



SPONSOR: Rep. Romer & Sen. Sokola
Reps. Heffernan, Morrison; Sens. Gay, Hoffner,
Lockman, Townsend

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 380

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CIVIL PROCEDURES TO
RELINQUISH FIREARMS OR AMMUNITION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 1448C, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1448C. Civil procedures to relinquish firearms or ammunition.

4 (a) For the purposes of this section:

5 (6) "Mental condition" means as defined under § 5001 of Title 16.

6 (b) ~~If, after October 30, 2018, If~~ a law-enforcement agency receives a ~~written~~ report about an individual ~~under §~~
7 ~~5402 or § 5403 of Title 16, with a suspected mental condition,~~ the law-enforcement agency shall determine if there is
8 probable cause that the individual is dangerous to others or self and in possession of firearms or ammunition.

9 (1) a. If the law-enforcement agency determines that there is probable cause that the individual is dangerous to
10 others or self and in possession of firearms or ammunition, the law-enforcement agency shall do both of the following:

11 1. Immediately seek an order from the Justice of the Peace Court that the individual relinquish any
12 firearms or ammunition owned, possessed, or controlled by the individual.

13 2. Immediately refer the report ~~under § 5402 or § 5403 of Title 16~~ and its investigative findings to the
14 Department of Justice.

15 (2) The Department of Justice may, upon review of the report and the law-enforcement agency's investigative
16 findings, petition the Superior Court for an order that the individual relinquish any firearms or ammunition owned,
17 possessed, or controlled by the individual. The Department of Justice must file 1 of the following with the Superior
18 Court within ~~30 days~~ 60 days after the entry of the Justice of the Peace Court's order under paragraph (d)(1) of this
19 section:

20 a. A petition under this paragraph (b)(2).

21 b. A petition requesting additional time to file a petition under this paragraph (b)(2) for good cause
22 shown.

23 1. If the Superior Court denies the Department of Justice's request for additional time to file a
24 petition under this paragraph (b)(2)b., the Department of Justice has either the remainder of the ~~30 days~~ 60
25 days provided by this paragraph (b)(2) or 7 days from the date of the Superior Court's denial, whichever is
26 longer, to file a petition with Superior Court under this paragraph (b)(2).

27 2. If the Superior Court approves the Department of Justice's request for additional time to file a
28 petition under this paragraph (b)(2)b., the Court may not grant the Department more than ~~15 days~~ 30 days to
29 file the petition from the date of the Court's approval.

30 (c) (1) The following procedures govern a proceeding under paragraph (b)(1)a. of this section:

31 b. The law enforcement agency has the burden of demonstrating that proof by a preponderance of the
32 evidence exists to believe that the individual ~~subject to a report under § 5402 or § 5403 of Title 16~~ with a
33 suspected mental condition is dangerous to others or self and in possession of firearms or ammunition.

34 (2) The following procedures govern a proceeding under paragraph (b)(2) of this section:

35 b. If a hearing is requested, it must be held within ~~15 days~~ 30 days of the Department of Justice's filing of
36 the petition under paragraph (b)(2) of this section, unless extended by the Court for good cause shown.

37 f. The Department of Justice has the burden of proving by clear and convincing evidence that the
38 individual is dangerous to others or ~~self~~. self due to a mental condition.

39 (g) (2) The Supreme Court, Superior Court, Justice of the Peace Court, Department of Justice, State Police, State
40 Bureau of Identification, Delaware Criminal Justice Information System Board of Managers, and the Department of Health
41 and Social Services may promulgate rules and regulations to carry out the purposes of this ~~section~~, section and § 1448(a)(2)
42 of this title, and §§ 5402 and 5403 of Title 16. title.

SYNOPSIS

This Act makes technical changes for clarity by adding a definition of "mental condition" to the Code section that deals with relinquishment of firearms for persons who may be a danger to self or others (also known as a "red flag" law). It also extends the time periods for the Department of Justice to petition for a permanent order from 30 days to 60 days and allows the Superior Court to grant an extension of time to file for an additional 30 days. Under the existing law, the Superior Court may only grant a 15-day extension. The time within which a hearing is required to be held is extended from 15 days after the DOJ's filing of a petition to 30 days. An ex parte emergency order issued by the JP Court will continue in effect during these time periods.