

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1038 Session of
2007

INTRODUCED BY WASHINGTON, FONTANA, KITCHEN, TARTAGLIONE,
C. WILLIAMS AND HUGHES, JULY 24, 2007

REFERRED TO JUDICIARY, JULY 24, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, prohibiting persons ordered to undergo
3 involuntary mental health treatment on an outpatient basis
4 from owning firearms.

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

7 Section 1. Sections 6105(c) and (f), 6105.1(a), 6109(c), (e)
8 and (i.1) and 6111.1(f) and (g) of Title 18 of the Pennsylvania
9 Consolidated Statutes are amended to read:

10 § 6105. Persons not to possess, use, manufacture, control, sell
11 or transfer firearms.

12 * * *

13 (c) Other persons.--In addition to any person who has been
14 convicted of any offense listed under subsection (b), the
15 following persons shall be subject to the prohibition of
16 subsection (a):

17 (1) A person who is a fugitive from justice. This
18 paragraph does not apply to an individual whose fugitive

1 status is based upon a nonmoving or moving summary offense
2 under Title 75 (relating to vehicles).

3 (2) A person who has been convicted of an offense under
4 the act of April 14, 1972 (P.L.233, No.64), known as The
5 Controlled Substance, Drug, Device and Cosmetic Act, or any
6 equivalent Federal statute or equivalent statute of any other
7 state, that may be punishable by a term of imprisonment
8 exceeding two years.

9 (3) A person who has been convicted of driving under the
10 influence of alcohol or controlled substance as provided in
11 75 Pa.C.S. § 3802 (relating to driving under influence of
12 alcohol or controlled substance) or the former 75 Pa.C.S. §
13 3731, on three or more separate occasions within a five-year
14 period. For the purposes of this paragraph only, the
15 prohibition of subsection (a) shall only apply to transfers
16 or purchases of firearms after the third conviction.

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

26 (4.1) A person who has been ordered to undergo
27 involuntary mental health treatment on an outpatient basis
28 under the Mental Health Procedures Act.

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

1 (6) A person who is the subject of an active protection
2 from abuse order issued pursuant to 23 Pa.C.S. § 6108, which
3 order provided for the relinquishment of firearms during the
4 period of time the order is in effect. This prohibition shall
5 terminate upon the expiration or vacation of an active
6 protection from abuse order or portion thereof relating to
7 the relinquishment of firearms.

8 (7) A person who was adjudicated delinquent by a court
9 pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or
10 under any equivalent Federal statute or statute of any other
11 state as a result of conduct which if committed by an adult
12 would constitute an offense under sections 2502, 2503, 2702,
13 2703 (relating to assault by prisoner), 2704, 2901, 3121,
14 3123, 3301, 3502, 3701 and 3923.

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

24 (9) A person who is prohibited from possessing or
25 acquiring a firearm under 18 U.S.C. § 922(g)(9) (relating to
26 unlawful acts). If the offense which resulted in the
27 prohibition under 18 U.S.C. § 922(g)(9) was committed, as
28 provided in 18 U.S.C. § 921(a)(33)(A)(ii) (relating to
29 definitions), by a person in any of the following
30 relationships:

1 (i) the current or former spouse, parent or guardian
2 of the victim;

3 (ii) a person with whom the victim shares a child in
4 common;

5 (iii) a person who cohabits with or has cohabited
6 with the victim as a spouse, parent or guardian; or

7 (iv) a person similarly situated to a spouse, parent
8 or guardian of the victim;

9 then the relationship need not be an element of the offense
10 to meet the requirements of this paragraph.

11 * * *

12 (f) Other exemptions and proceedings.--

13 (1) Upon application to the court of common pleas under
14 this subsection by an applicant subject to the prohibitions
15 under subsection (c)(4) or (4.1), the court may grant such
16 relief as it deems appropriate if the court determines that
17 the applicant may possess a firearm without risk to the
18 applicant or any other person.

19 * * *

20 § 6105.1. Restoration of firearm rights for offenses under
21 prior laws of this Commonwealth.

22 (a) Restoration.--A person convicted of a disabling offense
23 may make application to the court of common pleas in the county
24 where the principal residence of the applicant is situated for
25 restoration of firearms rights. The court shall grant
26 restoration of firearms rights after a hearing in open court to
27 determine whether the requirements of this section have been met
28 unless:

29 (1) the applicant has been convicted of any other
30 offense specified in section 6105(a) or (b) (relating to

1 persons not to possess, use, manufacture, control, sell or
2 transfer firearms) or the applicant's conduct meets the
3 criteria in section 6105(c)(1), (2), (3), (4), (4.1), (5),
4 (6) or (7);

5 (2) the applicant has been convicted of any other crime
6 punishable by imprisonment exceeding one year as defined in
7 section 6102 (relating to definitions); or

8 (3) the applicant's character and reputation is such
9 that the applicant would be likely to act in a manner
10 dangerous to public safety.

