

# Vermont Legislative Joint Fiscal Office

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## *FISCAL NOTE*

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### **S.141 – An Act Relating to Possession of Firearms**

*Analysis reflects the bill as passed by Senate*

#### Overview

This bill proposes to prohibit a person convicted of a violent crime from possessing a firearm, require personal service notification prior to the sale of firearms that have been relinquished by a relief from abuse order, require the Departments of Public Safety and of Mental Health to report on the establishment of a Vermont version of the New Hampshire Gun Shop Project, and to require the Court Administrator to report to the National Instant Criminal Background Check System (NICS) established by the Brady Handgun Violence Prevention Act of 1993. The bill also proposes a process through which a person who has been prohibited from possessing a firearm for mental health reasons may petition the Court to have his or her name removed from the NICS database after three years if the Court finds that the person is no longer a danger to him or herself or others.

The violent criminals in possession, fee for storage, and New Hampshire Gun Shop Project provisions are effective July 1, 2015, while the provisions related to mental health reporting are effective October 1, 2015.

#### Fiscal Impact

The annual estimated cost of prohibiting a person convicted of a violent crime from possessing a firearm ranges from \$76,500 to \$515,000. Of the State entities mentioned in the legislative language, the JFO determines that there is a fiscal impact on the Department of State's Attorneys and Sheriffs, the Attorney General's Office, and the Department of Mental Health. The Department of Public Safety and the Judiciary have determined that the proposed legislation will require no additional cost; however, the Judiciary notes that this legislation will add pressure to an already stressed budget.

- The Department of Mental Health estimates a \$10,000 to \$15,000 fiscal impact to hire a consultant to administer the required reporting.
- The Department of State's Attorneys and Sheriffs estimates an approximate cost of \$66,500 to process ten contested petitions for relief from disability. Cost could vary depending upon number of petitions. This assumes that the Office of State's Attorney handles the case.
- The Judiciary estimates no additional cost; however, it cautions that the staff is already stretched very thin due to budget constraints and this would create an additional work load.

- The Department of Public Safety estimates that S.141 would not have a fiscal impact on the budget.
- The Attorney General's Office (AGO) estimates that the cost would range from \$50,000 to \$500,000, which represents the cost to both the AG and the State's Attorney, depending upon the number of petitions filed and the office that handles the case, AGO or State's Attorney.

### **Individual Department Responses:**

#### **Department of State's Attorneys & Sheriffs – COST: \$66,500 assuming 10 contested petitions for relief from disability.**

Source: David Cahill, Director

It is hard to estimate the number of S.141 petitions that would be filed in any given year, however, the number could be estimated to be from 10 to a high of 50 statewide, each year. An assumption can be made that most of these petitions will be contested due to the nature of the cases. It is likely that the State would oppose a person's request to have firearms rights reinstated when the person was previously adjudicated incompetent or insane.

Cost per contested petition:

1. Attorney time: ~\$250. The cost of attorney time would likely be absorbed during the first year, unless the number of petitions was large.
2. Mental health expert witness fees: ~\$6,000. The cost for expert witness fees cannot be absorbed within the current budget. Expert fees are already putting a significant pressure on the budget used to address the existing caseload.
3. Obtaining legal and mental health records on the petitioner, including use of legal process when necessary: ~\$400. It would be preferable if the petitioner was required to submit medical records and materials pertaining to his/her previous case along with the petition, thus avoiding the cost of obtaining those records. The current budget does not include funds for the cost of obtaining mental health records.

The total cost per contested petition is estimated at \$6,650; however, as noted above, it is hard to predict the number of petitions. For the purposes of this exercise, the estimate is 10 petitions for a total of \$66,500. If there were more than 10 petitions, the cost would increase.

**Attorney General's Office** – Cost is estimated to be \$50,000 to \$500,000, for both the State's Attorney and the AG, depending upon the number of cases filed and which office handles the case, the respondent.

Source: Bill Griffin

Sec. 7 of the bill would create a legal process for a person to petition the Family Court for an order declaring that "the basis under which the person was prohibited from possessing firearms" under federal law "no longer applies." The federal prohibition applies to persons who have been

“adjudicated as a mental defective” or “committed to a mental institution.” *See* 18 U.S.C. s. 922(g) (4).

When a petition is filed, the “respondent” in these cases would be the State’s Attorney or the Attorney General. *See* proposed 13 V.S.A. § 4825(a). Whether the respondent is the State’s Attorney or the Attorney General, the estimate is that the cost of preparing and presenting a single case would be in the range of \$5,000 to \$10,000.

