

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 211 (Delegate Vitale, *et al.*)
 Judiciary

Public Safety - Handgun Permits - Qualifications

This bill establishes a 45-day timeframe within which the Secretary of State Police must issue a handgun permit to an applicant, replacing the existing “reasonable time” standard. The bill also (1) expands the circumstances under which a handgun permit must be issued; (2) modifies a prohibition against possessing a regulated firearm due to suffering from a mental disorder; and (3) repeals the requirement that an applicant have a “good and substantial reason” to wear, carry, or transport a handgun before the Secretary may issue a handgun permit to the person.

Fiscal Summary

State Effect: General fund revenues increase by \$7.5 million in FY 2014 from the issuance of additional handgun permits and the payment of associated fees. General fund expenditures for the Department of State Police (DSP) increase by \$10.4 million in FY 2014 to hire staff to expedite permit review. Future years reflect annualization, inflation, automobile replacement in FY 2017, and the licensure issuance and renewal cycle. Future years also reflect a decrease in new permit applications and renewals over time.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	\$7,500,000	\$6,375,000	\$9,918,800	\$8,656,000	\$6,525,100
GF Expenditure	\$10,437,200	\$8,300,700	\$9,172,700	\$8,545,600	\$8,055,000
Net Effect	(\$2,937,200)	(\$1,925,700)	\$746,100	\$110,400	(\$1,529,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful. It is assumed that the bill leads to an increase in the number of handguns sold in the State. Thus, retailers of handguns and ammunition benefit. Also, any small businesses engaged in providing training services to the private sector likely benefit from an increase in the demand for their services.

Analysis

Bill Summary: The bill establishes 45 days as the timeframe within which the Secretary of State Police must issue a handgun permit to an applicant, instead of within a “reasonable time.” The bill also expands the circumstances under which a handgun permit must be issued by including that the person (1) is not prohibited from possessing a regulated firearm; (2) is not an illegal alien; (3) has not been dishonorably discharged from the U.S. Armed Forces; (4) does not have a pending criminal charge for which an imprisonment sentence of more than one year may be imposed; and (5) has, unless exempted, completed a certified firearms safety training course that meets the standards set by the Police Training Commission and a field training course or test at the person’s expense.

The bill modifies a prohibition against possessing a regulated firearm due to suffering from a mental disorder by requiring that the disorder substantially impair the mental and emotional functioning of the person, as specified. Reference to the disqualification being based on a history of violent behavior against the person or another is eliminated.

The bill repeals one current law finding that must be made by the Secretary of State Police for the issuance of a handgun permit, *i.e.*, that the applicant has a good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.

Current Law: Generally, the State regulates firearms and crimes related to firearms under Title 5 of the Public Safety Article and Title 4 of the Criminal Law Article, respectively. The State preempts the right of any local jurisdiction to regulate the sale of firearms. The primary enforcement of the State’s firearms laws and any licensing requirements are handled by DSP and its Licensing Division.

A person may not possess a regulated firearm if the person was convicted of a crime of violence or a violation of specified controlled dangerous substances offenses. A violator is guilty of a felony and subject to a nonsuspendable, nonparolable mandatory minimum sentence of five years. Each violation of this prohibition is a separate offense. Chapter 164 of 2011 (SB 174) similarly prohibits the possession of a rifle or a shotgun if a person was previously convicted of a crime of violence or drug-related felony. A violator is guilty of a felony and subject to a maximum sentence of 15 years. Each violation must be considered a separate offense.

Other disqualifying criteria for possession of a regulated firearm, or a rifle or shotgun, include (1) suffering from a mental disorder as defined in § 10-101(f)(2) of the Health-General Article and having a history of violent behavior against the person or another, unless the person has a physician’s certificate that the person is capable of

possessing a regulated firearm without undue danger to the person or to another or (2) confinement for more than 30 consecutive days to a mental health “facility,” as defined in the Health-General Article, unless the person has a physician’s certificate that the person is capable of possessing such a weapon without undue danger to the person or to another.

Among other requirements that apply to an applicant to purchase, rent, or receive a regulated firearm, the individual must have completed a certified firearms safety training course that the Police Training Commission conducts without charge or that meets the standards of the Police Training Commission. An individual is not required to complete a certified firearms training course if such a training course has already been completed or if the individual:

- has already completed a certified firearms safety training course;
- is a law enforcement officer of the State or any local law enforcement agency in the State;
- is a member, retired member, or honorably discharged member of the U.S. Armed Forces or the National Guard;
- is a member of an organization that is required by federal law governing its specific business or activity to maintain handguns and applicable ammunition; or
- holds a permit to carry a handgun.

To be issued a permit to carry a handgun by DSP, an applicant (1) must be 18 or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) if younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or a misdemeanor that carries a statutory penalty of more than two years; (4) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (5) must not exhibit a propensity for violence or instability that may reasonably render possession of a handgun a danger to the applicant or another; and (6) must have a good and substantial reason to wear, carry, or transport a handgun. “Good and substantial reason” includes a finding by DSP that the permit is necessary as a reasonable precaution against apprehended danger.

