

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2463 Session of 2018

INTRODUCED BY NELSON AND DAVIS, JUNE 5, 2018

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 19, 2018

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in firearms and other dangerous
3 articles, further providing for persons not to possess, use,
4 manufacture, control, sell or transfer firearms and for
5 Pennsylvania State Police.

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

8 Section 1. Sections 6105(c)(4), (f)(1) and (j) and 6111.1(f)
9 (3) of Title 18 of the Pennsylvania Consolidated Statutes are
10 amended to read:

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

13 \* \* \*

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

18 \* \* \*

19 (4) A person who [has been adjudicated as an incompetent <--

1 or who has been involuntarily committed to a mental  
2 institution for inpatient care and treatment under section  
3 ~~302,~~ 303 or 304 of the provisions of the act of July 9, <--  
4 1976 (P.L.817, No.143), known as the Mental Health Procedures  
5 Act. ~~This paragraph shall not apply to any proceeding under <--~~  
6 section 302 of the Mental Health Procedures Act unless the  
7 examining physician has issued a certification that inpatient  
8 care was necessary or that the person was committable.]: <--

9 (I) HAS BEEN ADJUDICATED AS AN INCOMPETENT OR WHO  
10 HAS BEEN INVOLUNTARILY COMMITTED TO A MENTAL INSTITUTION  
11 FOR INPATIENT CARE AND TREATMENT UNDER SECTION 303 OR 304  
12 OF THE ACT OF JULY 9, 1976 (P.L.817, NO.143), KNOWN AS  
13 THE MENTAL HEALTH PROCEDURES ACT; OR

14 (II) HAS BEEN INVOLUNTARILY COMMITTED TO A MENTAL  
15 INSTITUTION FOR INPATIENT CARE AND TREATMENT UNDER  
16 SECTION 302 OF THE MENTAL HEALTH PROCEDURES ACT. THIS  
17 PARAGRAPH SHALL NOT APPLY TO ANY PROCEEDING UNDER SECTION  
18 302 OF THE MENTAL HEALTH PROCEDURES ACT UNLESS THE  
19 EXAMINING PHYSICIAN HAS ISSUED A CERTIFICATION THAT  
20 INPATIENT CARE WAS NECESSARY OR THAT THE PERSON WAS  
21 COMMITTABLE. THE PROHIBITION SHALL TERMINATE SIX MONTHS  
22 FROM THE DATE THE COMMITMENT COMMENCED.

23 \* \* \*

24 (f) Other exemptions and proceedings.--

25 [(1) Upon application to the court of common pleas under  
26 this subsection by an applicant subject to the prohibitions  
27 under subsection (c)(4), the court may grant such relief as  
28 it deems appropriate if the court determines that the  
29 applicant may possess a firearm without risk to the applicant  
30 or any other person.]

1       (1) (i) Any person subject to the prohibitions under  
2       subsection (c) (4), or who is prohibited from possessing  
3       firearms under 18 U.S.C. § 922(d) (4) or (g) (4) (relating  
4       to unlawful acts) as a result of actions taken under the  
5       laws of this Commonwealth, may apply to the court of  
6       common pleas for relief from any or all of the  
7       prohibitions. The court shall grant relief if the court  
8       determines by a preponderance of the evidence and makes  
9       findings that the applicant does not present a risk of  
10       harm to the applicant or any other person, will not be  
11       likely to act in a manner dangerous to public safety and  
12       that the granting of the relief would not be contrary to  
13       the public interest. The court order, whether denying or  
14       granting relief, shall also be supported by findings of  
15       fact and conclusions of law. In making its decision, the  
16       court shall receive and consider evidence relating to the  
17       following:

18               (A) The circumstances of and the time elapsed  
19               since the original commitment, appointment of a  
20               guardian or other finding of incompetency or  
21               incapacity.

22               (B) The applicant's mental health records,  
23               including the original commitment application and any  
24               related order, or other finding of incompetency or  
25               incapacity and medical records relating to any  
26               hospitalization resulting from the involuntary  
27               commitment, if any.

28               (C) The applicant's criminal history record.

29               (D) The applicant's character and reputation.

30               (E) Changes in the applicant's condition or

1 circumstances relevant to the relief sought.

2 (ii) The application shall be made to the court of  
3 common pleas in either the applicant's county of  
4 residence or the county of adjudication or commitment.  
5 The applicant shall bear the burden of proof. The  
6 applicant may commence a proceeding at any time, but in  
7 no event may an application be made until two years have  
8 elapsed from the date of the imposition of the  
9 disability. The application shall be served upon the  
10 following parties, who shall have standing to appear and  
11 contest the application, but are not required to appear  
12 or contest the application:

13 (A) The district attorney of the county where  
14 the application is filed.

