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HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
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 prohibited
9 from possessing a firearm ~~pursuant to § 1448A of this title; under § 1448A(l) of this title.~~

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

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

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

Section 2. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through 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” means that by reason of mental condition there is a substantial likelihood that the person will inflict serious bodily harm upon another person within the reasonably foreseeable future. This determination must take into account a person's history, recent behavior, and any recent act or threat.

(3) “Dangerous to others or self” means as “dangerous to others” and “dangerous to self” are defined in this subsection.

(4) “Dangerous to self” means that by reason of mental condition there is a substantial likelihood that the person will sustain serious bodily harm to oneself within the reasonably foreseeable future. This determination must take into account a person's history, recent behavior, and any recent act or threat.

(5) “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.

(6) “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 or § 5403 of Title 16, the law enforcement agency shall investigate to determine if there is probable cause that the individual is dangerous to others or self and in possession of firearms or ammunition.

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

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

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

51 b. In making the probable cause determination under paragraph (b)(1)a. of this section, a law enforcement
52 agency must determine if the individual is subject to involuntary commitment under §§ 5009, 5011, or 5013 of
53 Title 16. If the individual is subject of involuntary commitment, the law enforcement agency may not seek an
54 order under this paragraph (b)(1) of this section.

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

58 (3) If the Department of Justice does not file a petition with Superior Court under paragraph (b)(2) of this
59 section within 60 days of the Justice of the Peace's order under paragraph (d)(1) of this section, the Justice of the Peace
60 Court's order is void and a law enforcement agency holding the firearms or ammunition of the individual subject to the
61 order must return the firearms or ammunition to the individual.

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

63 a. The Justice of the Peace Court shall immediately hear a request for an order under paragraph (b)(1)a. of
64 this section.

65 b. The law enforcement agency has the burden of demonstrating that probable cause exists to believe that
66 the individual subject to a report under § 5402 or § 5403 of Title 16 is dangerous to others or self and in possession
67 of firearms or ammunition.

68 c. The individual does not have the right to be heard or to notice that the law enforcement agency has
69 sought an order under paragraph (b)(1)a. of this section.

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

71 a. The individual has the right to be heard.

72 b. If a hearing is held, the individual has the right to notice of the hearing, to present evidence, and to
73 cross examine adverse witnesses.

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

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

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

79 (3)a. The Justice of the Peace Court may adopt additional rules governing proceedings under paragraph
80 (b)(1)a. of this section.

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

83 (d)(1) If the Justice of the Peace Court finds that there is probable cause to believe that an individual is dangerous
84 to others or self, the Court shall order the individual to relinquish any firearms or ammunition owned, possessed, or
85 controlled by the individual. The Court may do any of the following through its order:

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

88 b. Prohibit the individual from residing with another individual who owns, possesses, or controls firearms
89 or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second
90 Amendment to the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who
91 is not the subject of the Court's order of relinquishment.

92 c. Direct any law enforcement agency to immediately search for and seize any firearms and ammunition
93 owned, possessed, or controlled by the individual.

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

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

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

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

106 d. Prohibit the individual from residing with another individual who owns, possesses, or controls firearms
107 or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second

Amendment to the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court's order of relinquishment.

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.

(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, Justice of the Peace 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 and 5403 of Title 16.

Section 3. Amend § 5009, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5009 Probable cause hearing.

(a) Upon the filing of the probable cause complaint the court shall forthwith:

(1) Schedule a probable cause hearing to determine whether probable cause exists for the involuntary patient's confinement, and, where necessary, appoint counsel to represent the involuntary patient. Such probable cause hearing shall be held as soon as practicable, but no later than 8 working days from the filing of the complaint. Hearings may be conducted using electronic means, such as video conferencing.

(2) Direct that notice of the probable cause hearing and copies of the pleadings be supplied to the involuntary patient, the patient's counsel and to the involuntary patient's spouse, other relative, close personal friend of the patient or any other person identified by the patient, provided that the patient is given the opportunity to agree, prohibit, or restrict the disclosure.

(3) Enter such other orders as may be appropriate, including an order authorizing the continued provisional confinement of the involuntary patient until further order of the court.

(4) (b)(1) If, pursuant to the probable cause hearing, the court determines that probable cause does not exist for involuntary inpatient commitment, the involuntary patient shall be immediately discharged.

(2) If the court determines that probable cause does exist for involuntary inpatient commitment, it shall schedule an involuntary inpatient commitment hearing, pursuant to § 5011 of this title, for the earliest practicable date, and no later than 8 working days after the probable cause hearing; and where necessary, it shall appoint an independent psychiatrist or other qualified medical expert to examine the involuntary patient and act as an expert witness on the involuntary patient's behalf. Notice of the hearing shall be given to the involuntary patient and the patient's counsel.