A handgun permit application costs \$75; two years after the initial permit and every three years thereafter, a \$50 renewal fee is due. In addition, the applicant must pay for fingerprint-based federal and State criminal history background checks for initial applications (\$52) and renewals (\$24).

Although Maryland law requires a person to be issued a permit to wear, carry, or transport a handgun, whether concealed or not, there are several exceptions to that requirement. For example, two of the exceptions include authorizing a person to wear, carry, or transport a handgun, provided that the handgun is unloaded and in an enclosed case or enclosed holster when being transported, if the person is (1) transporting the handgun to or from a legal place of sale or a repair shop or between the person's home or business or (2) wearing, carrying, or transporting the handgun in connection with an organized military activity, target practice, sport shooting event, hunting, or trapping. Further, a person may wear, carry, or transport a handgun if the person is in the person's home, place of business, or other property that the person owns or is a supervisory employee who is wearing, carrying, or transporting the handgun under specified circumstances.

Background:

Good and Substantial Reason

In *Woollard v. Gallagher* (No. 12-1437), the U.S. Court of Appeals for the Fourth Circuit is considering the constitutionality of Maryland's "good and substantial reason" handgun permit requirement.

On Christmas Eve 2002, Raymond Woollard's son-in-law, Kris Lee Abbott, broke into Mr. Woollard's home. During the incident, Mr. Woollard grabbed his shotgun and aimed it at Mr. Abbott, who was under the influence of drugs and attempting to steal a set of car keys. Subsequent to a struggle in which Mr. Abbott took the shotgun from Mr. Woollard, Mr. Woollard's son retrieved a different gun and pointed it toward Mr. Abbott while Mrs. Woollard called the police. Two and a half hours later, the police responded to Mr. Woollard's home, which was located in a remote part of Baltimore County.

In 2003, Mr. Woollard applied for and was issued a permit to carry a handgun for personal protection. Mr. Woollard renewed his permit in 2006, shortly after Mr. Abbott was released from prison. When Mr. Woollard sought to renew his permit again in 2009, however, the Handgun Permit Unit of DSP denied his renewal application because Mr. Woollard could not produce any current evidence of "apprehended fear." Mr. Woollard first appealed the decision informally and then appealed formally to the Handgun Permit Review Board. Ultimately, the board concluded that Mr. Woollard did not produce any evidence of threats occurring outside of his home and thus did not have a "good and substantial reason" to wear, carry, or transport a handgun.

On July 29, 2010, Mr. Woollard filed a civil action in the U.S. District Court for the District of Maryland against the Secretary of State Police and three members of the Handgun Permit Review Board in their official capacity. The complaint alleged that

Maryland's handgun permitting law violates the Second Amendment and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. After both sides presented oral arguments and filed motions for summary judgment, on March 2, 2012, the court issued an opinion that Maryland's "good and substantial reason" requirement infringes on an individual's right to bear arms under the Second Amendment. In the court's analysis, the "good and substantial reason" requirement was not sufficiently tailored to Maryland's interest in public safety and crime prevention and, therefore, violates the Second Amendment. The court, however, rejected Mr. Woollard's Equal Protection claim, finding that the Second Amendment provided the proper framework for analysis. After the District Court issued its opinion, the defendants filed an appeal in the U.S. Court of Appeals for the Fourth Circuit seeking to overturn the finding that Maryland's handgun permitting law violates the Second Amendment. On August 2, 2012, the Fourth Circuit granted Maryland's motion for a stay pending the outcome of the appeal. As a result, Maryland may continue its current handgun permitting practices while the appeal is pending. Oral arguments for the appeal were heard on October 24, 2012.

Handgun Permits and Concealed Carry Permits in Other States

There are about 14,000 active handgun permits in Maryland. Since 2009, DSP has received an average of about 1,800 initial and 2,100 renewal nonpolice-related applications per year, including renewal applications from retired law enforcement personnel. It generally takes DSP less than two days to receive the results of a national criminal history records check from the Federal Bureau of Investigation and approximately 135 days to process, investigate, and issue a permit. DSP has denied an average of 214 nonpolice-related applications each year between 2008 and 2010, or 5.6% of applications, on the basis of a finding that the person did not have a "good and substantial reason" for the permit.

Nationally, states' laws and requirements governing carry and concealed carry permits vary. According to a July 2012 report by the U.S. Government Accountability Office (<http://www.gao.gov/assets/600/592552.pdf>):

The number of states allowing concealed carry permits is increasing, and states broadly differ in eligibility requirements and the extent to which they have reciprocity agreements. In June 2002, 7 states and the District of Columbia prohibited the concealed carry of handguns. As of March 2012, individuals can carry concealed handguns in all but 1 state (Illinois) and the District of Columbia. "Shall-issue" states – in which issuing authorities are required to issue a permit to an applicant that fulfills the objective statutory criteria – generally issue more permits than states with greater discretion in granting permits ("may-issue" states). Because of differing eligibility requirements, some states would issue a permit to

an applicant, while others would not. For example, some states define what constitutes a disqualifying felony differently or have different firearms training requirements. As of March 2012, 39 states that issue permits and Vermont (permits not required) recognize concealed carry permits from other states. Of the 9 states that do not grant reciprocity, 8 are may-issue states.

