).

13 Section 3125 (relating to aggravated indecent assault).

14 Section 3301 (relating to arson and related offenses).

15 Section 3302 (relating to causing or risking

16 catastrophe).

17 Section 3502 (relating to burglary).

18 Section 3503 (relating to criminal trespass) if the

19 offense is graded a felony of the second degree or higher.

20 Section 3701 (relating to robbery).

21 Section 3702 (relating to robbery of motor vehicle).

22 Section 3921 (relating to theft by unlawful taking or

23 disposition) upon conviction of the second felony offense.

24 Section 3923 (relating to theft by extortion) when the

25 offense is accompanied by threats of violence.

26 Section 3925 (relating to receiving stolen property) upon

27 conviction of the second felony offense.

28 Section 4912 (relating to impersonating a public servant)

29 if the person is impersonating a law enforcement officer.

30 Section 4952 (relating to intimidation of witnesses or

1 victims).

2 Section 4953 (relating to retaliation against witness or
3 victim).

4 Section 5121 (relating to escape).

5 Section 5122 (relating to weapons or implements for
6 escape).

7 Section 5501(3) (relating to riot).

8 Section 5515 (relating to prohibiting of paramilitary
9 training).

10 Section 6110.1 (relating to possession of firearm by
11 minor).

12 Section 6301 (relating to corruption of minors).

13 Section 6302 (relating to sale or lease of weapons and
14 explosives).

15 Any offense equivalent to any of the above-enumerated
16 offenses under the prior laws of this Commonwealth or any
17 offense equivalent to any of the above-enumerated offenses
18 under the statutes of any other state or of the United
19 States.

20 (c) Other persons.--In addition to any person who has been
21 convicted of any offense listed under subsection (b), the
22 following persons shall be subject to the prohibition of
23 subsection (a):

24 (1) A person who is a fugitive from justice. This
25 paragraph does not apply to an individual whose fugitive
26 status is based upon a nonmoving or moving summary offense
27 under Title 75 (relating to vehicles).

28 (2) A person who has been convicted of an offense under
29 the act of April 14, 1972 (P.L.233, No.64), known as The
30 Controlled Substance, Drug, Device and Cosmetic Act, or any

1 equivalent Federal statute or equivalent Statute of any other
2 State that may be punishable by a term of imprisonment
3 exceeding two years.

4 (3) A person who has been convicted of driving under the
5 influence of alcohol or controlled substance as provided in
6 75 Pa.C.S. § 3731 (relating to driving under influence of
7 alcohol or controlled substance) on three or more separate
8 occasions within a five-year period. For the purposes of this
9 paragraph only, the prohibition of subsection (a) shall only
10 apply to transfers or purchases of firearms after the third
11 conviction.

12 (4) A person who has been adjudicated as an incompetent
13 or who has been involuntarily committed to a mental
14 institution for inpatient care and treatment under section
15 302, 303 or 304 of the provisions of the act of July 9, 1976
16 (P.L.817, No.143), known as the Mental Health Procedures Act.
17 This paragraph shall not apply to any proceeding under
18 section 302 of the Mental Health Procedures Act unless the
19 examining physician has issued a certification that inpatient
20 care was necessary or that the person was committable.

21 (5) A person who, being an alien, is illegally or
22 unlawfully in the United States.

23 (6) A person who is the subject of an active protection
24 from abuse order issued pursuant to 23 Pa.C.S. § 6108
25 [(relating to relief)], which order provided for the
26 confiscation of firearms during the period of time the order
27 is in effect. This prohibition shall terminate upon the
28 expiration or vacation of an active protection from abuse
29 order or portion thereof relating to the confiscation of
30 firearms.

1 (7) A person who was adjudicated delinquent by a court
2 pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or
3 under any equivalent Federal statute or statute of any other
4 state as a result of conduct which if committed by an adult
5 would constitute an offense under sections 2502, 2503, 2702,
6 2703 (relating to assault by prisoner), 2704, 2901, 3121,
7 3123, 3301, 3502, 3701 and 3923.

8 (8) A person who was adjudicated delinquent by a court
9 pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal
10 statute or statute of any other state as a result of conduct
11 which if committed by an adult would constitute an offense
12 enumerated in subsection (b) with the exception of those
13 crimes set forth in paragraph (7). This prohibition shall
14 terminate 15 years after the last applicable delinquent
15 adjudication or upon the person reaching the age of 30,
16 whichever is earlier.

