

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

<p>JOHN DOE I, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>COLONEL TYREE V. BLOCKER, in his official capacity as Commissioner of the Pennsylvania State Police,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.: 2:16-cv-6039</p>
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JOINT STIPULATION OF FACTS NOT IN DISPUTE

Pursuant to the May 10, 2018, teleconference with the Court, counsel for Plaintiffs and Defendant have conferred and the parties stipulate that the following facts are not in dispute:

Section 302 Examination Procedures

1. Pennsylvania State Police (PSP) has no involvement in the procedures relating to the examination and commitment of individuals under 50 Pa. Stat. Sec. 7302 (Section 302) of the Mental Health Procedures Act (MHPA), codified at 50 Pa. Stat. Sec. 7101 *et seq.*, including notifications provided to those individuals at any time before or during commitment. PSP specifically does not provide any procedures or notices to these individuals.
2. For Section 302 committees, there are three post-deprivation procedures available to

lift the prohibitions placed by the Pennsylvania Uniform Firearms Act (PUFA), 18 Pa. Cons. Stat. Ann. Sec. 6105(c)(4), which disqualifies an individual subject to a Section 302 commitment from acquiring or possessing a firearm within the meaning of the statute: a Section 302 committee can (1) file a petition in the Court of Common Pleas seeking restoration of his or her rights pursuant to 18 Pa. Cons. Stat. Ann. Sec. 6105(f)(1); (2) petition the court to review the sufficiency of the evidence upon which the commitment was based pursuant to 18 Pa. Cons. Stat. Ann. Sec. 6111.1(g)(2); or (3) present a challenge to PSP contesting the accuracy of his or her mental health record under 18 Pa. Cons. Stat. Ann. Sec. 6111.1(e).

3. PSP does not have responsibility for, or control over, notifications provided to individuals examined under Section 302 of the MHPA. The Pennsylvania Department of Human Services develops mental health provider forms that provide certain notifications to individuals examined under Section 302. In some cases, individual counties have also developed their own additional forms.
4. PSP does not specifically provide notice, prior to or at the time of examination, to individuals examined under Section 302 of the MHPA that commitment under Section 302 will subject the individual to the terms of 18 Pa. Cons. Stat. Ann. Sec. 6105(c)(4).
5. PSP does not specifically provide notice, prior to or at the time of examination, to individuals examined under Section 302 of the MHPA that the fact of their Section 302 commitment will be reported to the Pennsylvania Instant Check System (PICS), which is the state firearms background check database maintained by PSP, or shared with the National Instant Criminal Background Check System (NICS), which is the

federal firearms background check database maintained by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

6. PSP is unaware of whether any state or county agency or employee notifies individuals prior to and at the time of examination under Section 302 that the fact of their Section 302 commitment will be reported to PICS or shared with NICS.
7. PSP does not specifically provide notice, prior to or at the time of the examination, to individuals examined under Section 302 of the MHPA that upon commitment they will be subject to the terms of the federal Gun Control Act, 18 U.S.C. § 922(g)(4).
8. PSP is unaware of whether any state or county agency or employee notifies individuals prior to and at the time of examination under Section 302 of the MHPA that upon commitment they will be subject to the terms of the federal Gun Control Act, 18 U.S.C. § 922(g)(4).

Time for Reporting

9. Under 50 Pa. Stat. Section 7109(d), judges of the courts of common pleas, mental health review officers, and county mental health administrators must notify PSP, on a form created by PSP—the Act 77 form—of individuals committed under Section 302, within seven days of the commitment. PSP also accepts notice of Section 302 commitments through an online portal and by telephone.
10. PSP does not systematically track whether it receives notice of Section 302 commitments within seven days of the examination as provided by 18 Pa. Cons. Stat. Ann. Sec. 6109. When PSP has become aware that a county is routinely failing to send notifications within the seven-day notification period, PSP has taken steps to communicate with the county mental health administrator to fix the issue.

11. Section 302 commitment notices sent to PSP are sent directly to PSP's Firearms Division's PICS Unit, which is responsible for maintaining PICS, for review.
12. The PICS Unit confirms that the Section 302 commitment notice contains the following required information: the individual's name, date of birth or social security number, physical description (gender, race, height, weight, hair color, and eye color), the date of commitment, the name of the notifying mental health treatment facility, agency, or county.
13. The name of the "Physician Certifying Necessity of Involuntary Commitment" is not required to create a mental health record in PICS, but if the information is provided and legible then, as a matter of policy, procedure, and practice, it should be entered.
14. If PSP receives a Section 302 commitment notification form and the certifying physician fills out the portion of the form designated "Notification of Physician's Determination That No Severe Mental Disability Exists," the PICS Unit does not create an entry in the mental health database, and confirms with the county mental health administrator that the this information is accurate.
15. As a matter of policy, procedure, and practice, PSP does not take any steps to confirm that the certifying physician is a licensed physician as required by the MHPA. PSP relies on the entity providing the notification to provide complete and accurate information, as required by 37 Pa. Code Sec. 33.120(b).
16. As a matter of policy, procedure, and practice, PSP does not take any steps to confirm that the certifying physician had evidence before him or her when determining that an individual should be subject to a Section 302 commitment.

PSP relies on the entity providing the notification to provide complete and accurate information, as required by 37 Pa. Code Sec. 33.120(b).