Until 2011, Wisconsin did not issue carry permits. On November 1, 2011, Wisconsin became a shall-issue state and 65,921 permit applications were received in the first two months. For calendar 2012, the first full year of operation, Wisconsin received an additional 98,867 applications. By population, Maryland and Wisconsin are similar.

State Revenues: The Department of Legislative Services (DLS) estimates that this bill increases new handgun permit applications by about 100,000 in fiscal 2014 (even accounting for the bill’s October 1, 2013 effective date), and also imposes an operational burden on DSP to meet the 45-day deadline for the issuance of handgun permits. The bill also specifies five additional qualifiers for the issuance of a permit. According to DSP, it now takes about 135 days to process, investigate, and issue a permit.

Accordingly, assuming an increase of about 100,000 permit applications per year beginning in fiscal 2014, general fund revenues from handgun permit fees increase by an estimated \$7.5 million in fiscal 2014. By fiscal 2018, the increase in general fund revenues decreases to \$3.9 million; this estimate assumes that, over time, initial handgun permit applications decline by 15% per year and that 10% of permit holders choose not to renew annually. **Exhibit 1** shows the estimated increase in general fund revenues from additional handgun permit fees through fiscal 2018.

Exhibit 1
Estimated Handgun Permit Fee Revenue under the Bill

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
New Apps.	100,000	85,000	72,250	61,413	52,201
Fee Revenue	\$7,500,000	\$6,375,000	\$5,418,750	\$4,605,975	\$3,915,075
Renewals	-	-	90,000	81,000	72,900
Fee Revenue	-	-	4,500,000	\$4,050,000	\$2,610,050
Total Revenue	\$7,500,000	\$6,375,000	\$9,918,750	\$8,655,975	\$6,525,125

Source: Department of Legislative Services

State Expenditures: General fund expenditures for DSP increase by an estimated \$10.4 million in fiscal 2014, which accounts for the bill’s October 1, 2013 effective date. This estimate is primarily based on the need to expedite all permit issuances to occur within a 45-day window, rather than the estimated current 135-day (“reasonable time”) issuance period. It reflects the cost to hire 14 full-time troopers, 24 office services clerks, and 100 contractual background check investigators to process and issue the additional handgun permit applications, review and issue renewal permits, and prepare information relating to hearings. It includes salaries and fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions (Permanent)	38
Positions (Contractual)	100
Salaries and Fringe Benefits (Permanent)	\$2,101,399
Salaries and Fringe Benefits (Contractual)	2,794,331
Overtime Costs	3,530,203
Motor Vehicle Purchases and Operations	973,182
Additional Police and Civilian Equipment	742,506
Other Operating Expenses	<u>295,541</u>
Total FY 2014 DSP Expenditures	\$10,437,162

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and automobile replacement costs in fiscal 2017. Considerable trooper and civilian overtime costs are due to the Licensing Division – Firearms Section being currently understaffed.

DLS assumes that the bill’s new qualifiers for a handgun permit could reasonably be handled expeditiously by DSP through the fingerprint-based Criminal Justice Information System, National Instant Criminal Background Check System, and data derived from a report of arrest sheet for an individual, which contains a chronological history of an individual’s arrests, convictions, and sentences.

It is also assumed that verification that an applicant is not an illegal alien is handled in a manner similar to the Motor Vehicle Administration’s methods under requirements of the federal Real ID Act and State law. This means that all handgun permit applicants would be required to establish their lawful presence in the United States by producing one of the following identity documents: a valid U.S. passport; a certified copy of a birth certificate; a Consular Report of Birth Abroad issued by the U.S. Department of State; a Permanent Resident Card issued by the Department of Homeland Security (DHS); an employment authorization document issued by DHS; a foreign passport with a valid U.S. visa affixed; a Certificate of Naturalization; a Certificate of Citizenship issued by DHS; or such other documents as DHS may designate.

A similar approach could be used to establish military discharge status by requiring the handgun applicant to include discharge papers, if applicable, with an application.

The Police Training Commission advises that completion of a certified firearms safety training course is already required for a person to purchase a handgun. However, in circumstances where the handgun permit applicant is not the purchaser of the weapon – such as when the purchaser is an employer of the applicant and the handgun is necessary for the job – the permit applicant may not have completed such a course. The commission assumes that most handgun permit applicants will have already completed a sufficient training course, so that the commission can meet the bill’s training requirement with existing budgeted resources.

Additional Comments: While the bill’s changes to the current law bar against possessing a regulated firearm due to a mental disorder might reasonably be expected to allow some additional persons to possess firearms, such an impact cannot be reliably quantified, though it is likely small.

Additional Information

Prior Introductions: A similar bill, HB 1135 of 2012, received a hearing by the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Office of the Attorney General, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, U.S. Government Accounting Office, Department of Legislative Services

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