11 * * *

12 § 6109. Licenses.

13 * * *

14 (c) Form of application and content.--The application for a
15 license to carry a firearm shall be uniform throughout this
16 Commonwealth and shall be on a form prescribed by the
17 Pennsylvania State Police. The form may contain provisions, not
18 exceeding one page, to assure compliance with this section.
19 Issuing authorities shall use only the application form
20 prescribed by the Pennsylvania State Police. One of the
21 following reasons for obtaining a firearm license shall be set
22 forth in the application: self-defense, employment, hunting and
23 fishing, target shooting, gun collecting or another proper
24 reason. The application form shall be dated and signed by the
25 applicant and shall contain the following statement:

26 I have never been convicted of a crime that prohibits me
27 from possessing or acquiring a firearm under Federal or
28 State law. I am of sound mind and have never been
29 committed to a mental institution or been ordered to
30 undergo involuntary mental health treatment on an

1 outpatient basis. I hereby certify that the statements
2 contained herein are true and correct to the best of my
3 knowledge and belief. I understand that, if I knowingly
4 make any false statements herein, I am subject to
5 penalties prescribed by law. I authorize the sheriff, or
6 his designee, or, in the case of first class cities, the
7 chief or head of the police department, or his designee,
8 to inspect only those records or documents relevant to
9 information required for this application. If I am issued
10 a license and knowingly become ineligible to legally
11 possess or acquire firearms, I will promptly notify the
12 sheriff of the county in which I reside or, if I reside
13 in a city of the first class, the chief of police of that
14 city.

15 * * *

16 (e) Issuance of license.--

17 (1) A license to carry a firearm shall be for the
18 purpose of carrying a firearm concealed on or about one's
19 person or in a vehicle and shall be issued if, after an
20 investigation not to exceed 45 days, it appears that the
21 applicant is an individual concerning whom no good cause
22 exists to deny the license. A license shall not be issued to
23 any of the following:

24 (i) An individual whose character and reputation is
25 such that the individual would be likely to act in a
26 manner dangerous to public safety.

27 (ii) An individual who has been convicted of an
28 offense under the act of April 14, 1972 (P.L.233, No.64),
29 known as The Controlled Substance, Drug, Device and
30 Cosmetic Act.

1 (iii) An individual convicted of a crime enumerated
2 in section 6105.

3 (iv) An individual who, within the past ten years,
4 has been adjudicated delinquent for a crime enumerated in
5 section 6105 or for an offense under The Controlled
6 Substance, Drug, Device and Cosmetic Act.

7 (v) An individual who is not of sound mind or who
8 has ever been committed to a mental institution or who
9 has ever been ordered to undergo involuntary mental
10 health treatment on an outpatient basis.

11 (vi) An individual who is addicted to or is an
12 unlawful user of marijuana or a stimulant, depressant or
13 narcotic drug.

14 (vii) An individual who is a habitual drunkard.

15 (viii) An individual who is charged with or has been
16 convicted of a crime punishable by imprisonment for a
17 term exceeding one year except as provided for in section
18 6123 (relating to waiver of disability or pardons).

19 (ix) A resident of another state who does not
20 possess a current license or permit or similar document
21 to carry a firearm issued by that state if a license is
22 provided for by the laws of that state, as published
23 annually in the Federal Register by the Bureau of
24 Alcohol, Tobacco and Firearms of the Department of the
25 Treasury under 18 U.S.C. § 921(a)(19) (relating to
26 definitions).

27 (x) An alien who is illegally in the United States.

28 (xi) An individual who has been discharged from the
29 armed forces of the United States under dishonorable
30 conditions.

1 (xii) An individual who is a fugitive from justice.
2 This subparagraph does not apply to an individual whose
3 fugitive status is based upon nonmoving or moving summary
4 offense under Title 75 (relating to vehicles).

5 (xiii) An individual who is otherwise prohibited
6 from possessing, using, manufacturing, controlling,
7 purchasing, selling or transferring a firearm as provided
8 by section 6105.

