



# DISABILITIES LAW PROGRAM

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**To:** SCPD, GACEC, DDC

**From:** Disabilities Law Program, CLASI

**Date:** 3/13/2018

Re: HS1 for HB 302

This memorandum, prepared by Elizabeth Booth, is in follow up to the Disabilities Law Program's earlier memorandum evaluating HB 285 and HB 302, both of which proposed new procedures regarding the relinquishment of firearms for individuals with mental illness. Disabilities Law Program was asked by SCPD to evaluate this revised bill. The Disabilities Law Program concludes that HS 1 for HB 302 still focuses on individuals with mental illness rather than individuals who may be dangerous, provides a mechanism to render people homeless without due process for extended periods of time, and unnecessarily muddles the commitment process and the processes used by mental health treatment providers to report concerns.

## Revised Definitions of "Danger to Self" and "Danger to Others"

The revised bill has re-framed the definitions of "dangerous to self" and "dangerous to others." The new definitions do not use the definitions in the civil commitment statute (16 Del. C. §5001), though they have similar wording. Both terms are defined in the new bill as "by reason of mental condition," and based on the "substantial likelihood that the person will inflict serious bodily harm [to self or others] within the reasonably foreseeable future." The commitment statute by contrast defines "dangerous" to only include when the likelihood is "imminent." The definition used in the revised bill mentions specific factors that should be taken into account including "a person's history, recent behavior, and any recent act or threat."

While generally the new definitions contain more specific indicators that a person may inflict bodily harm (though not necessarily specifically with a firearm) and may be more broadly applicable as the risk of harm does not have to be imminent, it still is only applicable to individuals with a "mental condition." It is not clear from the text of the bill whether the term "mental condition" is intended to include other conditions beyond a diagnosed mental illness.

The revised definitions do not resolve the issue of the proposed law applying solely to individuals with mental illness as potential perpetrators of gun violence, and not to members of

the population at large who would meet the new definition of “dangerous” but for the fact that they do not have a diagnosed mental health condition. Because a person who is substantially likely to inflict serious bodily harm on themselves or others within the reasonably foreseeable future is equally dangerous regardless of whether that person has a “mental condition,” the bill stigmatizes persons with mental illness and fails to protect the public from other dangerous individuals. These factors could also potentially discourage people from seeking needed mental health treatment, particularly those who may need to carry firearms for their jobs or who actively use them for hobby or sport.

#### Revised Procedures for Issuance of an Order to Relinquish Firearms and Due Process Issues

The new version of the bill also creates two separate court procedures for obtaining an order for the relinquishment of weapons based on the report by a mental health professional to law enforcement. First, if a law enforcement agency receives a report, they are to investigate whether the individual “is dangerous to others or self and in possession of firearms or ammunition.” As with HB 285 and the prior version of HB 302, there are no clear parameters set in terms of what the law enforcement agency’s investigation entails.

Upon conclusion of the investigation, if the law enforcement agency has determined there is probable cause that the person is dangerous and in possession of firearms or ammunition, they are to immediately seek a relinquishment order from the Justice of the Peace Court and refer the original report and the agency’s findings to the Department of Justice (“DOJ”). The individual does not have the right to notice of the Justice of the Peace Court proceeding, or to a hearing. This is particularly problematic because in addition to the confiscation or relinquishment of firearms, the Justice of the Peace Court may order relief that includes “prohibit[ing] the individual from residing with another individual who owns, possesses or controls firearms or ammunition.” This provision would potentially render individuals immediately homeless, without providing any notice or due process, and would likely disproportionately impact individuals of limited financial means. This order would not be subject to appeal and could last for up to 60 days if the DOJ declines to take the matter to Superior Court, or even longer if they do. This issue has also been identified by the ACLU of Delaware as cause for concern.

The referral to the DOJ initiates the second procedure, by which the DOJ may file a separate petition with the Superior Court. If a second petition is not filed within sixty days of the Justice of Peace’s order, that order is void and the individual’s firearms must be returned. If the DOJ files a petition with the Superior Court, the individual has a right to notice and a hearing. It is not clear from the wording of the bill as written how much notice is required, or whether the hearing is automatic or would have to be requested by the respondent. There is also no indication as to the respondent’s right to counsel at these proceedings.

