

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 1036

(Senator Smith, *et al.*)

Judicial Proceedings

Judiciary

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. When a defendant is convicted of or pleads guilty to such a crime, the court must (1) inform the defendant that the person is prohibited from possessing a regulated firearm, rifle, or shotgun and (2) order the defendant to transfer all regulated firearms, rifles, and shotguns owned by the defendant or in his/her possession.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$110,100 in FY 2019 only. General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) may increase significantly. In addition, the bill may have operational impacts on the District Court. Revenues are not affected.

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 conviction to a State or local law enforcement agency 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 agency or to a federally licensed firearms dealer.

A law enforcement agency 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.

On application by the State's Attorney or a law enforcement official based on probable cause to believe that a defendant has failed to surrender one or more regulated firearms, rifles, or shotguns, the court may authorize the execution of a search warrant for the removal of any regulated firearm, rifle, or shotgun at any location where the court has probable cause to believe a regulated firearm, rifle, or shotgun owned or possessed by the person is located.

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.

The Maryland Police Training and Standards Commission (MPTSC), in consultation with the Maryland State's Attorney's Association (MSAA), must develop and maintain a uniform statewide training and certification curriculum to ensure use of best practices in investigating compliance with court orders to surrender regulated firearms, rifles, and shotguns under the bill's provisions.

Current Law:

Disqualifying Crime

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.

Domestically Related Crime

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.

Prohibition on Wearing, Carrying, or Transportation a Handgun – Exception

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.

Maryland Police Training and Standards Commission

Chapter 519 of 2016 reconstituted the former Police Training Commission as MPTSC, an independent commission within DPSCS. MPTSC operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum

qualifications for instructors and certifies qualified instructors for approved training schools.

MPTSC certifies persons as police officers who have met commission standards, including submission to a criminal history records check and a specified psychological evaluation. An individual who is not satisfactorily trained in the 12-month probationary period may not be employed as a police officer, and a police officer may not serve after certification has been revoked, suspended, or allowed to lapse.

MPTSC training requirements include wide-ranging courses on a continuing basis concerning, among other things, sexual assault, child abuse, evidentiary procedures, victim and witness contact and management, life-saving techniques, the use of electronic controls and devices, the profiling of traffic stops, antidiscrimination principles, and force de-escalation.

Background: Training for the certification of law enforcement officers in the State may be conducted at MPTSC facilities or at any of 20 police training academies in the State certified by MPTSC. There are approximately 16,500 certified police officers in Maryland.

State Expenditures:

Judiciary

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, the court must (1) provide verbal and written notice to the defendant that the defendant is prohibited from possessing regulated firearms, rifles, and shotguns and (2) order the defendant to transfer all such firearms, 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.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS may increase, perhaps significantly, for MPTSC to hire staff to research, develop, and maintain a uniform statewide training and certification program to ensure use of best practices in investigating compliance with court orders specific to the bill's provisions.

Although MPTSC advises that the curriculum for entrance-level and in-service training for law enforcement officers includes best practices on the service and execution of court orders and investigation of crimes, the commission is not aware of best practices relating specifically to compliance with court orders that require surrender of firearms. Furthermore, the commission does not evaluate how officers deliver such court orders or defendant compliance with them. Accordingly, DPSCS advises that it is unclear whether MPTSC needs additional staff for compliance and what level of staffing, if any, is needed. To the extent that MPTSC must hire staff to (1) research, develop, and maintain such a program for training and certification and (2) investigate compliance with court orders under the bill, general fund expenditures increase, perhaps significantly. The cost for one curriculum specialist is \$60,990, and the cost for one auditor is \$58,081 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date.

Department of State Police

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

Local Expenditures: Local expenditures likely increase for local State's Attorneys' offices; however, without actual experience under the bill, MSAA 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 (1) 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 and (2) the court must provide verbal and written notice to the defendant, as specified.

The bill's provisions relating to the transfer of firearms to law enforcement agencies are not anticipated to have a significant impact on local law enforcement agencies; however, law enforcement agencies with training academies may need to update training to comply with the bill's provisions.

Additional Information

Prior Introductions: None.

Cross File: HB 1646 (Delegate Atterbeary, *et al.*) - Judiciary.

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

Fiscal Note History: First Reader - February 27, 2018
mm/kdm Third Reader - April 2, 2018
Revised - Amendment(s) - April 2, 2018

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