9 (xiv) An individual who is prohibited from
10 possessing or acquiring a firearm under the statutes of
11 the United States.

12 * * *

13 (i.1) Notice to sheriff.--Notwithstanding any statute to the
14 contrary:

15 (1) Upon conviction of a person for a crime specified in
16 section 6105(a) or (b) or upon conviction of a person for a
17 crime punishable by imprisonment exceeding one year or upon a
18 determination that the conduct of a person meets the criteria
19 specified in section 6105(c)(1), (2), (3), (5), (6) or (9),
20 the court shall determine if the defendant has a license to
21 carry firearms issued pursuant to this section. If the
22 defendant has such a license, the court shall notify the
23 sheriff of the county in which that person resides, on a form
24 developed by the Pennsylvania State Police, of the identity
25 of the person and the nature of the crime or conduct which
26 resulted in the notification. The notification shall be
27 transmitted by the judge within seven days of the conviction
28 or determination.

29 (2) Upon adjudication that a person is incompetent or
30 upon the involuntary commitment of a person to a mental

1 institution for inpatient care and treatment under the act of
2 July 9, 1976 (P.L.817, No.143), known as the Mental Health
3 Procedures Act, or upon involuntary treatment of a person as
4 described under section 6105(c)(4) or (4.1), the judge of the
5 court of common pleas, mental health review officer or county
6 mental health and mental retardation administrator shall
7 notify the sheriff of the county in which that person
8 resides, on a form developed by the Pennsylvania State
9 Police, of the identity of the person who has been
10 adjudicated, committed or treated and the nature of the
11 adjudication, commitment or treatment. The notification shall
12 be transmitted by the judge, mental health review officer or
13 county mental health and mental retardation administrator
14 within seven days of the adjudication, commitment or
15 treatment.

16 * * *

17 § 6111.1. Pennsylvania State Police.

18 * * *

19 (f) Notification of mental health commitment or involuntary
20 outpatient treatment.--Notwithstanding any statute to the
21 contrary, judges of the courts of common pleas shall notify the
22 Pennsylvania State Police on a form developed by the
23 Pennsylvania State Police of the identity of any individual who
24 has been adjudicated incompetent or who has been involuntarily
25 committed to a mental institution for inpatient care and
26 treatment under the act of July 9, 1976 (P.L.817, No.143), known
27 as the Mental Health Procedures Act, or who has been
28 involuntarily treated as described in section 6105(c)(4) or
29 (4.1) (relating to persons not to possess, use, manufacture,
30 control, sell or transfer firearms). The notification shall be

1 transmitted by the judge to the Pennsylvania State Police within
2 seven days of the adjudication, commitment or treatment.

3 (g) Review by court.--

4 (1) Upon receipt of a copy of the order of a court of
5 competent jurisdiction which vacates a final order or an
6 involuntary certification issued by a mental health review
7 officer, the Pennsylvania State Police shall expunge all
8 records of the involuntary treatment received under
9 subsection (f).

10 (2) A person who is involuntarily committed pursuant to
11 section 302 of the Mental Health Procedures Act may petition
12 the court to review the sufficiency of the evidence upon
13 which the commitment was based. If the court determines that
14 the evidence upon which the involuntary commitment was based
15 was insufficient, the court shall order that the record of
16 the commitment submitted to the Pennsylvania State Police be
17 expunged. A petition filed under this subsection shall toll
18 the 60-day period set forth under section 6105(a)(2).

19 (3) The Pennsylvania State Police shall expunge all
20 records of an involuntary commitment of an individual who is
21 discharged from a mental health facility based upon the
22 initial review by the physician occurring within two hours of
23 arrival under section 302(b) of the Mental Health Procedures
24 Act and the physician's determination that no severe mental
25 disability existed pursuant to section 302(b) of the Mental
26 Health Procedures Act. The physician shall provide signed
27 confirmation of the determination of the lack of severe
28 mental disability following the initial examination under
29 section 302(b) of the Mental Health Procedures Act to the
30 Pennsylvania State Police.

1 (4) A person who is ordered to undergo involuntary
2 mental health treatment on an outpatient basis under the
3 Mental Health Procedures Act may petition the court to review
4 the sufficiency of the evidence upon which the order was
5 based. If the court determines that the evidence upon which
6 the order was based was insufficient, the court shall order
7 that the record of the involuntary treatment submitted to the
8 Pennsylvania State Police be expunged. A petition filed under
9 this subsection shall toll the 60-day period set forth under
10 section 6105(a)(2).

11 * * *

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