As with the Justice of the Peace Court process, the Superior Court has the option to prohibit the respondent from living with another person who owns, possesses or controls firearms. At this stage the respondent has the right to appeal an order of the Superior Court to the Supreme Court. A person who is subject to a relinquishment order issued by the Superior Court may also petition the Court for an order to return their firearms or ammunition. In these circumstances, the Court would follow the Relief from Disabilities Board's procedures and render a decision in place of the Relief from Disabilities Board as to whether the person's right to possess firearms or ammunition may be restored.

While having procedures available for temporary and permanent orders may balance the need for immediate action in the event of an imminent risk with an individual's due process rights, it seems unnecessarily complicated and potentially confusing to respondents, and does not provide adequate due process.

#### Using the Civil Commitment Process

The revised bill also amends the civil commitment process. The bill adds a step to the probable cause hearing for an individual who has been emergently detained per 16 Del. C. §5009. At the hearing, if the Court finds either a) that probable cause exists for involuntary inpatient commitment, or b) that there is not probable cause but the individual meets the criteria for outpatient treatment over objection the Court must also issue an order for the individual to relinquish weapons. The court may prescribe any other action that may be ordered under 11 Del. C. § 1448C, including that the individual may be prohibited from residing with any person who owns a gun. In this circumstance it is unclear from the bill that an individual would have any right to a hearing on the issue of possession of firearms, or to appeal. According to the bill the order could only be overturned by the Relief from Disabilities Board upon petition by the individual.

The civil commitment statute at 16 Del. C. § 5008 - 5009 requires that if a hospital is not intending to release a patient at the end of a 48-hour emergency detention period, the hospital must file a verified complaint seeking involuntary commitment of the patient. A probable cause hearing must then be held within eight working days of the filing of the petition. During this time leading up to the hearing, the individual would remain hospitalized, and potentially incapacitated depending on the nature of their illness. It is not clear from the bill whether an individual's right to counsel in commitment proceedings would extend to the issue of firearm relinquishment however either way counsel (particularly appointed counsel) may not have sufficient time to acquire any additional evidence prior to the probable cause hearing. In this scenario individuals at a probable cause hearing would be subject to the same permanent order of relinquishment that can be obtained through the Superior Court procedures described above, regardless of whether there is proof of any specific threat of violence.

What the State would have to prove at the probable cause hearing for a relinquishment order to be issued is substantively more or less the same, however the timing would potentially be much different. While it is not clear what notice would be required in the Superior Court proceeding under 11 Del. C. § 1448C, it appears a respondent in that process could potentially have at least sixty days' notice of a hearing on the issue of a permanent order, which would provide more time for the individual to retain counsel and seek additional evidence in their defense while also attending to their presumably emergent mental health needs. A person in commitment proceedings would have less than eight days' notice. There does not appear to be any reason for this discrepancy in notice and hearing rights, which again raises potential due process issues. This could also potentially incentivize detaining a person so that their weapons may be ordered relinquished through the early stages of the commitment process without the state having to initiate a separate proceeding or wait potentially more than sixty days for a hearing in Superior Court.

The order issued at the probable cause hearing would be permanent, and an individual subject to the order would need to later petition the Relief from Disabilities Board for restoration of their rights; they could only appeal to the Superior Court after a decision by the Relief from Disabilities Board. It also seems unnecessarily confusing for the process of seeking relief from an order of the Superior Court to depend on the nature of the court hearing that produced the order. Months or years later an individual may not know or understand how they came to be prohibited from possessing a firearm. It also seems arbitrary for one group of people subject to the same orders to have immediate access to the court, while others have to rely on an administrative process, with access to the court only on appeal.

