



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: March 28, 2014

TO: Members of the Delaware Senate and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
DM-PLP
State Council for Persons with Disabilities

RE: S.B. 162 [Possession of Deadly Weapon]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 162 which would expand the scope of individuals barred from possession of a "deadly weapon" or ammunition for a firearm. In general, the ban would extend to adults and juveniles determined incompetent to stand trial, not guilty by reason of insanity, or guilty but mentally ill of a crime of violence. Individuals subject to the ban could petition for relief through an administrative hearing process established by Title 11 Del.C. §1448A(k). Otherwise, the ban would extend for the individual's lifetime. A similar, but more comprehensive bill (H.B. 88) was defeated in the Senate. S.B. 162 essentially extracts a section (lines 9-19) of the defeated H.B. 88 into this separate legislation. SCPD has the following observations.

First, there are some technical inconsistencies in the legislation. The synopsis and one provision (lines 4-5) apply the ban to a "deadly weapon". A "deadly weapon" is defined in Title 11 Del.C. §222 as including a host of articles, including a slingshot, ice pick, bicycle chain, razor, knives with more than a 3-inch blade, and a dangerous instrument such as pepper spray. In contrast, the bill uses the term "firearm" in lines 11, 15, and 19. The statute establishing the process to request relief from the ban is also limited to "firearms". See Title 11 Del.C. §1448A(k). For consistency, the sponsors could consider an amendment clarifying that the ban in lines 9-19 only applies to firearms.

Second, historically, studies have demonstrated that individuals with mental illness are more often victims, rather than perpetrators, of crime. The synopsis to H.B. 88 recognized 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 advocates could cogently argue that persons with mental illness have more need for access to a firearm for self-defense, not less need for access. Indeed, if the legislation bans possession of a "deadly

weapon”, it may preclude a covered individual from carrying pepper spray in her purse for protection.

Third, the legislation does create an anomaly which may violate the federal ADA. Under existing law, adults convicted of non-felony crimes of violence automatically regain their right to purchase and possess deadly weapons after 5 years. See Title 11 Del.C. §1448(d). Moreover, individuals adjudicated delinquent for felony conduct automatically regain their right to purchase and possess a deadly weapon upon reaching age 25. See Title 11 Del.C. §1448(a)(4). In contrast, adults and juveniles found not guilty by reason of insanity or incompetent to stand trial are treated more harshly than individuals actually determined guilty of the same offense. Adults and juveniles would not regain their right to possess deadly weapons after 5 years or upon reaching age 25 respectively. As a practical matter, the statute restoring rights to juveniles upon reaching age 25 recognizes that what individuals do as children is not inherently predictive of their risk to society with maturity at age 25. Query whether it makes sense to impose a lifetime ban based on conduct occurring as a child.

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

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

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