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Townsend

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 302

AN ACT TO AMEND TITLE 11 AND TITLE 16 OF THE DELAWARE CODE RELATING TO INDIVIDUALS WITH
MENTAL ILLNESS.

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

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

3 § 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.

4 (a) Except as otherwise provided ~~herein in this section~~, the following persons are prohibited from purchasing,
5 owning, ~~possessing~~ possessing, or controlling a deadly weapon or ammunition for a firearm within the State:

6 (2) Any person who meets any of the following:

7 a. ~~has ever~~ Has been committed for a mental disorder to any ~~hospital, mental institution or sanitarium~~
8 hospital or psychiatric treatment facility, unless such person can demonstrate that he or she is no longer
9 prohibited from possessing a firearm ~~pursuant to § 1448A of this title; under § 1448A(I) of this title.~~

10 b. Has been found not guilty by reason of insanity, or guilty but mentally ill, including any juvenile
11 who has been found not guilty by reason of insanity or guilty but mentally ill, of a crime of violence,
12 unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm under
13 § 1448A(I) of this title.

14 c. Has been found mentally incompetent to stand trial for a crime of violence, including any juvenile
15 who has been found mentally incompetent to stand trial, unless there has been a subsequent finding that
16 the person has become competent, or unless such person can demonstrate that he or she is no longer
17 prohibited from possessing a firearm under § 1448A(I) of this title.

18 d. Is the subject of an order of relinquishment issued by the Superior Court under § 1448C of this
19 title.

20 Section 2. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by
21 strikethrough and insertions as shown by underline as follows:

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

(a) For the purposes of this section:

(1) “Ammunition” means as defined in § 1448(c) of this title.

(2) “Dangerous to others or self” means as “dangerous to others” and “dangerous to self” are defined in § 5001 of Title 16.

(3) “Law enforcement agency” means an agency established by this State, or by any county or municipality within this State, to enforce criminal laws or investigate suspected criminal activity.

(3) “Mental health professional” means any licensed professional qualified to render a psychiatric diagnosis. “Mental health professional” includes any of the following:

a. A psychiatrist, as defined in § 5001 of Title 16.

b. A licensed clinical social worker, as defined in § 3902 of Title 24.

c. An advanced practice registered nurse, as defined in § 1902 of Title 24, who specializes as a psychiatric nurse.

d. A psychologist, as defined in § 3502 of Title 24.

e. A credentialed mental health screener, as defined in § 5001 of Title 16.

(b) If, after [the effective date of this Act], a law enforcement agency receives a report about an individual under § 5402 of Title 16 from a mental health professional, institution, agency, or hospital, the law enforcement agency shall investigate to determine if the individual’s firearms and related ammunition should be relinquished.

(1) If the law enforcement agency determines that the individual’s firearms and related ammunition should be relinquished, the law enforcement agency shall refer the report and its investigative findings to the Department of Justice.

(2) The Department of Justice may, upon review of the report and the law enforcement agency’s investigative findings, petition the Superior Court for an order that the individual relinquish any firearms or ammunition owned, possessed, or controlled by the individual.

(c)(1) The following procedures govern a proceeding under paragraph (b)(2) of this section:

a. The Department of Justice has the burden of proving by clear and convincing evidence that the individual is dangerous to others or self.

b. If a hearing is held, the hearing must be closed to the public and testimony and evidence must be kept confidential, unless the individual requests the hearing be public.

c. If a hearing is held, the hearing must be on the record to allow for appellate review.

d. The individual has the right to notice of a hearing, to be heard, to be represented by counsel, to present evidence, and to cross-examine adverse witnesses.

(2) The Superior Court may adopt additional rules governing proceedings under paragraph (b)(2) of this section.

