



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: April 4, 2014

TO: The Honorable Members of the Delaware General Assembly

FROM: Terri Hancharick, Chairperson
GACEC

RE: **Senate Bill No. 162 (Possession and Purchase of Deadly Weapons)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed Senate Bill No. 162 relating to the possession and purchase of deadly weapons. The bill 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 life of the individual. House Bill No. 88, a similar, but more comprehensive bill was defeated in the Senate. Senate Bill No. 162 basically inserts a section (lines 9-19) of the defeated House Bill No. 88 into this separate legislation. Council **opposes** the proposed legislation and would like to share 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 the defeated House Bill No. 88 acknowledged 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. In fact, if the legislation bans possession of a "deadly weapon", it may prohibit a covered individual from carrying pepper spray in her purse for personal protection.

Third, the legislation creates an irregularity which may violate the federal Americans with Disabilities Act (ADA). Under existing law, adults convicted of non-felony crimes of violence automatically regain their right to purchase and possess deadly weapons after five years. See Title 11 Del.C. §1448(d). Furthermore, 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 severely than individuals actually determined guilty of the same offense. Adults and juveniles would not regain their right to possess deadly weapons after five 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 an inherent or fundamental predictor of their risk to society at age 25. Council queries whether it is reasonable to impose a lifetime ban based on conduct occurring as a child.

Thank you for your time and consideration of our position and observations. Please feel free to contact me or Wendy Strauss should you have questions or concerns.