17 (d) Exemption.--A person who has been convicted of a crime
18 specified in subsection (a) or (b) or a person whose conduct
19 meets the criteria in subsection (c)(1), (2), (5) or (7) may
20 make application to the court of common pleas of the county
21 where the principal residence of the applicant is situated for
22 relief from the disability imposed by this section upon the
23 possession, transfer or control of a firearm. The court shall
24 grant such relief if it determines that any of the following
25 apply:

26 (1) The conviction has been vacated under circumstances
27 where all appeals have been exhausted or where the right to
28 appeal has expired.

29 (2) The conviction has been the subject of a full pardon
30 by the Governor.

1 (3) Each of the following conditions is met:

2 (i) The Secretary of the Treasury of the United
3 States has relieved the applicant of an applicable
4 disability imposed by Federal law upon the possession,
5 ownership or control of a firearm as a result of the
6 applicant's prior conviction, except that the court may
7 waive this condition if the court determines that the
8 Congress of the United States has not appropriated
9 sufficient funds to enable the Secretary of the Treasury
10 to grant relief to applicants eligible for the relief.

11 (ii) A period of ten years, not including any time
12 spent in incarceration, has elapsed since the most recent
13 conviction of the applicant of a crime enumerated in
14 subsection (b) or a felony violation of The Controlled
15 Substance, Drug, Device and Cosmetic Act.

16 (e) Proceedings.--

17 (1) If a person convicted of an offense under subsection
18 (a), (b) or (c)(1), (2), (5) or (7) makes application to the
19 court, a hearing shall be held in open court to determine
20 whether the requirements of this section have been met. The
21 commissioner and the district attorney of the county where
22 the application is filed and any victim or survivor of a
23 victim of the offense upon which the disability is based may
24 be parties to the proceeding.

25 (2) Upon application to the court of common pleas
26 pursuant to paragraph (1) by an applicant who is subject to
27 the prohibition under subsection (c)(3), the court shall
28 grant such relief if a period of ten years, not including any
29 time spent in incarceration, has passed since the applicant's
30 most recent conviction under subsection (c)(3).

1 (f) Other exemptions and proceedings.--

2 (1) Upon application to the court of common pleas under
3 this subsection by an applicant subject to the prohibitions
4 under subsection (c)(4), the court may grant such relief as
5 it deems appropriate if the court determines that the
6 applicant may possess a firearm without risk to the applicant
7 or any other person.

8 (2) If application is made under this subsection for
9 relief from the disability imposed under subsection (c)(6),
10 notice of such application shall be given to the person who
11 had petitioned for the protection from abuse order, and such
12 person shall be a party to the proceedings. Notice of any
13 court order or amendment to a court order restoring firearms
14 possession or control shall be given to the person who had
15 petitioned for the protection from abuse order.

16 (3) All hearings conducted under this subsection shall
17 be closed unless otherwise requested to be open by the
18 applicant.

19 (4) The owner of any seized or confiscated firearms
20 shall be provided with a signed and dated written receipt by
21 the appropriate law enforcement agency. This receipt shall
22 include, but not limited to, a detailed identifying
23 description indicating the serial number and condition of the
24 firearm. In addition, the appropriate law enforcement agency
25 shall be liable to the lawful owner of said confiscated or
26 seized firearm for any loss, damage or substantial decrease
27 in value of said firearm that is a direct result of a lack of
28 reasonable care by the appropriate law enforcement agency.

29 (g) Other restrictions.--Nothing in this section shall
30 exempt a person from a disability in relation to the possession

1 or control of a firearm which is imposed as a condition of
2 probation or parole or which is imposed pursuant to the
3 provision of any law other than this section.

4 (h) License prohibition.--Any person who is prohibited from
5 possessing, using, controlling, selling, purchasing,
6 transferring or manufacturing any firearm under this section
7 shall not be eligible for or permitted to obtain a license to
8 carry a firearm under section 6109 (relating to licenses).

9 (i) Firearm.--As used in this section only, the term
10 "firearm" shall include any weapons which are designed to or may
11 readily be converted to expel any projectile by the action of an
12 explosive or the frame or receiver of any such weapon.

13 (j) Copy of order to State Police.--If the court grants
14 relief from the disabilities imposed under this section, a copy
15 of the order shall be sent by the prothonotary within ten days
16 of the entry of the order to the Pennsylvania State Police and
17 shall include the name, date of birth and Social Security number
18 of the individual.

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