

SB3690



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3690

Introduced 2/14/2020, by Sen. Rachelle Crowe

SYNOPSIS AS INTRODUCED:

430 ILCS 65/10

from Ch. 38, par. 83-10

Amends the Firearm Owners Identification Card Act. Provides that notwithstanding any prohibitions on granting relief from obtaining a Firearm Owner's Identification Card because of federal law, the Director of the Illinois State Police, or the circuit court for various violations, may grant relief when the federal prohibition on possession of firearms is predicated solely on a provision of the Criminal Code of 2012, including, but not limited to, possession of a firearm by a felon, that would no longer apply to the applicant upon granting of relief under the appeals provisions of the Act. Effective immediately.

LRB101 18491 RLC 67942 b

A BILL FOR

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Firearm Owners Identification Card Act is
5 amended by changing Section 10 as follows:

6 (430 ILCS 65/10) (from Ch. 38, par. 83-10)

7 Sec. 10. Appeal to director; hearing; relief from firearm
8 prohibitions.

9 (a) Whenever an application for a Firearm Owner's
10 Identification Card is denied, whenever the Department fails to
11 act on an application within 30 days of its receipt, or
12 whenever such a Card is revoked or seized as provided for in
13 Section 8 of this Act, the aggrieved party may appeal to the
14 Director of State Police for a hearing upon such denial,
15 revocation or seizure, unless the denial, revocation, or
16 seizure was based upon a forcible felony, stalking, aggravated
17 stalking, domestic battery, any violation of the Illinois
18 Controlled Substances Act, the Methamphetamine Control and
19 Community Protection Act, or the Cannabis Control Act that is
20 classified as a Class 2 or greater felony, any felony violation
21 of Article 24 of the Criminal Code of 1961 or the Criminal Code
22 of 2012, or any adjudication as a delinquent minor for the
23 commission of an offense that if committed by an adult would be

1 a felony, in which case the aggrieved party may petition the
2 circuit court in writing in the county of his or her residence
3 for a hearing upon such denial, revocation, or seizure.

4 (b) At least 30 days before any hearing in the circuit
5 court, the petitioner shall serve the relevant State's Attorney
6 with a copy of the petition. The State's Attorney may object to
7 the petition and present evidence. At the hearing the court
8 shall determine whether substantial justice has been done.
9 Should the court determine that substantial justice has not
10 been done, the court shall issue an order directing the
11 Department of State Police to issue a Card. However, the court
12 shall not issue the order if the petitioner is otherwise
13 prohibited from obtaining, possessing, or using a firearm under
14 federal law.

15 (c) Any person prohibited from possessing a firearm under
16 Sections 24-1.1 or 24-3.1 of the Criminal Code of 2012 or
17 acquiring a Firearm Owner's Identification Card under Section 8
18 of this Act may apply to the Director of State Police or
19 petition the circuit court in the county where the petitioner
20 resides, whichever is applicable in accordance with subsection
21 (a) of this Section, requesting relief from such prohibition
22 and the Director or court may grant such relief if it is
23 established by the applicant to the court's or Director's
24 satisfaction that:

25 (0.05) when in the circuit court, the State's Attorney
26 has been served with a written copy of the petition at

1 least 30 days before any such hearing in the circuit court
2 and at the hearing the State's Attorney was afforded an
3 opportunity to present evidence and object to the petition;

4 (1) the applicant has not been convicted of a forcible
5 felony under the laws of this State or any other
6 jurisdiction within 20 years of the applicant's
7 application for a Firearm Owner's Identification Card, or
8 at least 20 years have passed since the end of any period
9 of imprisonment imposed in relation to that conviction;

10 (2) the circumstances regarding a criminal conviction,
11 where applicable, the applicant's criminal history and his
12 reputation are such that the applicant will not be likely
13 to act in a manner dangerous to public safety;

14 (3) granting relief would not be contrary to the public
15 interest; and

16 (4) granting relief would not be contrary to federal
17 law. Notwithstanding any prohibitions on such relief in
18 this paragraph (4), the Director, or circuit court as
19 provided in subsection (a), may grant relief when the
20 federal prohibition on possession of firearms is
21 predicated solely on a provision of the Criminal Code of
22 2012, including, but not limited to, subsection (a) of
23 Section 24-1.1 of that Code, that would no longer apply to
24 the applicant upon granting of relief under this Section.

25 (c-5) (1) An active law enforcement officer employed by a
26 unit of government, who is denied, revoked, or has his or her

1 Firearm Owner's Identification Card seized under subsection
2 (e) of Section 8 of this Act may apply to the Director of State
3 Police requesting relief if the officer did not act in a manner
4 threatening to the officer, another person, or the public as
5 determined by the treating clinical psychologist or physician,
6 and as a result of his or her work is referred by the employer
7 for or voluntarily seeks mental health evaluation or treatment
8 by a licensed clinical psychologist, psychiatrist, or
9 qualified examiner, and:

10 (A) the officer has not received treatment
11 involuntarily at a mental health facility, regardless of
12 the length of admission; or has not been voluntarily
13 admitted to a mental health facility for more than 30 days
14 and not for more than one incident within the past 5 years;
15 and

16 (B) the officer has not left the mental institution
17 against medical advice.