(d)(1) If the Superior Court finds by clear and convincing evidence that an individual is dangerous to others or self, the Court shall order the individual to relinquish any firearms or ammunition owned, possessed, or controlled by the individual. The Court may do any of the following through its order:

a. Require the individual to relinquish to a law enforcement officer any firearms or ammunition owned, possessed, or controlled by the individual.

b. Allow the individual to voluntarily relinquish to a law enforcement officer any firearms or ammunition owned, possessed, or controlled by the individual.

c. Allow the individual to relinquish firearms or ammunition owned, possessed, or controlled by the individual to a designee of the individual. A designee of the individual must not reside with the individual and must not be a person prohibited under § 1448 of this title. The Court must find that the designee of the individual will keep firearms or ammunition owned, possessed, or controlled by the individual out of the possession of the individual.

d. Prohibit the individual from residing with another individual who owns, possesses, or controls firearms or ammunition.

e. Direct any law enforcement agency to immediately search for and seize firearms and ammunition of the individual if the Department of Justice shows that the individual has ownership, possession, or control of a firearm or ammunition.

(2) Nothing in this section may be construed to impair or limit the right to keep and bear arms of any individual residing with an individual who is subject to the Superior Court's order of relinquishment.

(e)(1) An individual subject to the Superior Court's order of relinquishment may petition the Court for an order to return firearms or ammunition. In considering such a petition, the Court shall act as the Relief from Disabilities Board established by, and follow the procedures under, § 1448A(l) of this title.

(2) If the basis for relinquishment under this section is removed by the Court, any firearms and ammunition taken from the individual must be restored in a timely manner without the additional requirement of petitioning under § 1448A(l) of this title.

(f) Any party in interest aggrieved by a decision of the Superior Court under this section may appeal the decision to the Supreme Court.

(g)(1) The State Police and the Department of Justice shall work with county and municipal law enforcement agencies and the Department of Health and Social Services, and its Division of Substance Abuse and Mental Health, to develop appropriate internal policies and regulations to ensure that personnel who act under this section are trained on appropriate mental health risk assessment procedures and to look for histories of violence.

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

Section 3. Amend § 5402, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5402. Duty of mental health services providers to take precautions against threatened patient violence; duty to warn.

~~(a) Except as provided in subsection (d) of this section, no~~ A person may not bring a cause of action ~~shall lie~~ against a mental health services provider, institution, agency, or hospital, ~~nor shall~~ and legal liability may not be imposed, for the inability of a mental health services provider, institution, agency, or hospital to prevent harm to person or property caused by a patient unless both of the following are met:

(1) The patient has communicated to the mental health services provider an explicit and imminent threat to kill or seriously injure a clearly identified victim ~~or victims~~, or to commit a specific violent act or to destroy property under circumstances which could easily lead to serious personal injury or death, and the patient has an apparent intent and ability to carry out the ~~threat~~; and threat.

(2) The mental health services provider, institution, agency, or hospital fails to take the precautions specified in subsection (b) of this section in an attempt to prevent the threatened harm.

(b) Any duty owed by a mental health services provider, institution, agency, or hospital to take reasonable precautions to prevent harm threatened by a patient is discharged, as a matter of law, if the mental health services provider, institution, agency, or hospital, in a timely ~~manner~~ manner, does either of the following:

(1) Notifies a law-enforcement agency near where the potential victim resides, or notifies a law-enforcement agency near where the patient resides, and communicates the threat of death or serious bodily injury to the clearly identified ~~victim or victims; or victim~~.

(2) Arranges for the patient's immediate voluntary or involuntary hospitalization, in an inpatient or outpatient program, unless the patient would have access to firearms or ammunition based on the circumstances of the patient's hospitalization.

(c) ~~Whenever~~ If a patient has explicitly threatened to cause serious harm to a person or property, or a mental health services provider, institution, agency, or hospital otherwise concludes that the patient is likely to do so or is dangerous to others or dangerous to self, as these terms are defined in § 5001 of this title, and the mental health services provider, institution, agency, or hospital, for the purpose of reducing the risk of harm, discloses any confidential communication made by or relating to the patient, ~~no~~ a person may not bring cause of action, either criminal or civil, ~~shall lie against the mental health services provider, institution, agency, or hospital~~ for making such disclosure.

