

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 382

(Senators Brochin and Raskin)

Judicial Proceedings

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**Mental Health - Emergency Evaluations - Surrender of Firearms**

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This bill requires a petition for the emergency evaluation of an individual to state (if known by the petitioner) whether the evaluatee has possession of, or access to, any firearms. If a court endorses a petition stating that the evaluatee has possession of or access to firearms, the court may order the evaluatee to surrender the firearms to the peace officer who takes the evaluatee to an emergency facility. Such a peace officer must take the firearms that the evaluatee has possession of or access to if (1) the petition states that the evaluatee has possession of or access to firearms and (2) either a court orders the surrender of the firearms under the bill or the petition was made by a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, health officer or designee or a health officer, or peace officer.

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**Fiscal Summary**

**State Effect:** The bill's requirements can be handled with existing budgeted resources.

**Local Effect:** The bill's requirements can be handled with existing budgeted resources.

**Small Business Effect:** None.

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## Analysis

### **Current Law:**

#### *Petitions for Emergency Evaluation*

A petition for emergency evaluation of an individual may be made only if the petitioner has reason to believe that the individual has a mental disorder and presents a danger to the life or safety of the individual or of others. Such a petition must contain specified information, including a description of the behavior and statements of the evaluatee or any other information that led the petitioner to believe that the evaluatee has a mental disorder and presents a danger to the life and safety of the individual or of others.

After review of the petition, the court must endorse the petition if the court finds probable cause to believe that the evaluatee has shown the symptoms of a mental disorder and that the individual presents a danger to the life or safety of the individual or of others. If the court does not find probable cause, the court must indicate that fact on the petition, and no further action may be taken under the petition.

A peace officer must take an evaluatee to the nearest emergency facility if the peace officer has a petition for emergency evaluation that has been endorsed by a court within the previous five days and is signed and submitted by a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, health officer or designee or a health officer, or peace officer. (“Peace officer” means a sheriff, a deputy sheriff, a State police officer, a county police officer, a municipal or other local police officer, or a Secret Service agent who is a sworn special agent of the U.S. Secret Service or Department of Homeland Security authorized to exercise powers delegated under federal law.)

#### *Possession of Firearms*

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 the Department of State Police (DSP) and its Licensing Division.

The State regulates the possession and sale of assault weapons in the same manner as the possession and sale of handguns, both of which are defined together as “regulated firearms.” Assault weapons are defined as a list of 45 specific semiautomatic weapons and their copies (mostly types of semiautomatic rifles and shotguns). Before a person

purchases, rents, or transfers a regulated firearm in the State, the person must submit to DSP or other designated law enforcement agency a firearm application that identifies the applicant and the firearm that is the subject of the transaction. Applications are investigated by DSP and are subject to a seven-day waiting period before the transaction may take place.

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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2013  
ncs/ljm

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