18 (2) The Director of State Police shall grant expedited
19 relief to active law enforcement officers described in
20 paragraph (1) of this subsection (c-5) upon a determination by
21 the Director that the officer's possession of a firearm does
22 not present a threat to themselves, others, or public safety.
23 The Director shall act on the request for relief within 30
24 business days of receipt of:

25 (A) a notarized statement from the officer in the form
26 prescribed by the Director detailing the circumstances

1 that led to the hospitalization;

2 (B) all documentation regarding the admission,
3 evaluation, treatment and discharge from the treating
4 licensed clinical psychologist or psychiatrist of the
5 officer;

6 (C) a psychological fitness for duty evaluation of the
7 person completed after the time of discharge; and

8 (D) written confirmation in the form prescribed by the
9 Director from the treating licensed clinical psychologist
10 or psychiatrist that the provisions set forth in paragraph
11 (1) of this subsection (c-5) have been met, the person
12 successfully completed treatment, and their professional
13 opinion regarding the person's ability to possess
14 firearms.

15 (3) Officers eligible for the expedited relief in paragraph
16 (2) of this subsection (c-5) have the burden of proof on
17 eligibility and must provide all information required. The
18 Director may not consider granting expedited relief until the
19 proof and information is received.

20 (4) "Clinical psychologist", "psychiatrist", and
21 "qualified examiner" shall have the same meaning as provided in
22 Chapter I of the Mental Health and Developmental Disabilities
23 Code.

24 (c-10) (1) An applicant, who is denied, revoked, or has his
25 or her Firearm Owner's Identification Card seized under
26 subsection (e) of Section 8 of this Act based upon a

1 determination of a developmental disability or an intellectual
2 disability may apply to the Director of State Police requesting
3 relief.

4 (2) The Director shall act on the request for relief within
5 60 business days of receipt of written certification, in the
6 form prescribed by the Director, from a physician or clinical
7 psychologist, or qualified examiner, that the aggrieved
8 party's developmental disability or intellectual disability
9 condition is determined by a physician, clinical psychologist,
10 or qualified to be mild. If a fact-finding conference is
11 scheduled to obtain additional information concerning the
12 circumstances of the denial or revocation, the 60 business days
13 the Director has to act shall be tolled until the completion of
14 the fact-finding conference.

15 (3) The Director may grant relief if the aggrieved party's
16 developmental disability or intellectual disability is mild as
17 determined by a physician, clinical psychologist, or qualified
18 examiner and it is established by the applicant to the
19 Director's satisfaction that:

20 (A) granting relief would not be contrary to the public
21 interest; and

22 (B) granting relief would not be contrary to federal
23 law.

24 (4) The Director may not grant relief if the condition is
25 determined by a physician, clinical psychologist, or qualified
26 examiner to be moderate, severe, or profound.

1 (5) The changes made to this Section by this amendatory Act
2 of the 99th General Assembly apply to requests for relief
3 pending on or before the effective date of this amendatory Act,
4 except that the 60-day period for the Director to act on
5 requests pending before the effective date shall begin on the
6 effective date of this amendatory Act.

7 (d) When a minor is adjudicated delinquent for an offense
8 which if committed by an adult would be a felony, the court
9 shall notify the Department of State Police.

10 (e) The court shall review the denial of an application or
11 the revocation of a Firearm Owner's Identification Card of a
12 person who has been adjudicated delinquent for an offense that
13 if committed by an adult would be a felony if an application
14 for relief has been filed at least 10 years after the
15 adjudication of delinquency and the court determines that the
16 applicant should be granted relief from disability to obtain a
17 Firearm Owner's Identification Card. If the court grants
18 relief, the court shall notify the Department of State Police
19 that the disability has been removed and that the applicant is
20 eligible to obtain a Firearm Owner's Identification Card.

21 (f) Any person who is subject to the disabilities of 18
22 U.S.C. 922(d)(4) and 922(g)(4) of the federal Gun Control Act
23 of 1968 because of an adjudication or commitment that occurred
24 under the laws of this State or who was determined to be
25 subject to the provisions of subsections (e), (f), or (g) of
26 Section 8 of this Act may apply to the Department of State

1 Police requesting relief from that prohibition. The Director
2 shall grant the relief if it is established by a preponderance
3 of the evidence that the person will not be likely to act in a
4 manner dangerous to public safety and that granting relief
5 would not be contrary to the public interest. In making this
6 determination, the Director shall receive evidence concerning
7 (i) the circumstances regarding the firearms disabilities from
8 which relief is sought; (ii) the petitioner's mental health and
9 criminal history records, if any; (iii) the petitioner's
10 reputation, developed at a minimum through character witness
11 statements, testimony, or other character evidence; and (iv)
12 changes in the petitioner's condition or circumstances since
13 the disqualifying events relevant to the relief sought. If
14 relief is granted under this subsection or by order of a court
15 under this Section, the Director shall as soon as practicable
16 but in no case later than 15 business days, update, correct,
17 modify, or remove the person's record in any database that the
18 Department of State Police makes available to the National
19 Instant Criminal Background Check System and notify the United
20 States Attorney General that the basis for the record being
21 made available no longer applies. The Department of State
22 Police shall adopt rules for the administration of this
23 Section.

24 (Source: P.A. 98-63, eff. 7-9-13; 99-29, eff. 7-10-15; 99-78,
25 eff. 7-20-15.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.