This estimate includes the State’s costs for its attorney, support staff, and expert witnesses. It assumes that the case is contested and that there is a court proceeding and live testimony. In these circumstances, the State’s Attorney or the Attorney General would have to:

- Gather and review mental health records and criminal history records.
- Find and retain expert witnesses.
- Identify other witnesses.
- Consult with victims.
- Prepare witnesses for trial.
- Present witnesses at trial.
- Prepare to cross-examine the petitioner’s witnesses, including experts.
- Cross-examine the petitioners’ witnesses at trial.
- Research, prepare, and file papers with the Court – for example, a response to the petition, proposed findings and conclusions, and a brief trial memo.

The \$5,000 to \$10,000 per case estimate also assumes that the legal proceedings would be expedited. For example, it assumes that there would be little or no discovery or motion practice. It assumes that the trial court’s decision, even if adverse to the petitioner, would not be appealed to the Vermont Supreme Court. This estimate covers State’s Attorneys/AGO costs only, and not Judiciary or other State costs.

The AG’s office was unable to discover any data that might help to predict the number of petitions that would be filed. Using the same estimate of the number of cases that the State’s Attorneys used, 10 to 50 per year, and the AG’s cost range of \$5,000 to \$10,000 per case, the fiscal impact of Sec.7 would range from \$50,000 to \$500,000 per year. The assumption is that some of these petitions would not be contested, so the \$500,000 number may be extreme. Also, since the petitioner would select the respondent – the State’s representative in these cases – there is no way to predict how the cases and costs would be allocated between State’s Attorneys and the Attorney General.

**Department of Mental Health – COST RANGE FROM \$10,000 to \$15,000**

Source: Dena Monahan

Expressed concerns about cost to the Committee last week. The Department of Mental Health may require an additional \$10,000 to \$15,000 to hire a consultant to do the required reporting.

**Department of Public Safety – NO COST**

Source: Paco Aumand, Deputy Commissioner, Department of Public Safety.

Estimate is that there would be no additional costs related to the bill since the departments only responsibility will be to coordinate with the Dept. of Health on the report in Sec. 3, New Hampshire Gun Shop Project. This will require writing a report, which will be done by existing staff.

**Judiciary: Court Administrator – NO COST BUT CREATES ADDITIONAL PRESSURE**

Source: Matt Riven, Chief Financial Officer

**Summary of Impacts to the Judiciary –**

The estimate is that it would take 20 days of staff time for VTADS, eCabinet and reporting changes driven by this bill. This includes 3 developers and 2 Business Analysts. This is in addition to the work of the Superior Judges, Superior Clerks and staff in the courthouses, described below. While in all cases these are existing staff, and hence there is no direct cost, it should be noted that there is a branch-wide vacancy rate of 8-9% in order to stay within the General Fund appropriation. As such, court and CAO staff are already stretched thin; the additional workload may cause increases in overall branch caseload and IT development backlogs.

Impacts by Section:

**Sec. 1.** 13 V.S.A. § 4017 is added to read: (Persons Prohibited from Possessing Firearms; Conviction of Violent Crime)

Impact would be new criminal case filings. There is no way to predict what this number might be. Those cases would be absorbed into the existing criminal caseload.

**Sec. 4.** 13 V.S.A. § 4824 is added to read: (Reporting; National Instant Criminal Background Check System)

Programming needs to be done to the existing system with updates to the codes in the criminal docket relating to psychiatric evaluations. New development would be needed in the mental health docket; however, copying the events and appropriate codes from the criminal environment may be possible. For both dockets, a report would have to be developed and a system put in place with NICBCS to deliver the reports.

Meeting the time frame of 48 hours is a concern with current staffing resources. One recommended option would be that NICBCS register in eCabinet so that the order can be generated in VTADS to Word and sent electronically to help meet that deadline.

**Sec. 6.** 18 V.S.A. § 7617a is added to read: (Reporting; National Instant Criminal Background Check System)

A system would need to be developed for this reporting requirement and with NICBCS for delivery of the reports.

**Sec. 7.** 13 V.S.A. § 4825 is added to read: (Persons Prohibited by Federal law from Possessing Firearms due to Mental Illness; Petition for Relief from Disability)

Forms and process would need to be developed. Court hearings would likely be required for these petitions. There is no way to anticipate how many petitions would be filed with the courts.

**Sec. 8.** Reporting; Department of Mental Health; Court Administrator

Response: This one may be problematic for the courts. DMH must report to CAO the names of persons under custody subject to hospitalization and non-hospitalization at that time. The Administrator must report those names to the NICBCS. The bill does not specify a time frame for this to happen once the CAO receives the names. It could be problematic if the turn-around time is too quick. The time frame would also depend on whether CAO reported directly or directed the courts to do so. There would need to be lead time for CAO to prepare a list or individual reports. The language is vague on the process.

**Sec. 9.** Reports

The report is not due until January 15, 2018.