



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5166

Introduced 2/1/2010, by Rep. Roger L. Eddy

SYNOPSIS AS INTRODUCED:

See Index

Amends the Firearm Owners Identification Card Act. Provides that the Department of State Police may petition to revoke a Firearm Owner's Identification Card if the Department finds that the card holder is, or was at the time of issuance, a person whose mental condition was determined, following a complete evaluation by a psychiatrist or a physician pursuant to the Mental Health and Developmental Disabilities Confidentiality Act, to pose a clear and present danger to the card holder, another person, or the community, (instead of a Firearm Owner's Identification Card may be revoked if the Department finds that the card holder is or was at the time of issuance, a person whose mental condition poses a clear and present danger to the applicant, others, or the community based upon a reasonable belief by a physician, clinical psychologist, or qualified examiner). Provides that a revocation petition is heard in the circuit court in the card holder's county of residence. Provides that the State's Attorney may participate in the hearing, present evidence, and take a position on the petition. Provides that the court may revoke the card if it finds that substantial justice would be done by a revocation and the card holder is a person whose mental condition poses a clear and present danger to the card holder, others, or the community. Provides that the circuit court's decision is subject to appeal under the Code of Civil Procedure (instead of the card holder appealing the Department's revocation of the card is subject to administrative review in the circuit court). Amends the Mental Health and Developmental Disabilities Confidentiality Act. In provisions concerning disclosure of mental health records to the State Police, provides that a mental health facility may disclose to the State Police records about a person whose mental condition is manifested by violent, suicidal, threatening, or assaultive behavior, for which there is a reasonable belief following a complete evaluation (instead of reasonable belief) by a psychiatrist or a physician, (instead of by a physician, clinical psychologist, or qualified examiner) that the person poses a clear and present or imminent danger to the card holder, others, or the community. Makes other changes.

LRB096 16109 AJO 31358 b

A BILL FOR

1 AN ACT concerning public 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 8 and by adding Sections 8.3 and
6 10.1 as follows:

7 (430 ILCS 65/8) (from Ch. 38, par. 83-8)

8 Sec. 8. The Department of State Police has authority to
9 deny an application for or to revoke and seize a Firearm
10 Owner's Identification Card previously issued under this Act
11 only if the Department finds that the applicant or the person
12 to whom such card was issued is or was at the time of issuance:

13 (a) A person under 21 years of age who has been convicted
14 of a misdemeanor other than a traffic offense or adjudged
15 delinquent;

16 (b) A person under 21 years of age who does not have the
17 written consent of his parent or guardian to acquire and
18 possess firearms and firearm ammunition, or whose parent or
19 guardian has revoked such written consent, or where such parent
20 or guardian does not qualify to have a Firearm Owner's
21 Identification Card;

22 (c) A person convicted of a felony under the laws of this
23 or any other jurisdiction;

1 (d) A person addicted to narcotics;

2 (e) A person who has been a patient of a mental institution
3 within the past 5 years or has been adjudicated as a mental
4 defective;

5 (f) (Blank); ~~A person whose mental condition is of such a~~
6 ~~nature that it poses a clear and present danger to the~~
7 ~~applicant, any other person or persons or the community;~~

8 ~~For the purposes of this Section, "mental condition" means~~
9 ~~a state of mind manifested by violent, suicidal, threatening or~~
10 ~~assaultive behavior.~~

11 (g) A person who is mentally retarded;

12 (h) A person who intentionally makes a false statement in
13 the Firearm Owner's Identification Card application;

14 (i) An alien who is unlawfully present in the United States
15 under the laws of the United States;

16 (i-5) An alien who has been admitted to the United States
17 under a non-immigrant visa (as that term is defined in Section
18 101(a)(26) of the Immigration and Nationality Act (8 U.S.C.
19 1101(a)(26))), except that this subsection (i-5) does not apply
20 to any alien who has been lawfully admitted to the United
21 States under a non-immigrant visa if that alien is:

22 (1) admitted to the United States for lawful hunting or
23 sporting purposes;