17. Once the PICS Unit verifies that the Section 302 commitment notice contains the required information, a mental health record is created in the PICS mental health database indicating that the individual was committed under Section 302.
18. If the Section 302 commitment notice does not contain all the information required to create a mental health record in the PICS mental health database, the PICS Unit will take steps to obtain the missing information.
19. If the PICS Unit is unable to obtain all of the information required to create a mental health record in the PICS mental health database for a Section 302 committee, a mental health record is not created.
20. The creation of a mental health record in the PICS mental health database typically occurs the same day that the PICS Unit receives the Section 302 commitment notice for review.
21. Once created in the PICS mental health database, PSP automatically transmits, in real time, the mental health record to NICS via Pennsylvania's CLEAN portal.
22. PSP is not required by any legal authority to report Section 302 commitments to NICS.
23. Beginning in 2013, ATF began accepting mental health records from PSP and PSP voluntarily began transmitting previously created and new mental health records to NICS, including mental health records for Section 302 committees.
24. PSP attempts to verify whether it has received notice of every Section 302

commitment that has occurred in Pennsylvania in a given month.

25. Twice a month, PSP distributes the Mental Health Acknowledgement Form to county mental health administrators covering all counties in Pennsylvania.
26. Using the Mental Health Acknowledgment Form, county mental health administrators are supposed to verify to PSP that all Section 302 commitments within their county have been reported.
27. As a matter of policy, procedure, and practice, PSP does not take any additional steps other than providing the Mental Health Acknowledgement Form to county mental health administrators to confirm that it has received all Section 302 commitment notices in a given month.
28. As a matter of policy, procedure, and practice, PSP treats all Section 302 commitment notices in the same manner, regardless of whether PSP received a particular notice in a timely fashion.
29. As a matter of policy, procedure, and practice, PSP treats all Section 302 commitment notices in the same manner, regardless of whether the Section 302 committee was a juvenile or an adult at the time of his or her Section 302 commitment.
30. As a matter of policy, procedure, and practice, PSP takes the view that an individual committed pursuant to Section 302 becomes subject to prohibitions of 18 Pa. Cons. Stat. Ann. Sec. 6105(c)(4) by virtue of the commitment itself regardless of whether the Section 302 commitment is ever entered into the PICS mental health database.
31. As a matter of policy, procedure, and practice, PSP takes the view that the creation of

a mental health record in the PICS mental health database facilitates enforcement of 18 Pa. Cons. Stat. Ann. Sec. 6105(c)(4).

Subsequent Criminal Acts

32. As a matter of policy, procedure, and practice, PSP does not specifically monitor crimes, crime rates, or bad acts committed by persons examined under Section 302 or subject to Section 302 commitment.

Sixty-Day Transfer Period

33. As a matter of policy, procedure, and practice, PSP does not notify individuals subject to Section 302 commitment that, pursuant to 18 Pa. Cons. Stat. Ann. Sec. 1605(a)(2)(i), they have sixty days to sell or transfer their firearm(s).
34. PSP is unaware of whether any state agency or employee notifies individuals subject to Section 302 commitment that they are required, pursuant to 18 Pa. Cons. Stat. Ann. Sec. 1605(a)(2)(i), to sell or transfer their firearms within sixty days.
35. As a matter of policy, procedure, and practice, PSP does not confirm that every person subject to Section 302 commitment has sold or transferred his or her firearm(s) within the legally required sixty-day period described in 18 Pa. Cons. Stat. Ann. Sec. 6105(a)(2)(i).
36. As a matter of policy, procedure, and practice, PSP does not refer or coordinate with federal or local law enforcement agencies to ensure that every person subject to a Section 302 commitment sells or transfers his or her firearm(s) within the legally required sixty-day period described in 18 Pa. Cons. Stat. Ann. Sec. 6105(a)(2)(i).
As a matter of policy, procedure, and practice, if PSP discovers that a person who

has been subjected to a Section 302 commitment is in possession of a firearm, PSP will confiscate that firearm and refer that individual to PSP's criminal investigation division for prosecution for violating 18 Pa. Cons. Stat. Ann. Sec. 6105(c)(4).

Subsequent Law Enforcement Action

37. As a matter of policy, procedure, and practice, PSP takes no special action to target for investigation, surveil, or otherwise track the firearms-related activities of individuals who have been committed under Section 302.
38. As a matter of policy, procedure, and practice, PSP refers for investigation and criminal prosecution all Section 302 committees who attempt to purchase a firearm and are denied through the PICS background check.
39. As a matter of policy, procedure, and practice, PSP refers every violation of 18 Pa. Cons. Stat. Ann. Sec. 6105(c)(4) that comes to PSP's attention to PSP's criminal investigation division for criminal prosecution.
40. As a matter of policy, practice, and procedure, PSP does not have any involvement in the issuance of hunting licenses, which are handled by the Pennsylvania Game Commission. PUFA does not prevent individuals prohibited from possessing firearms pursuant to 18 Pa. Cons. Stat. Ann. Sec. 6105(c)(4) from obtaining a hunting license, since there are many of forms of hunting that do not require the use of a firearm as it is defined in PUFA. As such, as a matter of policy, practice, and procedure, PSP does not coordinate with the Pennsylvania Game Commission to confirm that an individual granted a hunting license is not subject to 18 Pa. Cons. Stat. Ann. Sec. 6105(c)(4) due to a Section 302 commitment.

/s/ John Parker Sweeney

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CERTIFICATE OF SERVICE

I hereby certify that on this August 7, 2018, the foregoing Joint Stipulation of Facts Not in Dispute was filed with the United States District Court for the Eastern District of Pennsylvania, via CM/ECF system, which will forward copies to Counsel of Record.

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