

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 1646
 Judiciary

(Delegate Atterbeary, *et al.*)

Judicial Proceedings

Criminal Procedure - Firearms - Transfer

This bill requires the State’s Attorney, before trial or acceptance of a guilty plea or equivalent, to provide written notice to the defendant, the defendant’s counsel, and the court, when a defendant has been charged with a disqualifying crime that is a domestically related crime, as specified, that (1) the defendant has been charged with a disqualifying crime and (2) under State law, it is illegal for a person who has been convicted of a disqualifying crime to possess or own a regulated firearm, rifle, or shotgun. At the time of sentencing for a conviction, plea of guilty, or the equivalent of a plea of guilty to such a crime, the court must inform the defendant that the person is prohibited from possessing a regulated firearm, rifle, or shotgun. In addition, the court must order the defendant to (1) attest to the court that the person does not presently own or possess any regulated firearms, rifles, or shotguns or (2) transfer all regulated firearms, rifles, and shotguns owned by the defendant or in his/her possession. The defendant must provide proof of the transfer to the court.

Fiscal Summary

State Effect: General fund expenditures increase by \$110,100 in FY 2019 only. The bill may also have operational impacts on the District Court. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	110,100	0	0	0	0
Net Effect	(\$110,100)	\$0	\$0	\$0	\$0

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

Local Effect: Local expenditures likely increase for local State’s Attorneys’ offices. In addition, the bill may have operational impacts on the circuit courts. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary: A transfer of a regulated firearm, rifle, or shotgun in accordance with the bill must be made within two business days after the sentencing to a State or local law enforcement official or to a federally licensed firearms dealer. A person ordered to surrender a regulated firearm, rifle, or shotgun may designate a representative to transfer the firearm to a State or local law enforcement official or to a federally licensed firearms dealer.

A law enforcement official or federally licensed firearms dealer accepting a transferred firearm is required to issue a written proof of transfer to the person transferring the firearm. A written proof of transfer must include the name of the person transferring the firearm; the date the firearm was transferred; and the serial number, make, and model of the firearm. However, for a firearm manufactured before 1968, identifying marks may be substituted for the required serial number. Within five business days after being ordered to transfer a regulated firearm, rifle, or shotgun, a person must file a copy of the proof of transfer with the court and attest that all regulated firearms, rifles, and shotguns owned by the person or in the person's possession have been transferred and that the person does not own or possess any other regulated firearms, rifles, or shotguns.

On application by the State's Attorney or a law enforcement official based on the failure to file the proof of transfer or based on probable cause to believe that the person has failed to surrender one or more regulated firearms, rifles, or shotguns, the court may issue a search warrant for the removal of any regulated firearms, rifles, or shotguns owned or possessed by the person at any location identified in the application for the warrant.

Law enforcement agencies may develop rules and procedures pertaining to the storage and disposal of firearms that are surrendered in accordance with the bill's provisions.

An exception is provided to the prohibition against wearing, carrying, or transporting a regulated firearm by a person who is carrying a court order requiring the surrender of the weapon if the firearm is unloaded, the person has notified law enforcement that the firearm is being transported in accordance with the court order, and the person transports the firearm directly to the law enforcement unit or a federally licensed firearms dealer. A similar exception is provided for the transportation of an assault pistol, assault long gun or copycat weapon, rifle, or shotgun for surrender to a law enforcement unit or a federally licensed 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.

A “domestically related crime” (under § 6-233 of the Criminal Procedure Article) is a crime committed by a defendant against a victim who is a “person eligible for relief” (under § 4-501 of the Family Law Article) or is a person who had a sexual relationship with the defendant within 12 months before the commission of the crime. Under the applicable provisions of the Family Law Article, a “person eligible for relief” includes (1) the current or former spouse of the respondent; (2) a cohabitant of the respondent; (3) a person related to the respondent by blood, marriage, or adoption; (4) a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within one year before the filing of the petition; (5) a vulnerable adult; (6) an individual who has a child in common with the respondent; or (7) an individual who has had a sexual relationship with the respondent within one year before the filing of the petition.

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: Under the bill, the State’s Attorney, before trial or acceptance of a guilty plea or equivalent, must provide the specified written notice to the defendant, the defendant’s counsel, and the court. In addition, a person must provide proof to the court that all regulated firearms, rifles, and shotguns owned by the defendant or in the defendant’s possession have been transferred, as specified. As a result, the Judiciary advises that the bill likely results in operational impacts for the District Court.

In addition, because information needs to be recorded in the Judicial Information System regarding persons to which the bill applies, general fund expenditures increase by \$110,090 in fiscal 2019 only for the Judiciary to reprogram its computer system.

The Department of State Police advises that it can implement the bill’s provisions relating to the transfer of firearms to law enforcement officials with existing resources.

Local Expenditures: Local expenditures likely increase for local State's Attorneys' offices; however, without actual experience under the bill, the Maryland State's Attorney's Association is unable to reliably estimate the fiscal or operational impacts for local State's Attorneys' offices.

The Judiciary advises that the bill likely results in operational impacts on the circuit courts because if the defendant provides the required proof of transfer to a circuit court, the court must develop new procedures to accept and document the proof, as required under the bill.

The bill's provisions relating to the transfer of firearms to law enforcement officials are not anticipated to have a significant impact on local law enforcement agencies.

Additional Information

Prior Introductions: None.

Cross File: SB 1036 (Senator Smith) - Judicial Proceedings.

Information Source(s): Baltimore, Harford, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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