

Pennsylvania State Police Testimony
Senate Judiciary
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Presented by:
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Responsibility

Good afternoon, Chairmen Baker and Farnese and members of the Senate Judiciary Committee. On behalf of the Pennsylvania State Police (PSP), I would like to thank you for leading the discussion about mental health and firearms. This written testimony will attempt to clarify the process by which PSP receives notifications of mental health commitments and how that impacts a person's right to purchase or possess firearms.

In Pennsylvania, an individual may be subjected involuntarily to a temporary emergency commitment for up to 120 hours under Section 302 of the Pennsylvania Mental Health Procedures Act (MHPA), if the person is "severely mentally disabled and in need of immediate treatment". As defined in Section 301 of the MHPA, a person is severely mentally disabled, when, as a result of mental illness, their capacity to exercise self-control, judgment and discretion is so lessened that they pose a clear and present danger of harm to themselves or others. Section 301 also sets forth a standard for determining clear and present danger to themselves or others, which often includes causing or threatening bodily harm to another or attempting or threatening suicide, where there is reasonable probability that additional harm would occur unless adequate immediate treatment is afforded the individual.

A 302 commitment is initiated in one of two ways. First, a physician or responsible party may make written application to the county mental health administrator setting forth facts constituting reasonable grounds to believe a person is severely mentally disabled and in need of treatment. Upon review of the written application, the county mental health

administrator may issue a warrant requiring an authorized person to take the individual to a specified facility for examination. Second, a physician, police officer, or other authorized person may take a person to an approved facility for an emergency examination upon personal observation of the conduct constituting reasonable grounds to believe the person is in need of immediate treatment. If a person is taken to a facility without a 302 warrant, the transporting individual must make a written statement setting forth the grounds for believing the person is in need of the examination.

An individual transported to a treatment facility under Section 302 must be examined by a physician to determine if they pose a clear and present danger to themselves or others and is in need of immediate involuntary treatment. If the physician finds there is no need for emergency involuntary treatment, or if at any time it appears that continued involuntary treatment is no longer required, the individual *must* be discharged. It should be noted that if the person is discharged upon the initial examination of the physician and is not committed, there is no resultant firearms prohibition.

Sections 303 and 304 of the MPHA allow a treatment facility to extend a 302 commitment past 120 hours if it is determined the individual requires further treatment. To extend a 302 commitment under section 303 (up to 20 days), the facility must file an application in the court of common pleas and an informal hearing is held before a judge or mental health review officer (MHRO) appointed for that purpose. Upon conclusion of the review, the judge or MHRO can determine that the individual is in need of continued involuntary treatment or direct the facility director to discharge the person. An extension

of a 302 commitment under section 304 (up to 90 days) is similar to the process under Section 303 but requires assistance of an expert in mental health, must be held before the Court of Common Pleas, and involves more substantial evidentiary burdens.

Section 6105 of the Pennsylvania Uniform Firearms Act identifies individuals who are prohibited from possessing firearms. Relevant to this discussion is subsection (c)(4) which prohibits any person who has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303, or 304 of the provisions of the MHPA.

The Pennsylvania State Police is responsible for uploading mental health commitments into the Pennsylvania Instant Check System (PICS) and the National Instant Check System (NICS). The MHPA requires that PSP be notified of any individual who has been adjudicated incompetent or involuntarily committed for inpatient care and treatment. Judges of the courts of common pleas, mental health review officers and county mental health administrators must notify the PSP on a form prescribed by the PSP within seven days of the adjudication, commitment, or treatment. The notice of a mental health commitment sent to PICS must contain the committed individual's name, date of birth or Social Security number, physical description, date of commitment, and the name of the notifying mental health treatment facility, agency, or county. While voluntary, PSP allows electronic submission of this data to aid timely transmission and receipt.

The PSP does not examine the evidence used by the treating physician to certify the commitment. The PSP relies upon the reporting entity to provide complete and accurate information. Upon confirmation that the commitment notice contains the required information, PSP creates a mental health record in the PICS database and transmits the information to NICS.

Firearms prohibitions resulting from mental health commitments are permanent. However, there are three post-deprivation procedures available to an individual who seeks relief from a firearms prohibition imposed pursuant to a mental health commitment. Section 6105(f)(1) of the UFA allows an individual to assert to the court of common pleas that he/she is no longer mentally ill and should be allowed to possess a firearm. A petition made pursuant to 6105(f)(1) is reviewed in a civil proceeding with a full evidentiary hearing. If the petitioner demonstrates that he/she can possess a firearm without risk to themselves or others, the court can issue an order effectively exempting the person from Pennsylvania's mental health firearm prohibition. Upon order of the court, the PSP makes notation in the PICS database that the petitioner is no longer prohibited and notifies NICS of the relief. Second, under Section 6111.1(g)(2) of the UFA, an individual can attempt to have his 302 commitment expunged by petitioning the court to review the sufficiency of the evidence upon which the commitment was initially based. Upon receipt of a copy of a court order which vacates a final order or an involuntary certification issued by a mental health review officer, the PSP expunges all records of the involuntary treatment, removes the petitioner's record from the PICS database, and notifies NICS of the expungement. Finally, under Section 6111.1(e) of the UFA, an individual who has failed

a PICS Check can submit a challenge to the PSP Firearms Division that contests the accuracy of his or her denial, including in cases involving a mental health record that was reported to the PSP. As part of this administrative challenge process PSP will conduct a review of the accuracy of the information forming the basis for the denial and has the burden of proving the accuracy of the existence of the record. If the PSP upholds the denial, the person then has the right to appeal the accuracy of PSP's decision to an administrative law judge appointed by the Office of the Attorney General.

Thank you for the opportunity to testify today on this important issue. I would be happy to answer any questions you may have at this time.