24 (2) an official representative of a foreign government
25 who is:

26 (A) accredited to the United States Government or

1 the Government's mission to an international
2 organization having its headquarters in the United
3 States; or

4 (B) en route to or from another country to which
5 that alien is accredited;

6 (3) an official of a foreign government or
7 distinguished foreign visitor who has been so designated by
8 the Department of State;

9 (4) a foreign law enforcement officer of a friendly
10 foreign government entering the United States on official
11 business; or

12 (5) one who has received a waiver from the Attorney
13 General of the United States pursuant to 18 U.S.C.
14 922 (y) (3);

15 (j) (Blank);

16 (k) A person who has been convicted within the past 5 years
17 of battery, assault, aggravated assault, violation of an order
18 of protection, or a substantially similar offense in another
19 jurisdiction, in which a firearm was used or possessed;

20 (l) A person who has been convicted of domestic battery or
21 a substantially similar offense in another jurisdiction
22 committed on or after January 1, 1998;

23 (m) A person who has been convicted within the past 5 years
24 of domestic battery or a substantially similar offense in
25 another jurisdiction committed before January 1, 1998;

26 (n) A person who is prohibited from acquiring or possessing

1 firearms or firearm ammunition by any Illinois State statute or
2 by federal law;

3 (o) A minor subject to a petition filed under Section 5-520
4 of the Juvenile Court Act of 1987 alleging that the minor is a
5 delinquent minor for the commission of an offense that if
6 committed by an adult would be a felony; or

7 (p) An adult who had been adjudicated a delinquent minor
8 under the Juvenile Court Act of 1987 for the commission of an
9 offense that if committed by an adult would be a felony.

10 (Source: P.A. 95-581, eff. 6-1-08; 96-701, eff. 1-1-10.)

11 (430 ILCS 65/8.3 new)

12 Sec. 8.3. Mental condition revocation.

13 (a) The Department of State Police has the authority to
14 petition for the revocation of a Firearm Owner's Identification
15 Card previously issued under this Act if the Department finds
16 that the person to whom such card was issued is or was at the
17 time of issuance a person whose mental condition is determined,
18 following a complete evaluation by a psychiatrist or a
19 physician pursuant to item (2) of subsection (b) of Section 12
20 of the Mental Health and Developmental Disabilities
21 Confidentiality Act, is of such a nature that it poses a clear
22 and present danger to the card holder, any other person or
23 persons, or the community.

24 (b) For the purposes of this Section, "mental condition"
25 means a state of mind manifested by violent, suicidal,

1 threatening, or assaultive behavior.

2 (430 ILCS 65/10.1 new)

3 Sec. 10.1. Firearm owner's identification card revocation
4 process-mental condition.

5 (a) Whenever the Department petitions for the revocation of
6 a Firearm Owner's Identification Card under Section 8.3, a
7 hearing upon the Department's petition shall be held in the
8 circuit court in the county of residence of the card holder
9 whose Firearm Owner's Identification Card is the subject of the
10 petition.

11 (b) At least 30 days before any hearing in the circuit
12 court, the Department shall serve the holder of the Firearm
13 Owner's Identification Card and the relevant State's Attorney
14 with a copy of the petition for revocation. The Department
15 shall proceed on its petition before the court and the holder
16 of the Firearm Owner's Identification Card may respond.
17 Additionally, the State's Attorney may participate in the
18 hearing, present evidence, and take a position on the petition.
19 At the hearing the court shall determine whether substantial
20 justice would be done by revoking the card holder's card and
21 whether the card holder is a person whose mental condition is
22 of such a nature that it poses a clear and present danger to
23 the card holder, any other person or persons, or the community.

