

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1480
Judiciary

(Delegate Lam, *et al.*)

Background Check Accountability Act of 2016

This bill alters the timing of existing reporting requirements by the court and mental health care facilities, regarding specified individuals, to the Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS Index). The Department of Health and Mental Hygiene (DHMH) must electronically enter into the NICS Index information on specified individuals admitted/committed to mental health facilities by January 1, 2017.

In addition, the bill establishes procedures for the return of a privately owned firearm to an individual by a law enforcement agency and establishes notification requirements for a person who has been granted a non ex parte peace order or protective order against the legal owner of the firearm to request notification when the firearm is returned.

Fiscal Summary

State Effect: Although the bill may result in operational impacts for the Judiciary and some State agencies with law enforcement units, the bill is not anticipated to significantly affect State finances. DHMH can implement the bill with existing resources.

Local Effect: Although the bill may result in operational impacts for some local law enforcement agencies, the bill is not anticipated to significantly affect local finances.

Small Business Effect: None.

Analysis

Bill Summary:

Reporting and Data Entry Requirements

The bill establishes requirements regarding the timing of existing reporting to the NICS Index on individuals (1) determined by a court to be not criminally responsible, incompetent to stand trial, or in need of protection of a guardian for reasons other than solely a physical disability or (2) who have been admitted to a mental health facility for 30 consecutive days or more or have been involuntarily committed to a facility for any period of time. The court making the determination or finding or the facility to which a person was admitted or committed must report the information as soon as practicable, but no later than the close of business on the business day following receipt of the information.

By July 1, 2017, DHMH must electronically enter into the NICS Index information on individuals admitted to a public mental health facility for 30 consecutive days or more, and individuals involuntarily committed to a public mental health facility for any period of time, during the period from January 1, 1996 to January 1, 2016, if the information has not already been entered into the system. The Governor or the Secretary of Health and Mental Hygiene may extend the time for completion of the data entry for up to 60 days for good cause shown.

Procedures for Return of Firearms

Each law enforcement agency must develop a notification protocol that allows a person who has been granted a current, non ex parte peace order or protective order by a court against a legal owner of a firearm to use an incident number or case number to request to be notified when a law enforcement agency returns a privately owned firearm to the legal owner of the firearm or an authorized representative of that individual. If notification is requested, a law enforcement agency must provide notice to the person if the law enforcement agency intends to return the firearm and hold the firearm in custody for 72 hours after notification has been provided. Notification may be made by telephone, email, text message, or another method that allows notification to be provided without unnecessary delay. If a law enforcement agency is in possession of multiple privately owned firearms of a single individual, notification regarding the return of one firearm is considered notification for all of the firearms.

Information provided by the person requesting notice, including the existence of the request, is not subject to disclosure under the Maryland Public Information Act. A State or local official, employee, or agent is immune from civil liability for damages for any

release of information or failure to release information relating to the notification process, unless the release or failure to release was with gross negligence.

In addition to ensuring that the requirements relating to the notification process are met, before a law enforcement agency returns a privately owned firearm to an individual, it must:

- confirm that the individual to whom the firearm will be returned is the legal owner of the firearm or an authorized representative of that individual;
- confirm that the legal owner or the authorized representative is eligible to possess a firearm under State and federal law;
- ensure that the firearm is not required to be held in custody or otherwise prohibited from being released; and
- ensure that at least 24 hours have elapsed from the time the firearm was obtained by law enforcement.

Once those requirements are met, the firearm must be released to the legal owner or the authorized representative of that individual on request without unnecessary delay. If a firearm cannot be returned because it is required to be held in custody, written notice must be provided to the legal owner within five business days of the individual requesting return of the firearm specifying the reason it is being held in custody. Notification may be made by email, text message, mail service, or personal service.

With the exception of confirming that the individual to whom the firearm will be returned is the legal owner of the firearm or an authorized representative of that individual, the above requirements, including the notification process, do not apply to circumstances in which a law enforcement officer (1) has momentarily obtained a firearm from an individual and would otherwise immediately return the firearm to the individual during the same interaction or (2) believes that a firearm was seized or held in error.

Current Law/Background:

Firearm Possession and Reporting to NICS

A person may not possess a regulated firearm, a rifle, or a shotgun if the person:

- has been convicted of a disqualifying crime;
- has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than two years;
- is a fugitive from justice;
- is a habitual drunkard;

- is addicted to a controlled dangerous substance or is a habitual user;
- suffers from a mental disorder and has a history of violent behavior against the person or another;
- has been found incompetent to stand trial;
- has been found not criminally responsible;
- has been voluntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders;
- has been involuntarily committed to a facility that provides treatment or other services for mental disorders;
- is under the protection of a guardian of the person or property of a disabled person appointed by a court, except for cases in which the appointment of a guardian is solely a result of a physical disability;
- is a respondent against whom a current non ex parte civil protective order has been entered in this State or an order for protection has been issued by a court of another state or a Native American tribe and is in effect; or
- if younger than age 30 at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

A person may seek relief from mental health related disqualifications by application to DHMH and by generally showing that the person is not likely to act in a manner dangerous to the applicant or public safety and possession of a firearm by the person is not contrary to the public interest.

The court or a mental health facility is required to report to the NICS Index information on individuals (1) determined by a court to be not criminally responsible, incompetent to stand trial, or in need of protection of a guardian for reasons other than solely a physical disability or (2) who have been admitted to a mental health facility for 30 consecutive days or more or have been involuntarily committed to a facility. The information that must be reported is (1) the name and identifying information of the person; (2) the date of the determination or finding or of when admitted or committed to a facility; and (3) the name of the facility to which a person was admitted or committed. Under current law, the court must report that information *promptly*.

The NICS Index was established under the federal Brady Handgun Violence Prevention Act of 1993 and is a national system that checks available records on persons who may be disqualified from receiving firearms under federal or state law.

Peace Orders and Protective Orders

Under the Courts and Judicial Proceedings Article of the Annotated Code, an individual (petitioner) may seek a peace order against another individual (respondent) for any of various specified alleged acts against the person seeking the peace order. Interim and temporary peace orders, which are effective for relatively limited duration, may be issued by a commissioner and court, respectively, whether or not the respondent has had an opportunity to be heard. Peace orders may restrict a respondent from committing or threatening to commit specified acts against the petitioner, from specified contact with the petitioner, and/or from being in specified proximity to the petitioner, with violations subject to criminal penalties. A respondent must have an opportunity to be heard before a final peace order is issued. A similar process is established under domestic violence provisions of the Family Law Article for a petitioner to seek relief from abuse through a protective order.

Generally, a final peace order or protective order requires the respondent to surrender to law enforcement authorities any firearm in the respondent's possession and to refrain from possession of any firearm for the duration of the protective order.

Access to Public Records

Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any Public Information Act Manual published by OAG.

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time.

A custodian has to deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, specified information about an individual maintained by a library, retirement records, certain police records, criminal charging documents, arrest warrants, personnel records, certain hospital and school records, records of certain State agencies, certain recorded and surveillance images, and captured plate data collected by

automatic license plate reader systems. Denial of inspection is required for information in a public record relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Dorchester, Garrett, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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