

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 445

(Senator Ferguson, *et al.*)

Judicial Proceedings

Public Safety - Handgun Permits - Requirements and Limitations

This emergency bill specifies that a person who has been issued to a permit to wear, carry, or transport a handgun may only wear, carry, or transport the handgun within the scope of the permit issued. The bill also expands the circumstances under which a handgun permit must be issued and requires a person to complete in person, unless exempted, a certified firearms safety training course within six months before submitting an application for renewal of a permit.

The bill makes it a misdemeanor for a person who holds a permit to wear, carry, or transport a handgun while the person is on specified real property, such as a school or church. A violator is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

The bill's provisions are severable.

Fiscal Summary

State Effect: None. The bill's requirements can be handled with the existing budgeted resources of the Department of State Police (DSP), the Police Training Commission, and the courts. The bill's criminal penalty provisions are not expected to materially affect State operations or finances.

Local Effect: None. Enforcement of the bill's prohibition against wearing, carrying, or transporting a handgun on certain real property can be handled with the existing budgeted resources of local law enforcement agencies. The bill's criminal penalty provisions are not expected to materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: Specifically, the bill expands the circumstances under which a handgun permit must be issued by including a person who (1) is not prohibited from possessing a regulated firearm; (2) has, unless exempted, and within six months before submitting an application for a permit (or a permit renewal), completed in person a certified firearms safety training course that meets the standards set by the Police Training Commission; (3) has not been dishonorably discharged from the U.S. Armed Forces; (4) does not have a pending criminal charge for which an imprisonment sentence of more than one year may be imposed; (5) has not been involuntarily committed to a mental health facility within the five years preceding the date of permit application; and (6) based on an investigation, has not exhibited any conduct that indicates the person is potentially a danger to the public if issued a permit.

Current Law: To be issued a permit to carry a handgun by DSP, an applicant (1) must be 18 or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) if younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; (4) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (5) must not exhibit a propensity for violence or instability that may reasonably render possession of a handgun a danger to the applicant or another; and (6) must have a good and substantial reason to wear, carry, or transport a handgun. “Good and substantial reason” includes a finding by DSP that the permit is necessary as a reasonable precaution against apprehended danger. The Secretary of State Police may limit the geographic area, circumstances, or times of day, week, month, or year in which a permit is effective.

A handgun permit application costs \$75; two years after the initial permit and every three years thereafter, a \$50 renewal fee is due. In addition, the applicant must pay for fingerprint-based federal and State criminal history background checks at a cost of \$42 for the initial application (plus \$10 for the fingerprint cards) and \$24 for renewals (covering a federal recheck only).

Although Maryland law requires a person to be issued a permit to wear, carry, or transport a handgun, whether concealed or not, there are several exceptions to that requirement. For example, two of the exceptions include authorizing a person to wear, carry, or transport a handgun, provided that the handgun is unloaded and in an enclosed case or enclosed holster when being transported, if the person is (1) transporting the handgun to or from a legal place of sale or a repair shop or between the person’s home or

business or (2) wearing, carrying, or transporting the handgun in connection with an organized military activity, target practice, sport shooting event, hunting, or trapping. Further, a person may wear, carry, or transport a handgun if the person is in the person's home, place of business, or other property that the person owns or is a supervisory employee who is wearing, carrying, or transporting the handgun under specified circumstances.

Nationally, states' laws and requirements governing carry and concealed carry permits vary. According to a July 2012 report by the U.S. Government Accountability Office (<http://www.gao.gov/assets/600/592552.pdf>):

The number of states allowing concealed carry permits is increasing, and states broadly differ in eligibility requirements and the extent to which they have reciprocity agreements. In June 2002, 7 states and the District of Columbia prohibited the concealed carry of handguns. As of March 2012, individuals can carry concealed handguns in all but 1 state (Illinois) and the District of Columbia. "Shall-issue" states – in which issuing authorities are required to issue a permit to an applicant that fulfills the objective statutory criteria – generally issue more permits than states with greater discretion in granting permits ("may-issue" states). Because of differing eligibility requirements, some states would issue a permit to an applicant, while others would not. For example, some states define what constitutes a disqualifying felony differently or have different firearms training requirements. As of March 2012, 39 states that issue permits and Vermont (permits not required) recognize concealed carry permits from other states. Of the 9 states that do not grant reciprocity, 8 are may-issue states.