24 (c) A circuit court decision entered pursuant to this
25 Section shall be subject to appeal under the provisions of the

1 Code of Civil Procedure.

2 Section 10. The Mental Health and Developmental
3 Disabilities Confidentiality Act is amended by changing
4 Section 12 as follows:

5 (740 ILCS 110/12) (from Ch. 91 1/2, par. 812)

6 Sec. 12. (a) If the United States Secret Service or the
7 Department of State Police requests information from a mental
8 health or developmental disability facility, as defined in
9 Section 1-107 and 1-114 of the Mental Health and Developmental
10 Disabilities Code, relating to a specific recipient and the
11 facility director determines that disclosure of such
12 information may be necessary to protect the life of, or to
13 prevent the infliction of great bodily harm to, a public
14 official, or a person under the protection of the United States
15 Secret Service, only the following information may be
16 disclosed: the recipient's name, address, and age and the date
17 of any admission to or discharge from a facility; and any
18 information which would indicate whether or not the recipient
19 has a history of violence or presents a danger of violence to
20 the person under protection. Any information so disclosed shall
21 be used for investigative purposes only and shall not be
22 publicly disseminated. Any person participating in good faith
23 in the disclosure of such information in accordance with this
24 provision shall have immunity from any liability, civil,

1 criminal or otherwise, if such information is disclosed relying
2 upon the representation of an officer of the United States
3 Secret Service or the Department of State Police that a person
4 is under the protection of the United States Secret Service or
5 is a public official.

6 For the purpose of this subsection (a), the term "public
7 official" means the Governor, Lieutenant Governor, Attorney
8 General, Secretary of State, State Comptroller, State
9 Treasurer, member of the General Assembly, member of the United
10 States Congress, Judge of the United States as defined in 28
11 U.S.C. 451, Justice of the United States as defined in 28
12 U.S.C. 451, United States Magistrate Judge as defined in 28
13 U.S.C. 639, Bankruptcy Judge appointed under 28 U.S.C. 152, or
14 Supreme, Appellate, Circuit, or Associate Judge of the State of
15 Illinois. The term shall also include the spouse, child or
16 children of a public official.

17 (b) The Department of Human Services (acting as successor
18 to the Department of Mental Health and Developmental
19 Disabilities) and all public or private hospitals and mental
20 health facilities are required, as hereafter described in this
21 subsection, to furnish the Department of State Police only such
22 information as may be required for the sole purpose of
23 determining whether an individual who may be or may have been a
24 patient is disqualified because of that status from receiving
25 or retaining a Firearm Owner's Identification Card under
26 subsection (e) or (f) of Section 8 of the Firearm Owners

1 Identification Card Act or 18 U.S.C. 922(g) and (n). All public
2 or private hospitals and mental health facilities shall, in the
3 form and manner required by the Department, provide such
4 information as shall be necessary for the Department to comply
5 with the reporting requirements to the Department of State
6 Police. Such information shall be furnished within 7 days after
7 admission to a public or private hospital or mental health
8 facility or the provision of services to a patient described in
9 clause (2) of this subsection (b). Any such information
10 disclosed under this subsection shall remain privileged and
11 confidential, and shall not be redisclosed, except as required
12 by clause (e)(2) of Section 3.1 of the Firearm Owners
13 Identification Card Act, nor utilized for any other purpose.
14 The method of requiring the providing of such information shall
15 guarantee that no information is released beyond what is
16 necessary for this purpose. In addition, the information
17 disclosed shall be provided by the Department within the time
18 period established by Section 24-3 of the Criminal Code of 1961
19 regarding the delivery of firearms. The method used shall be
20 sufficient to provide the necessary information within the
21 prescribed time period, which may include periodically
22 providing lists to the Department of Human Services or any
23 public or private hospital or mental health facility of Firearm
24 Owner's Identification Card applicants on which the Department
25 or hospital shall indicate the identities of those individuals
26 who are to its knowledge disqualified from having a Firearm

1 Owner's Identification Card for reasons described herein. The
2 Department may provide for a centralized source of information
3 for the State on this subject under its jurisdiction.

