

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1424

(Delegate Atterbeary, *et al.*)

Judiciary

Criminal Procedure - Firearms - Transfer

This bill requires a court to inform a person “convicted of a disqualifying crime,” either verbally or in writing, that the person is prohibited from possessing regulated firearms, rifles, and shotguns. The court must advise the person that proof must be provided to the Department of Public Safety and Correctional Services (DPSCS) that all firearms owned by the person or in the person’s possession that violate the bill’s prohibitions have been transferred from the person’s possession. Such a transfer must be made within two days after the conviction of a disqualifying crime to a State or local law enforcement official or to a federally licensed firearms dealer. The bill establishes procedures and requirements related to transfers and the disposal of transferred firearms. In addition, the bill establishes specified exceptions to the prohibitions against the possession of a regulated firearm by a person who is otherwise prohibited from possessing a regulated firearm because the person has been convicted of a disqualifying crime.

Fiscal Summary

State Effect: General fund expenditures increase by \$4.9 million in FY 2018, which includes costs for (1) DPSCS to track and investigate compliance and (2) the Judiciary to reprogram its computer system. Future year expenditures reflect annualization. Potential increase in general fund expenditures for the Department of State Police (DSP); any such increase is not reflected below in the table. The bill is not expected to have a significant impact on other State law enforcement agencies.

(\$ in millions)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	4.9	5.9	6.1	6.4	6.7
Net Effect	(\$4.9)	(\$5.9)	(\$6.1)	(\$6.4)	(\$6.7)

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

Local Effect: While some local law enforcement agencies can implement the bill with existing resources, others may incur potentially significant additional costs. The bill may also have operational impacts on the circuit courts. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful. Firearms dealers in the State must develop procedures and mechanisms for accepting transferred firearms.

Analysis

Bill Summary: A person prohibited from possessing a firearm may designate a representative to transfer a firearm to a State or local law enforcement official or to a federally licensed firearms dealer.

A law enforcement official or firearms dealer accepting a transferred firearm must issue a written notice of completed transaction or other proof of transfer to the person transferring the firearm. A written notice of completed transaction or proof of transfer must include (1) the name of the person transferring the firearm; (2) the date the firearm was transferred; and (3) the serial number, make, and model of the firearm. For a firearm manufactured before 1968, identifying marks may be substituted for the serial number.

Within five business days of being advised of the requirement to transfer possession of a firearm, a person must:

- file a copy of a written notice of completed transaction or proof of transfer with DPSCS and attest that all firearms owned by the person or in the person's possession have been transferred and that the person does not own or possess any other firearms; or
- attest to DPSCS that the person does not own or possess a firearm and did not own or possess a firearm at the time of the order.

If a person transfers a firearm to a law enforcement agency pursuant to the bill, the agency may dispose of the firearm.

The bill establishes an exception to the prohibition against the possession of a regulated firearm by a person who has been convicted of a disqualifying crime, or by that person's representative, if:

- the firearm is unloaded;
- it is within two days after the conviction of a disqualifying crime;
- the person, or the person’s representative, has notified law enforcement that the firearm is being transported to a State or local law enforcement official or to a federally licensed firearms dealer for the purposes of transferring the firearm to the official or dealer; and
- the person, or the person’s representative, transports the firearm directly to the law enforcement official or firearms dealer.

Similar exceptions are provided for the possession of a rifle or shotgun for surrender to a law enforcement official or firearms dealer.

Current Law: A “disqualifying crime” means a crime of violence, felony, or a misdemeanor that carries a statutory penalty of more than two years. “Convicted of a disqualifying crime” includes a case in which a person received probation before judgment for a crime of violence and a case in which a person received probation before judgment in a domestically related crime. “Convicted of a disqualifying crime” does not include a case in which a person received a probation before judgment for second-degree assault or a crime which was expunged under Title 10, Subtitle 1 of the Criminal Procedure Article.

State law provides an exception to the prohibition against wearing, carrying, or transporting a handgun by a person who is carrying a court order to surrender the weapon if the handgun is unloaded, the person has notified law enforcement that the handgun is being transported in accordance with the court order, and the person transports the handgun directly to the law enforcement unit. A similar exception is provided for the transportation of a rifle or shotgun for surrender to a law enforcement unit.

