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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS -- RELIEF FROM DISQUALIFIERS BOARD

Introduced By: Senators Nesselbush, Sosnowski, Cool Rumsey, Archambault, and Lombardi

Date Introduced: April 11, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 40.1 of the General Laws entitled "BEHAVIORAL HEALTHCARE,  
2 DEVELOPMENTAL DISABILITIES AND HOSPITALS" is hereby amended by adding thereto  
3 the following chapter:

4 CHAPTER 30

5 RELIEF FROM DISQUALIFIERS BOARD

6 **40.1-30-1. Legislative findings. --** It is found and declared as follows:

7 (1) Recent and well-publicized events, including the tragic shootings at Sandy Hook  
8 Elementary School in neighboring Connecticut, have called into question how we as a society  
9 deal with firearm violence, behavioral health, and public safety;

10 (2) Of particular concern is how the state of Rhode Island deals with the intersection of  
11 behavioral health and firearms safety;

12 (3) The Brady Handgun Violence Prevention Act of 1993 (Brady Act) requires Federal  
13 Firearms Licensees (FFLS) to use the National Instant Criminal Background Check System  
14 (NICS) to determine if a person is disqualified from receiving or possessing firearms to conduct a  
15 search of available records;

16 (4) The National Instant Criminal Background Check System (NICS) conducts records  
17 searches in three (3) databases: the National Crime Information Center (NCIC), which contains  
18 information on wanted persons and protection orders; the Interstate Identification Index (III),

1 which contains criminal history records; and the NICS Index, which contains the names of  
2 prohibited persons as defined in the Brady Act;

3 (5) The NICS Index consists of individuals who are determined to be prohibited from  
4 possessing a firearm when disqualifying information is not available through the NCIC or III  
5 systems;

6 (6) The NICS Improvement Act of 2007 (NIAA) amends the Brady Act and was enacted  
7 in the wake of the April 2007 shooting tragedy at Virginia Tech to address the gap in information  
8 available to the NICS about prohibiting mental health adjudications and commitments and other  
9 prohibiting backgrounds, which will better enable the system to operate as intended, to keep guns  
10 out of the hands of persons prohibited by state or federal law from receiving or possessing  
11 firearms.

12 (7) Pursuant to federal and state law the state of Rhode Island will contribute  
13 disqualifying information on individuals to the NICS Index, including information on persons  
14 with mental health adjudications or commitments or controlled substance abusers;

15 (8) The state of Rhode Island will review the records in the state records repositories and  
16 make improvements where needed to ensure that information is accurate so that individuals with  
17 disqualifying backgrounds are prohibited from receiving or possessing firearms.

18 (9) A condition for participation in federal grant programs to support records  
19 improvement is the creation and certification of a relief program under state law that permits a  
20 person adjudicated as prohibited from receiving or possessing a firearm imposed by 18 U.S.C.  
21 section 922 (d) (4) or g (4) to apply for relief.

22 **40.1-30-2. Relief board -- Appointment and terms of members. --** Within the  
23 department of behavioral healthcare, developmental disabilities and hospitals there shall be a  
24 relief board consisting of five (5) qualified electors of the state appointed by the governor, subject  
25 to the advice and consent of the senate, who shall serve for a term of three (3) years.

26 **40.1-30-3. Qualification of board members. --** The five (5) electors to be named by the  
27 governor shall have the following qualifications:

28 (1) Two (2) of the qualified electors one of whom shall be a psychiatrist and one of  
29 whom shall be a psychologist, both licensed to practice medicine in the state of Rhode Island, and  
30 one of which shall be either a forensic psychiatrist or forensic psychologist;

31 (2) One shall be an active member of law enforcement in the state of Rhode Island;

32 (3) One member shall be the director of the department of behavioral healthcare,  
33 developmental disabilities and hospitals, or his/her designee.

34 (4) One member shall be the mental health advocate or his or designee.

1           **40.1-30-4. Facilities and supplies for board.** -- The director of the behavioral  
2 healthcare, developmental disabilities and hospitals shall provide adequate quarters for the board  
3 for the purpose of holding meetings and hearings and shall provide space and facilities for the  
4 keeping of records for the board, together with the necessary equipment and supplies incident to  
5 the maintenance of the board.

6           **40.1-30-5. Petition for relief from disqualifiers.** -- (a) Any person having a state  
7 firearms disqualifier or a federal firearms disqualifier under 18 USC 922 (d) (4) or (g)(4), as a  
8 result of an adjudication or commitment rendered in this state may petition the relief board for  
9 relief from the firearms disqualifier that resulted from such adjudication or commitment.

10           (b) The petitioner shall submit to the relief board, together with the petition and the  
11 release required by subsection (c) of this section, information in support of the petition, including,  
12 but not limited to:

13           (1) Certified copies of medical records detailing the petitioner's psychiatric history where  
14 applicable, including records pertaining to the specific adjudication or commitment that is the  
15 subject of the petition;

16           (2) Certified copies of medical records from all of the petitioner's current treatment  
17 providers , if the petitioner is receiving treatment;

18           (3) A certified copy of all criminal history information maintained on file by the state  
19 bureau of criminal identification and the Federal Bureau of Investigation pertaining to the  
20 petitioner or a copy of the response from said bureaus indicating there is no criminal history  
21 information on file;

22           (4) Evidence of the petitioner's reputation, which may include notarized letters of  
23 reference from current and past employers, letters and other forms of personal attestation from  
24 family members or personal friends, affidavits from the petitioner or other character evidence;  
25 and

26           (5) Any further information or documents specifically requested by the board which  
27 documents shall be certified copies of original documents.

