



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
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MEMORANDUM

DATE: May 30, 2013

TO: Delaware State Senate

FROM: Ms. Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities  
*DMP/20*

Ms. Diann Jones, Chairperson  
Developmental Disabilities Council  
*DJ/20*

RE: H.B. 88 [Possession of Deadly Weapons by Certain Individuals]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 88 which seeks to expand the scope of existing laws restricting access to deadly weapons by persons with mental health profiles. This includes individuals found not guilty by reason of insanity, mentally incompetent to stand trial, or guilty but mentally ill in connection with a crime of violence (lines 13-19). It also expands the scope of agencies given immunity for reporting "dangerous" individuals to law enforcement (lines 153-155). SCPD has the following observations.

First, historically, studies have demonstrated that individuals with mental illness are more often victims, rather than perpetrators, of crime. The synopsis recognizes this observation: "Statistically, mental illness has little to do with homicide perpetration but conversely increases the chances of being a victim of violence." Thus, gun rights advocates could cogently argue that persons with mental illness have more need for access to firearms for self-defense, not less need for access. Therefore, the Councils are very concerned about the negative stigma the proposed legislation directs towards individuals with mental illness. The bill really sends a message to the general population and to the mental health constituency that people with mental illness are commonly dangerous, violent and need to be regulated more than the rest of society.

Second, the legislation does create an anomaly which may violate the federal ADA. Consistent with lines 4 and 70-71, individuals convicted of misdemeanor crimes of violence automatically regain their right to purchase and possess deadly weapons after 5 years. In contrast, individuals found not guilty by reason of insanity or found incompetent to stand trial for the identical crime would not regain their right to purchase and possess deadly weapons after 5 years. Findings of

not guilty by reason of insanity and incompetency to stand trial for adults require evidence of disability. See Title 11 Del.C. §401 and 404. Moreover, these individuals have not been convicted of a crime. Therefore, it would be preferable to amend lines 70-72 as follows: “Any person...not a felony, or found incompetent to stand trial or not guilty by reason of insanity in connection with an offense which is not a felony shall not be prohibited...”.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Delaware House of Representatives  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

hb 88 possession of deadly weapons 5-30-13