15 (B) The Firearms Division of the Pennsylvania  
16 State Police.

17 (C) The county mental health agency where the  
18 commitment or adjudication occurred.

19 (iii) Any party shall have the right of appeal to  
20 ~~Superior~~ COMMONWEALTH Court. Appeal shall be subject to a <--  
21 de novo standard of review. A person may only file a  
22 subsequent application under this paragraph after one  
23 year has elapsed from the conclusion of the prior  
24 proceeding, including any appeal, which resulted in a  
25 denial under this paragraph.

26 (iv) Notwithstanding any law to the contrary, the  
27 judges of the courts of common pleas, mental health  
28 review officers and county mental health and mental  
29 retardation administrators shall disclose to the  
30 APPLICANT, THE district attorney of the county where the <--

1 application is filed and to the Pennsylvania State Police  
2 any records in their possession which are to be received  
3 by a court consistent with subparagraph (i) when such  
4 request is made in conjunction with a proceeding under  
5 this paragraph. The district attorney of the county where  
6 the application is filed and the Pennsylvania State  
7 Police may, in their discretion, disclose the information  
8 to any person or entity whenever necessary in accordance  
9 with this paragraph.

10 \* \* \*

11 (j) Copy of order to State Police.--

12 (1) If [the court grants relief from the disabilities  
13 imposed under this section] a court grants any relief  
14 authorized by this section, a copy of the order shall be sent  
15 by the prothonotary or Clerk of Court within ten days of the  
16 entry of the order to the Pennsylvania State Police and shall  
17 include the name, date of birth and Social Security number of  
18 the individual.

19 (2) In all cases of relief authorized under this  
20 section, the Pennsylvania State Police shall, upon the  
21 expiration of any applicable appeal period, take all steps  
22 necessary to comply with the order, including, when required,  
23 notifying the Attorney General of the United States, the  
24 Federal Bureau of Investigation and the National Instant  
25 Check System, regarding the order.

26 § 6111.1. Pennsylvania State Police.

27 \* \* \*

28 (f) Notification of mental health adjudication, treatment,  
29 commitment, drug use or addiction.--

30 \* \* \*

1 (3) Notwithstanding any law to the contrary, the  
2 Pennsylvania State Police [may] shall, within 72 hours of  
3 receipt, disclose, electronically or otherwise, to the United  
4 States Attorney General or a designee, any record relevant to  
5 a determination of whether a person is disqualified from  
6 possessing or receiving a firearm under 18 U.S.C. § 922 (g)  
7 (3) or (4) or an applicable state statute.

8 \* \* \*

9 SECTION 2. THIS ACT SHALL APPLY AS FOLLOWS: <--

10 (1) THE AMENDMENT OF 18 PA.C.S. § 6105(C) (4) SHALL APPLY  
11 TO A PERSON WHO HAS BEEN, ON AND AFTER THE EFFECTIVE DATE OF  
12 THIS SECTION, ADJUDICATED AS AN INCOMPETENT OR WHO HAS BEEN  
13 INVOLUNTARILY COMMITTED TO A MENTAL INSTITUTION FOR INPATIENT  
14 CARE AND TREATMENT UNDER SECTION 302 OF THE ACT OF JULY 9,  
15 1976 (P.L.817, NO.143), KNOWN AS THE MENTAL HEALTH PROCEDURES  
16 ACT.

17 (2) THE AMENDMENT OF 18 PA.C.S. § 6105(F) (1) SHALL APPLY  
18 TO A PERSON WHO HAS BEEN:

19 (I) BEFORE THE EFFECTIVE DATE OF THIS SECTION,  
20 ADJUDICATED AS AN INCOMPETENT OR WHO HAS BEEN  
21 INVOLUNTARILY COMMITTED TO A MENTAL INSTITUTION FOR  
22 INPATIENT CARE AND TREATMENT UNDER SECTION 302 OF THE  
23 MENTAL HEALTH PROCEDURES ACT; OR

24 (II) BEFORE, ON AND AFTER THE EFFECTIVE DATE OF THIS  
25 SECTION, ADJUDICATED AS AN INCOMPETENT OR WHO HAS BEEN  
26 INVOLUNTARILY COMMITTED TO A MENTAL INSTITUTION FOR  
27 INPATIENT CARE AND TREATMENT UNDER SECTION 303 OR 304 OF  
28 THE MENTAL HEALTH PROCEDURES ACT.

29 Section ~~2~~ 3. This act shall take effect ~~in 60 days.~~ <--

30 SEPTEMBER 1, 2018, OR IMMEDIATELY, WHICHEVER IS LATER. <--