State Expenditures:

Department of Public Safety and Correctional Services

General fund expenditures increase by \$4,759,641 in fiscal 2018 for DPSCS, which accounts for the bill’s October 1, 2017 effective date. This estimate reflects the cost of hiring 75 parole and probation agents, 10 field supervisors, and 10 office secretaries to investigate and track compliance and the filings of written notice of completed transactions, proof of transfers, and related affidavits. It includes salaries, fringe benefits, one-time start-up costs (including updating the department’s offender case management system to track and manage data and filings), and ongoing operating expenses. In order to implement the bill’s provisions, DPSCS advises that 123 additional staff are necessary. However, given that some individuals will provide written notice of a completed transaction or proof

of transfer, the Department of Legislative Services assumes that the bill's requirements can likely be implemented with 95 additional staff.

Positions	95
Salaries and Fringe Benefits	\$4,249,310
Computer programming	25,000
Operating Expenses	<u>485,331</u>
Total FY 2018 State Expenditures	\$4,759,641

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

The bill is unclear as to whether or not the bill's requirements are imposed as a condition of probation by the court. For the purpose of this analysis, it is assumed that the intent of the bill is that the filings of written notice of completed transactions, proof of transfers, and related affidavits are required to be presented to DPSCS as a condition of probation. If the requirements are not imposed as a condition of probation, DPSCS has no authority on which to enforce compliance. DPSCS is not a law enforcement agency; thus, DPSCS is not able to enforce criminal laws, investigate a person for possible violations of the law, or bring criminal charges against a person for a violation of the law. DPSCS may only enforce compliance with the general and special conditions of supervision that are imposed by the court as a condition of probation or imposed by the Maryland Parole Commission as a condition of release on parole or mandatory release supervision. A person who has been convicted of a disqualifying crime and continues to possess a firearm would have to be prosecuted by the State for the illegal possession of the firearm separately from the disqualifying crime for which the person was convicted.

According to DPSCS, in fiscal 2016, approximately 16,500 individuals were convicted of a disqualifying crime. While some individuals were sentenced to terms of incarceration to commence immediately on sentencing, others were sentenced to unsupervised probation and not under the jurisdiction of DPSCS. However, under the bill, all 16,500 individuals are required to provide DPSCS with proof of transfer or notice of completed transfer within five business days of having been advised of the requirement. Therefore, in order to ensure that all individuals convicted of a disqualifying crime are accounted for, DPSCS likely requires weekly data from the Judiciary identifying individuals who have been convicted of a disqualifying crime.

Because the bill requires that proof or completed notices are filed within five business days, this analysis assumes that most individuals convicted of a disqualifying crime likely file a written attestation to deny possession or ownership in order to satisfy the instruction by the court. For this reason, it is assumed that DPSCS needs to investigate many of the attestations for validity. As a result, DPSCS must (1) enhance its offender case

management system to track and manage the conviction data, personal data, and mandated filings and (2) hire staff to conduct investigations, as noted above.

Department of State Police

DPSCS advises that it plans to involve DSP to check certain databases to confirm if a person is listed as having a firearm in an effort to confirm the attestation. To the extent that is the case, and depending on the number of inquiries DPSCS makes each year, general fund expenditures may increase for DSP to hire staff to handle the additional workload. DSP can implement the other provisions of the bill with existing budgeted resources.

Judiciary

Under the bill, the courts are responsible for informing a person that he/she is prohibited from possessing a firearm and advising the person of the requirement to provide proof to DPSCS. Although not required by the bill, the Judiciary advises that information needs to be shared with DPSCS regarding persons to which the bill's requirements apply. In order to provide such information, general fund expenditures increase by \$129,690 in fiscal 2018 only for the Judiciary to reprogram its computer system to track compliance. This estimate assumes that the bill requires approximately 1,524 computer programming hours.

Other Law Enforcement Agencies

It is assumed that other State law enforcement agencies can implement the bill with existing budgeted resources.

Local Expenditures: While the police departments of Charles and Montgomery counties indicate that the bill's requirements can be met with existing resources, the cities of Frederick and Havre de Grace and the Montgomery County Sheriff's Department indicate that the bill may result in a significant increase in expenditures to collect, store, and dispose of firearms transferred to local law enforcement agencies under the bill.

The Judiciary advises that the bill likely results in operational impacts on the circuit courts to provide the required information to a person convicted of a disqualifying crime.

Additional Information

Prior Introductions: HB 1001 of 2016 passed the House with amendments and passed third reading with amendments in the Senate, but no further action was taken.

Cross File: Although SB 727 (Senator Smith, *et al.* - Judicial Proceedings) is designated as a cross file, it is not identical.

Information Source(s): Charles and Montgomery counties; cities of Frederick and Havre de Grace; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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mm/lgc

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