Background: In *Woollard v. Gallagher* (No. 12-1437), the U.S. Court of Appeals for the Fourth Circuit is considering the constitutionality of Maryland's "good and substantial reason" handgun permit requirement.

On Christmas Eve 2002, Raymond Woollard's son-in-law, Kris Lee Abbott, broke into Mr. Woollard's home. During the incident, Mr. Woollard grabbed his shotgun and aimed it at Mr. Abbott, who was under the influence of drugs and attempting to steal a set of car keys. Subsequent to a struggle in which Mr. Abbott took the shotgun from Mr. Woollard, Mr. Woollard's son retrieved a different gun and pointed it toward Mr. Abbott while Mrs. Woollard called the police. Two and a half hours later, the police responded to Mr. Woollard's home, which was located in a remote part of Baltimore County.

In 2003, Mr. Woollard applied for and was issued a permit to carry a handgun for personal protection. Mr. Woollard renewed his permit in 2006, shortly after Mr. Abbott was released from prison. When Mr. Woollard sought to renew his permit again in 2009, however, the Handgun Permit Unit of DSP denied his renewal application because

Mr. Woollard could not produce any current evidence of “apprehended fear.” Mr. Woollard first appealed the decision informally and then appealed formally to the Handgun Permit Review Board. Ultimately, the board concluded that Mr. Woollard did not produce any evidence of threats occurring outside of his home and thus did not have a “good and substantial reason” to wear, carry, or transport a handgun.

On July 29, 2010, Mr. Woollard filed a civil action in the U.S. District Court for the District of Maryland against the Secretary of State Police and three members of the Handgun Permit Review Board in their official capacity. The complaint alleged that Maryland’s handgun permitting law violates the Second Amendment and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. After both sides presented oral arguments and filed motions for summary judgment, on March 2, 2012, the court issued an opinion that Maryland’s “good and substantial reason” requirement infringes on an individual’s right to bear arms under the Second Amendment. In the court’s analysis, the “good and substantial reason” requirement was not sufficiently tailored to Maryland’s interest in public safety and crime prevention and, therefore, violates the Second Amendment. The court, however, rejected Mr. Woollard’s Equal Protection claim, finding that the Second Amendment provided the proper framework for analysis. After the District Court issued its opinion, the defendants filed an appeal in the U.S. Court of Appeals for the Fourth Circuit seeking to overturn the finding that Maryland’s handgun permitting law violates the Second Amendment. On August 2, 2012, the Fourth Circuit granted Maryland’s motion for a stay pending the outcome of the appeal. As a result, Maryland may continue its current handgun permitting practices while the appeal is pending. Oral arguments for the appeal were heard on October 24, 2012.

Data regarding handgun permit applications from calendar 2010 through 2012 are shown in **Exhibit 1**.

Exhibit 1
Handgun Permit Statistics for Maryland
Calendar 2010-2012

| | <u>2010</u> | <u>2011</u> | <u>2012</u> |
|-------------------------------------|-------------|-------------|-------------|
| New Handgun Permit Applications | 1,932 | 2,020 | 2,503 |
| Handgun Permit Renewal Applications | 2,785 | 3,196 | 2,980 |

Source: Department of State Police

Initial permit applications have had an average growth rate of 221 additional applications over the past five years. It generally takes DSP less than two days to receive the results of a national criminal history records check from the Federal Bureau of Investigation and approximately 135 days to process, investigate, and issue a permit.

State Fiscal Effect: Handgun permits already have specific limitations and scope when issued by DSP, and the bill is not expected to materially affect the number of permits issued or renewed annually. Further, the bill imposes no new requirements for the Police Training Commission; it is assumed that all current training is performed *in person*. Thus, the bill's requirements can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

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