### Clinicians' Duty to Warn

This version of the bill makes the same revisions to the § 5402 of Title 16, which details mental health clinicians' duty to warn. The language added to 5042(b)(2) regarding the duty to arrange for an individual's hospitalization ("unless the patient would have access to firearms or ammunition based on the circumstances of the hospitalization"), which appears in both version of the bills, is confusing as a person would presumably not have access to weapons of any kind at a psychiatric hospital or acute care unit.

This version of the bill also adds a section specifically discussing discretionary disclosures to law enforcement, establishing that a mental health professional may report someone to law enforcement "regardless of whether the patient has made explicit threats against an identifiable victim." This section defines "dangerous to others or self" as it is defined by the revised version 11 Del. C. § 1448 within this bill, while the sections above all refer to dangerousness as being defined by the civil commitment statute. Having multiple provisions in

this section about the duty warn with slightly different standards of dangerousness is potentially confusing for clinicians seeking to fulfill their duty to warn while avoiding potential liability.

### Policing People with Mental Illness

As has also been pointed out by the ACLU of Delaware, a core concern about HB 302 is that it will increase the interactions between people with serious mental illness and law enforcement, potentially in circumstances where the person with mental illness is experiencing decompensation and may be exhibiting symptoms such as agitation and paranoia. While both versions of HB 302 contain language about state agencies developing internal policies and providing appropriate training to staff on “appropriate mental health risk assessment procedures” and to look for histories of violence, we remain concerned that increasing the involvement of law enforcement in possible mental health crises without sufficient resources and support will potentially lead to escalated situations where individuals with serious mental illness who are in crisis may either be harmed by police officers or arrested on other charges and enter the criminal justice system.

### Prohibited Living Arrangements

As referenced above, all court orders contemplated by the bill may also prohibit a respondent from residing with any individual who owns, possesses or controls a firearm. While another person could presumably choose to relinquish their firearms to allow the respondent to remain in their current living arrangement, they cannot be required to do so. Individuals who are low-income or who are reliant on other people or agencies for their living situations may not be able to make immediate arrangements to reside elsewhere.

This is very concerning as it could potentially cause an individual actively experiencing an exacerbation of their mental illness to be homeless with limited notice and potentially without a hearing or legal representation. In the case of an individual who is the respondent at a probable cause hearing for involuntary commitment, they would have been hospitalized in the days immediately preceding the hearing with no ability to prepare for a possible relocation and likely with only whatever personal possessions were on their person when they were taken to the hospital. This provision could also ostensibly force immediate or extended family members residing together to live apart, which may not be economically feasible or could remove an individual with mental illness from the household of their primary caregiver. The ultimate outcomes of these scenarios could be re-hospitalization or further contact with law enforcement and/or the criminal justice system.

### Conclusions and Recommendations

The revised version of HB 302 raises new concerns. First, it retains the provision of the older version of the bill that can prohibit a person from living in the same household as anyone

who owns firearms; however it broadens the circumstances in which this can be ordered while decreasing the process a person may be entitled to before the order is entered. Second, it puts people in civil commitment proceedings at a disadvantage in terms of the notice and hearing afforded to them with respect to a potential order to relinquish firearms, and in the process of undoing such an order. Third, it adds a lot of potential confusion to the process by involving multiple courts, and by making procedures different for people who were subject to the order through the civil commitment process as opposed to through a separate process initiated by law enforcement.

Many of the same fundamental concerns remain. As previously noted, conditioning the entire mechanism for seizing firearms on a person having a mental illness potentially prevents law enforcement from obtaining an order to take away firearms in a situation where by all indicators a person is dangerous but does not have a diagnosed mental illness. It also perpetuates stereotypes and misconceptions about people with mental illness and their propensity for certain types of violence, which may discourage people experiencing symptoms of a mental illness from seeking help. It may also increase the likelihood of confrontations between individuals with mental illness and law enforcement. The bill talks about training of clinicians and law enforcement officers but does not guarantee any additional resources for this work. Finally, as stated above, the provisions allowing for a person to be prohibited from residing with anyone who owns a gun may result in people with mental illness who are in crisis losing the right to remain in their homes or temporary residences. The immediate focus in these situations should be connecting people with the appropriate treatment and support to address their ongoing behavioral health crisis.