28           (6) Any other person determined by the board to have an interest in the matter may  
29 present any and all relevant information at the board hearing and in any appeal to the superior  
30 court.

31           (c) The petitioner shall provide for the release of all of the petitioner's records that may  
32 relate to the petition, including, but not limited to, health, mental health, military, immigration,  
33 juvenile court, mental health court, civil court and criminal records, on a form prescribed by the  
34 relief board. The releases shall authorize the director of behavioral healthcare, developmental

1 disabilities and hospitals, or his/her designee, to obtain any of such records for use at the relief  
2 board hearing or any appeal from the decision of the board. Releases of information for the  
3 purposes of this section are limited to the relief board, the director, or his/her designee, and any  
4 parties involved in the relief hearing as determined by the board. Except as expressly provided in  
5 this section, no such release shall constitute a waiver of the confidentiality protections of the  
6 petitioner under state and federal law and all parties to a relief hearing are bound by said  
7 confidentiality laws.

8 (d) The petitioner shall ensure that all required information accompanies the petition at  
9 the time it is submitted to the board. At the discretion of the board, information provided after  
10 receipt of the petition by the board may be considered. Information specifically requested by the  
11 board must be received by the board no later than fifteen (15) calendar days after the date of the  
12 request in order for the information to be considered. The board may extend such time period for  
13 good cause shown. Failure to provide the requested information within such time period may  
14 result in a denial of the petition.

15 (e) Upon the filing of the petition, the relief board shall set a date, time and place for a  
16 hearing within sixty (60) calendar days of receipt of the petition, and shall give notice of such  
17 hearing to:

18 (1) The petitioner;

19 (2) the court that rendered the adjudication or commitment;

20 (3) the conservator appointed for the petitioner, if any; and

21 (4) any other person determined by the board to have an interest in the matter.

22 (f) The board shall cause a recording of the testimony given at such hearing to be made.  
23 Such recording shall be transcribed only in the event of an appeal from the decision rendered by  
24 the board under this section. A copy of such transcript shall be furnished without charge to any  
25 appellant whom the board finds is unable to pay for such copy.

26 (g) The petitioner shall have the burden of establishing by clear and convincing evidence  
27 that:

28 (1) The petitioner is not likely to act in a manner that is dangerous to public safety; and

29 (2) Granting relief from the federal and state firearms disqualifier is not contrary to the  
30 public interest.

31 (h) In determining whether to grant relief under this section, the board shall consider the  
32 following:

33 (1) The circumstances regarding the firearms disqualifier imposed by state law, 18 USC  
34 922(d)(4) or 18 USC 922(g)(4);

1           (2) The petitioner's record, which shall include, at a minimum, the petitioner's mental  
2 health records and criminal history records, if any;

3           (3) The petitioner's reputation, which the petitioner must demonstrate through character  
4 witness statements, testimony or other character evidence; and

5           (4) Any other relevant information provided by the petitioner or any other person  
6 determined by the board to have an interest in the matter.

7           (i) The board shall grant relief under this section if it finds by clear and convincing  
8 evidence that:

9           (1) The petitioner will not be likely to act in a manner dangerous to public safety, and

10          (2) Granting the relief will not be contrary to the public interest.

11          (j) The board shall include in its decision the specific findings of fact on which it bases its  
12 decision.

13          (k) The petitioner may appeal the final decision of the relief board for the denial of relief  
14 to the superior court for review:

15          (1) Review must include the record of the relief board pertaining to the petitioner;

16          (2) Review may include additional evidence necessary to conduct an adequate review;

17          (3) Notwithstanding any provision of the general statutes, any review of the decision of  
18 the relief board by the superior court shall be de novo.

19          (l) As soon as practicable after receiving notice of the decision of the board granting  
20 relief, the director of behavioral healthcare, developmental disabilities and hospitals, or his/her  
21 designee, shall:

22          (1) Coordinate the removal or cancellation of the record in the National Instant Criminal  
23 Background Check System (NICS), and

24          (2) Notify the attorney general of the United States that the basis of the record no longer  
25 applies.

26          (m) All proceedings of the relief board under the provisions of this section shall be closed  
27 to the public and all records of the proceedings shall be confidential and not subject to disclosure  
28 except to the petitioner and/or his or her counsel, unless the relief board, after notice to the parties  
29 and a hearing, determines that such records should be disclosed for good cause shown.

30          **40.1-30-6. Rules and regulations.** -- The director of behavioral healthcare,  
31 developmental disabilities and hospitals shall promulgate rules and regulations governing the  
32 application and granting and denial of relief imposed under state law, 18 U.S.C. 922 (d)(4) or  
33 (g)(4).

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS -- RELIEF FROM DISQUALIFIERS BOARD

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- 1           This act would create the relief from disqualifier board which would hear petitions from
- 2 person seeking relief from a federal firearms disability.
- 3           This act would take effect upon passage.

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