4 Any person, institution, or agency, under this Act,
5 participating in good faith in the reporting or disclosure of
6 records and communications otherwise in accordance with this
7 provision or with rules, regulations or guidelines issued by
8 the Department shall have immunity from any liability, civil,
9 criminal or otherwise, that might result by reason of the
10 action. For the purpose of any proceeding, civil or criminal,
11 arising out of a report or disclosure in accordance with this
12 provision, the good faith of any person, institution, or agency
13 so reporting or disclosing shall be presumed. The full extent
14 of the immunity provided in this subsection (b) shall apply to
15 any person, institution or agency that fails to make a report
16 or disclosure in the good faith belief that the report or
17 disclosure would violate federal regulations governing the
18 confidentiality of alcohol and drug abuse patient records
19 implementing 42 U.S.C. 290dd-3 and 290ee-3.

20 For purposes of this subsection (b) only, the following
21 terms shall have the meaning prescribed:

22 (1) "Hospital" means only that type of institution
23 which is providing full-time residential facilities and
24 treatment.

25 (2) "Patient" shall include only: (i) a person who is
26 an in-patient or resident of any public or private hospital

1 or mental health facility or (ii) a person who is an
2 out-patient or provided services by a public or private
3 hospital or mental health facility whose mental condition
4 is of such a nature that it is manifested by violent,
5 suicidal, threatening, or assaultive behavior or reported
6 behavior, for which there is a reasonable belief following
7 a complete evaluation by a psychiatrist or a physician,
8 ~~clinical psychologist, or qualified examiner~~ that the
9 condition poses a clear and present or imminent danger to
10 the patient, any other person or the community meaning the
11 patient's condition poses a clear and present danger in
12 accordance with subsection (f) of Section 8 of the Firearm
13 Owners Identification Card Act. The terms physician and
14 psychiatrist, ~~clinical psychologist, and qualified~~
15 ~~examiner~~ are defined in Sections 1-120 and 1-121, ~~1-103,~~
16 ~~and 1-122~~ of the Mental Health and Developmental
17 Disabilities Code.

18 (3) "Mental health facility" is defined by Section
19 1-114 of the Mental Health and Developmental Disabilities
20 Code.

21 (c) Upon the request of a peace officer who takes a person
22 into custody and transports such person to a mental health or
23 developmental disability facility pursuant to Section 3-606 or
24 4-404 of the Mental Health and Developmental Disabilities Code
25 or who transports a person from such facility, a facility
26 director shall furnish said peace officer the name, address,

1 age and name of the nearest relative of the person transported
2 to or from the mental health or developmental disability
3 facility. In no case shall the facility director disclose to
4 the peace officer any information relating to the diagnosis,
5 treatment or evaluation of the person's mental or physical
6 health.

7 For the purposes of this subsection (c), the terms "mental
8 health or developmental disability facility", "peace officer"
9 and "facility director" shall have the meanings ascribed to
10 them in the Mental Health and Developmental Disabilities Code.

11 (d) Upon the request of a peace officer or prosecuting
12 authority who is conducting a bona fide investigation of a
13 criminal offense, or attempting to apprehend a fugitive from
14 justice, a facility director may disclose whether a person is
15 present at the facility. Upon request of a peace officer or
16 prosecuting authority who has a valid forcible felony warrant
17 issued, a facility director shall disclose: (1) whether the
18 person who is the subject of the warrant is present at the
19 facility and (2) the date of that person's discharge or future
20 discharge from the facility. The requesting peace officer or
21 prosecuting authority must furnish a case number and the
22 purpose of the investigation or an outstanding arrest warrant
23 at the time of the request. Any person, institution, or agency
24 participating in good faith in disclosing such information in
25 accordance with this subsection (d) is immune from any
26 liability, civil, criminal or otherwise, that might result by

1 reason of the action.

2 (Source: P.A. 95-564, eff. 6-1-08; 96-193, eff. 8-10-09.)

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2

Statutes amended in order of appearance

3

430 ILCS 65/8 from Ch. 38, par. 83-8

4

430 ILCS 65/8.3 new

5

430 ILCS 65/10.1 new

6

740 ILCS 110/12 from Ch. 91 1/2, par. 812