As a potential further revision to the bill, we suggest that the term “dangerous” be further revised to not be in any way dependent on a person’s mental condition or illness. There are plenty of other risk factors that can be used in this analysis, as laid out in the statutory schemes adopted by other states such as California, Oregon and Washington. Additionally, if the changes to the commitment statute are to remain in the bill, it would make more sense for the order issued by the Court at a person’s probable cause hearing to be temporary, comparable to the order issued by the Justice of the Peace Court for an individual not in commitment proceedings, so that the DOJ can issue notice of a petition and hearing on a permanent order and a person has the same due process rights in the issuance of a permanent order regardless of the context. It would also make more sense to have the process for reversing permanent orders by the Superior Court to be the same for everyone subject to such an order. Finally, we suggest that the provision for the court to prohibit an individual from residing with a person who owns a gun be stricken or revised to provide for additional notice and due process rights and to take into consideration the complications of the living situations of many people with mental illness.



SPONSOR: Rep. Bentz & Rep. Longhurst & Rep. Heffernan &  
Rep. Kowalko & Sen. Henry  
Reps. Baumbach, Brady, Jaques, Mitchell, Schwartzkopf,  
Sens. Delcollo, Lopez, Townsend

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.

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

21 § 1448C. Civil procedures to relinquish firearms or ammunition.

22 (a) For the purposes of this section:

23 (1) "Ammunition" means as defined in § 1448(c) of this title.

24 (2) "Dangerous to others" means that by reason of mental condition there is a substantial likelihood that the  
25 person will inflict serious bodily harm upon another person within the reasonably foreseeable future. This  
26 determination must take into account a person's history, recent behavior, and any recent act or threat.

27 (3) "Dangerous to others or self" means as "dangerous to others" and "dangerous to self" are defined in this  
28 subsection.

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

32 (5) "Law enforcement agency" means an agency established by this State, or by any county or municipality  
33 within this State, to enforce criminal laws or investigate suspected criminal activity.

34 (6) "Mental health professional" means any licensed professional qualified to render a psychiatric diagnosis.  
35 "Mental health professional" includes any of the following:

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

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

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

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

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

42 (b) If, after [the effective date of this Act], a law enforcement agency receives a report about an individual under §  
43 5402 or § 5403 of Title 16, the law enforcement agency shall investigate to determine if there is probable cause that the  
44 individual is dangerous to others or self and in possession of firearms or ammunition.

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

47 1. Immediately seek an order from the Justice of the Peace Court that the individual relinquish any  
48 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

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

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

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

116 (2) If the basis for relinquishment under this section is removed by the Court, any firearms and ammunition  
117 taken from the individual must be restored in a timely manner without the additional requirement of petitioning under §  
118 1448A(l) of this title.

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

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

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

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

131 § 5009 Probable cause hearing.

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

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

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

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

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

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

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

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

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

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

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

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

167           (2) Allow the individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of  
168 this section to relinquish firearms or ammunition owned, possessed, or controlled by the individual to a designee of the  
169 individual. A designee of the individual must not reside with the individual and must not be a person prohibited under  
170 § 1448 of this title. The court must find that the designee of the individual will keep firearms or ammunition owned,  
171 possessed, or controlled by the individual out of the possession of the individual.

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

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

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

182           Section 4. Amend § 5402, Title 16 of the Delaware Code by making deletions as shown by strike through and  
183 insertions as shown by underline as follows:

184           § 5402. Duty of mental health services providers to take precautions against threatened patient violence; duty to  
185 warn.

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

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

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

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

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

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

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

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

217 Section 5. Amend Chapter 54, Title 16 of the Delaware Code by making deletions as shown by strike through and  
218 insertions as shown by underline as follows:

219 § 5403. Discretionary disclosures to law enforcement.

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

224 (b) A person may not bring a cause of action, either criminal or civil, against a mental health services provider for  
225 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.