



SPONSOR: Rep. Bennett & Sen. Delcollo
Reps. Briggs King, Hudson, Outten, Ramone, B. Short,
Viola; Sens. Hocker, Lavelle, Lopez

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 376

AN ACT TO AMEND TITLE 11 AND TITLE 16 OF THE DELAWARE CODE RELATING TO HEALTH AND
SAFETY.

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

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

3 § 1448A. Criminal history record checks for sales of firearms.

4 (i) ~~The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report~~
5 ~~including the number of inquiries made pursuant to this section and § 1448B of this title for the prior calendar year. Such~~
6 ~~report shall include, but not be limited to, the number of inquiries received from licensees, the number of inquiries resulting~~
7 ~~in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm pursuant to~~
8 ~~§§ 1448 and 1448B of this title or federal law. [Repealed.]~~

9 (l) Relief from Disabilities Program. — A person who is subject to the disabilities of 18 U.S.C. § 922(d)(4) and
10 (g)(4) or of § 1448(a)(2) of this title because of an adjudication or a commitment under the laws of this State may petition
11 for relief from a firearms prohibition from the Relief from Disabilities Board ("Board"). ~~The Relief from Disabilities Board~~
12 ~~shall be comprised of 3 members, with the chairperson appointed by and serving at the pleasure of the Secretary of Safety~~
13 ~~and Homeland Security, and 2 members appointed by and serving at the pleasure of the Secretary of the Department of~~
14 ~~Health and Social Services, 1 of whom shall be a licensed psychiatrist.~~

15 (1) a. The Board is composed of 3 members, as follows:

16 1. A chair, appointed by the Governor for a term of 4 years.

17 2. A licensed psychiatrist, appointed by the Secretary of the Department of Health and Social
18 Services for a term of 3 years.

19 3. An individual, appointed by the Secretary of the Department of Safety and Homeland Security for
20 a term of 3 years.

21 b. An appointment made under this paragraph (l)(1) of this section requires the advice and consent of the

22 Senate.

(4) (2) The Board shall consider the petition for relief in accordance with all of the following:

a. The Board shall give the petitioner the opportunity to present evidence to the Board in a closed and confidential hearing on the ~~record~~; and record.

b. A record of the hearing shall be maintained by the Board for purposes of appellate review.

(2) (3) In determining whether to grant relief, the Board shall consider evidence regarding all of the following:

a. The circumstances regarding the firearms disabilities ~~pursuant to~~ under § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and ~~(g)(4); (g)(4)~~.

b. The petitioner's record, which must include, at a minimum, the petitioner's mental health record, ~~including a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons; and~~ written or oral testimony of the treating physician.

c. Criminal history ~~records~~; and records.

d. The petitioner's reputation as evidenced through character witness statements, testimony, or other character evidence.

(3) (4) The Board shall have the authority to require that the petitioner undergo a clinical evaluation and risk assessment, which it may also consider as evidence in determining whether to approve or deny the petition for relief.

(4) (5) After a hearing on the record, the Board shall grant relief if it finds, by ~~a preponderance of the evidence, that~~ substantial evidence, all of the following:

a. The petitioner will not be likely to act in a manner dangerous to public ~~safety~~; and safety.

b. Granting the relief will not be contrary to the public interest.

(5) (6) The Board shall issue its decision in writing and include findings of fact and conclusions of law explaining in detail the reasons for a denial or grant of relief.

(6) (7)a. Any person whose petition for relief has been denied by the Relief from Disabilities Board shall have a right to one of the following:

1. a A de novo judicial review in the Superior Court. The Superior Court shall consider the record of the Board hearing on the petition for relief, the decision of the Board, and, at the Court's discretion, any additional evidence it deems necessary to conduct its review.

2. An appeal on the record in Superior Court. The Superior Court shall consider the record of the Board hearing on the petition for relief and the decision of the Board, but may not consider any additional evidence.

b. A person whose petition for relief has been denied and who wishes to appeal the denial must seek one of the forms of appeal under paragraph (l)(7)a. of this section within 90 days of the Board's written decision.

(7) (8) Upon notice that a petition for relief has been granted, the Department of Safety and Homeland Security shall, as soon as practicable, do all of the following:

a. Cause the petitioner's record to be updated, corrected, modified, or removed from any database maintained and made available to NICS to reflect that the petitioner is no longer subject to a firearms prohibition as it relates to under § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4).

b. Notify the Attorney General of the United States that the petitioner is no longer subject to a firearms prohibition pursuant to under § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4).

(m) The Department of Safety and Homeland Security shall adopt regulations relating to compliance with NICS, including without limitation issues relating to the transmission of data, the transfer of existing data in the existing state criminal background check database database, and the relief from disabilities process set forth in subsection (k) subsection (l) of this section. In preparing such regulations, the Department shall consult with the Department of Health and Social Services, the courts, the Department of Children, Youth and Their Families, the Department of State and such other entities as may be necessary or advisable. Such regulations shall include provisions to ensure the identity, confidentiality confidentiality, and security of all records and data provided pursuant to this section.

Section 2. Amend § 8509, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8509. Information to be supplied by heads of institutions.

Every person in responsible charge of an institution to which there are committed individuals convicted of crime, or persons declared to be not guilty by reason of mental illness insanity or guilty but mentally ill under § 401 of this title, or declared incompetent to stand trial for criminal offenses offenses, or involuntarily committed for mental illness pursuant to under an order entered under Chapter 50 of Title 16, shall:

(1) Transmit to the Bureau the names, dates of birth birth, and Social Security numbers of all adults so committed and shall report any subsequent change in release status. Every person in responsible charge of such institutions shall also forward to the Bureau the names and photographs of all individuals who are to be discharged from such institutions, after having been confined in such institutions. Such photographs shall be taken immediately before release of such individuals, and the individual shall be attired in civilian clothes.

(2) Pursuant to § 1448A of this title, cause to be transmitted to the Federal Bureau of Investigation, National Instant Criminal Background Check System, such information as may be required to comply with federal laws and regulations relating to background checks for the purchase or transfer of firearms.

Section 3. Amend § 5003, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5003. Voluntary admission procedure.

(i) A voluntary patient must, within 24 hours of the patient's admission, be informed both orally and in writing of the patient's rights and options as a voluntary patient, including the patient's right to submit a written request for discharge under subsection (e) of this section.

Section 4. Amend §5004 of Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5004. Emergency detention of a person with a mental condition; justification; procedure.

(1) An individual who is emergently detained must be treated the same as an individual who is subject to a provisional admission under § 5005 of this title.

(2) An individual who is emergently detained may not be considered "involuntarily committed" for any legal purpose.

SYNOPSIS

This Act replaces House Bill No. 285 and, in so doing, removes provisions of House Bill No. 285 related to creating an order of relinquishment process for removing firearms or ammunition from an individual subject to a report from a mental health provider under § 5402 of Title 16 as these provisions are now exclusively contained in House Substitute No. 1 for House Bill No. 302.

This Act retains provisions of House Bill No. 285 that do the following:

- (1) Improve the structure and process related to the Relief from Disabilities Board.
- (2) Require that information regarding individuals who are declared guilty but mentally ill is reported to the Federal Bureau of Investigation's National Instant Criminal Background Checks System (NICS).
- (3) Require that an individual who is voluntarily admitted for inpatient treatment at a psychiatric treatment facility be informed of the individual's rights and options as a voluntary patient.
- (4) Clarify that an individual who is emergently detained must be treated the same as an individual who is subject to a provisional admission and may not be considered involuntarily committed for any legal purpose.

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