(d) ~~Whenever a patient within the custodial responsibility of a hospital or other facility has made or makes threats of the kind dealt with in subsection (a) of this section, the mental health services provider and institution, agency or hospital shall, prior to such patient's discharge, consider and evaluate previously made threats made by such patient. Under such circumstances, the mental health services provider may consider it prudent to inform appropriate law enforcement agencies or the previously threatened party as a measure of precaution. Subsections (a) and (c) of this section shall also apply to the hospital or facility. [Repealed.]~~

Section 4. Effective Date. This Act takes effect 90 days after its enactment into law.

Section 5. This Act is known as the "Beau Biden Gun Violence Prevention Act."

SYNOPSIS

This Act is designed to create procedures in Delaware for making sure firearms are not in the hands of dangerous individuals while protecting due process and not creating a barrier to care for those suffering from mental illness. Instead of labelling all individuals with a mental health diagnosis as dangerous, this Act refocuses attention on individuals who have indicated they are dangerous to others or themselves. Statistically, mental illness has little to do with homicide perpetration but rather increases the chance of being a victim of violence. This Act looks instead for propensities of violence, a much more reliable and evidence-based metric. This metric will also ensure that Delaware can provide care to those more likely to commit violent acts and help destigmatize mental illness here in Delaware.

Currently, § 1448(a)(2) prohibits "any person who has ever been committed for a mental disorder" from purchasing, owning, possessing, or controlling a deadly weapon, but this paragraph only applies to individuals who have been involuntarily committed after a hearing.

Section 1 of this Act clarifies that perpetrators of violent crimes who have been found Not Guilty By Reason of Insanity, Guilty But Mentally Ill, or Mentally Incompetent to Stand Trial, including juveniles who fall into these categories, are persons prohibited from purchasing, owning, possessing, or controlling a deadly weapon. It also expands the definition of "persons prohibited" to include those individuals who are prohibited from possessing firearms by a court order issued under the procedures established by Section 2 of this Act.

Section 2 of this Act creates § 1448C of Title 11 and establishes a procedure by which law enforcement, upon receiving a report that an individual is demonstrating behaviors that a mental health services provider, institution, agency, or hospital believes are dangerous, must investigate to determine if probable cause exists to believe an individual's firearms and related ammunition should be relinquished. If so, law enforcement must immediately remove any firearms or ammunition and refer the matter to the Department of Justice, which may petition the Superior Court for an order requiring the individual to relinquish the individual's firearms and ammunition. If the Department of Justice does not file a petition

within 60 days of law enforcement removing the individual's firearms or ammunition, law enforcement must return the firearms or ammunition.

If the Superior Court finds by clear and convincing evidence that the individual is dangerous to others or self, the Court must order the individual to relinquish to a law enforcement officer, voluntarily or otherwise, any firearms or ammunition owned, possessed, or controlled by the individual. The Court may issue an order that allows an individual to relinquish firearms and ammunition to a designee of the individual who does not reside with the individual and is not a person prohibited under § 1448 of Title 11 and who the Court finds will keep firearms or ammunition owned, possessed, or controlled by the individual out of the possession of the individual. The Court may also issue an order directing any law enforcement agency to immediately search for and seize firearms and ammunition of any such person prohibited shown to have ownership, possession or control of a firearm or ammunition.

Any individual subject to the Court's order may petition the Court for an order to return firearms or ammunition by establishing to a preponderance of evidence that he or she is not a danger to self or others. In addition, as is the case under the current law, an individual who is adjudicated to be a person prohibited under § 1448(a)(2)b. and c. of Title 11, added by Section 1 of this Act, has the opportunity to demonstrate, under § 1448A(l) of Title 11, that the individual should be relieved of the person prohibited status.

Section 3 of this Act revises and clarifies an existing statute, § 5402 of Title 16, which currently codifies the need for mental health professionals to report those with mental illness who may be a threat to others. Currently, the section contains a limited duty of mental health professionals to warn law enforcement of a specific threat. This Act clarifies the original intent of the section by requiring that to avoid liability all treating mental health professionals must report dangerous individuals to law enforcement. The appropriate law enforcement agency must then initiate an investigation and take other actions required under Section 2 of this Act.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Section 4 of this Act makes it effective 90 days after its enactment into law.

Finally, Section 5 of this Act names it the "Beau Biden Gun Violence Prevention Act."