(5) (c) If the court determines that probable cause does not exist for involuntary inpatient commitment, but finds that an individual meets the criteria for outpatient treatment over objection, the court may order that an individual be placed on outpatient treatment over objection, pursuant to § 5013 of this title, and the next hearing shall be scheduled for 3 months after the probable cause hearing. The court may only place an individual on outpatient treatment over objection at a probable cause hearing if the issue has been appropriately noticed.

(6) (d) For good cause shown, the court may order that judicial proceedings under this chapter take place in the court in and for a county other than the county in which the action was initiated.

(7) (e) For purposes of this chapter and for any other legal purpose, no person shall be considered "involuntarily committed" until the court so orders following a probable cause hearing held pursuant to the requirements of this chapter.

(f) If the court makes a determination under paragraph (b)(2) of this section or subsection (c) of this section, the court shall order an individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section to relinquish any firearms or ammunition owned, possessed, or controlled by the individual.

(g) The Court may do any of the following through an order of relinquishment issued under subsection (f) of this section:

(1) Require the individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section to relinquish to a law enforcement officer any firearms or ammunition owned, possessed, or controlled by the individual.

(2) Allow the individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section 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.

(3) Prohibit the individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section not to reside with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court's order of relinquishment.

(4) Direct a law enforcement agency to immediately search for and seize firearms and ammunition of the individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section if the Department of Justice shows that the individual has ownership, possession, or control of a firearm or ammunition.

(h) An individual subject to an order of relinquishment under subsection (f) of this section may seek relief from the order under § 1448A(l) of Title 11.

Section 4. 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, institution, agency, or hospital 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 5. Amend Chapter 54, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5403. Discretionary disclosures to law enforcement.

(a) A mental health service provider, institution, agency, or hospital may disclose confidential communications made by or relating to a patient to law enforcement if the mental health service provider, institution, agency, or hospital concludes that the patient is dangerous to others or dangerous to self, as these terms are defined in § 1448C(a) of Title 11, regardless of whether the patient has made explicit threats against an identifiable victim.

(b) A person may not bring a cause of action, either criminal or civil, against a mental health services provider for making a communication to law enforcement under this section.

- 226 Section 6. Effective Date. This Act takes effect 90 days after its enactment into law.
- 227 Section 7. This Act is known as the “Beau Biden Gun Violence Prevention Act.”

SYNOPSIS

This Substitute Act incorporates House Bill No. 302, and also makes the following changes to House Bill No. 302:

- (1) Creates a new § 5403 of Title 16, which permits a mental health service provider, institution, agency, or hospital to disclose confidential communications to a law enforcement if the mental health service provider, institution, agency, or hospital concludes that the patient is dangerous to self or dangerous to others.
- (2) Adds definitions for “dangerous to others” and “dangerous to self” that are based on the definition in § 5001 of Title 16, but expand the temporal imminence of the individual’s actions.
- (3) Permits a law-enforcement officer to obtain an order of relinquishment from the Justice of the Peace Court if the officer has probable cause to believe that an individual who is the subject of a report from a mental health provider under § 5402 or § 5403 of Title 16 is dangerous to others or self and in possession of firearms or ammunition. This process is an expedited process, akin to obtaining a search or arrest warrant. Under this process, if the Justice of the Peace Court finds probable cause, it must order the relinquishment of firearms to law enforcement and may prohibit the individual from residing with others who possess firearms and grant permission for law enforcement to search for and seize firearms. An order from the Justice of the Peace Court is good for 60 days. If the Department of Justice does not file a petition in Superior Court within 60 days, the Justice of the Peace Court’s order is void and law enforcement must return the firearms.
- (4) Makes clear that if the Department of Justice files a petition in Superior Court, the individual has the right to a hearing before an order of relinquishment may be granted by the Superior Court.
- (5) Makes clear that the Justice of the Peace Court and the Superior Court may, as part of an order of relinquishment, order an individual to not reside with an individual who owns, possesses, or controls firearms. However, the Courts may not impair or limit the right to keep and bear arms of an individual who is not subject to an order.
- (6) Adds consistent relinquishment provisions to Title 16 so that if the Superior Court finds probable cause for an involuntary commitment hearing or orders an individual to outpatient treatment, the Court must also order the individual to relinquish firearms or ammunition. It also makes clear that an individual subject to the order of relinquishment may seek relief from the Relief from Disabilities Board.
- (7) Makes technical changes to correct a designation in § 1448C of Title 11 and to add “, institution, agency, or hospital” to § 5402(a)(1) of Title 16.