

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 with House proposed Amendments

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, 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 if the Court finds that the person is no longer a danger to him or herself or others.

Fiscal Impact

The annual estimated cost of preparing and presenting cases of individuals petitioning for relief from disability ranges from \$37,500 to \$60,000. These costs will be incurred by the Department of State's Attorneys and the Attorney General's Office (AGO.) The Department of Public Safety, the Department of Mental Health, 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 that due to the removal of the report required in a previous version of the bill regarding the New Hampshire gun shop project, there is no cost associated with this bill.
- The Department of State's Attorneys and the Attorney General's Office (AGO)- For purposes of this estimate we are using the average cost per case estimated by the AGO of \$7,500 to prepare and present each contested petition. We received two cost estimates of \$6,650 from the States Attorneys and \$5,000 to \$10,000 from the Attorney General. We chose the mid-point of the higher estimate, \$7,500. The Joint Fiscal Office is estimating that there would potentially be five to eight petitions filed in Vermont each year based upon the experience in the states of Virginia and California. ¹Based upon these estimates the cost would range from \$37,500 to \$60,000.

¹ In 2010, according to a NYT report, judges in Virginia considered roughly 40 restoration applications and granted firearms rights under state law to 25 people. Proportionately, based upon population, that would equate to just over 5 cases in Vermont. In 2010 California reported 180 cases of restored gun rights. Assuming a similar proportion of applications, as was the case in Virginia, the Vermont equivalent would be just about 5 cases. In that the program start up is likely to result in more cases, and this data is limited at best, a range of 5-8 seemed appropriate.

http://www.nytimes.com/2011/07/03/us/03guns.html?_r=0

- 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.

Individual Department Responses:

Department of State's Attorneys –

Source: David Cahill, Director

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 State's Attorney's cost per case estimate is \$6,650.

Attorney General's Office (AGO) –

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 AGO. *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, averaging \$7,500.

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 estimated average cost per case of \$7,500 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 Attorney/AGO costs only.

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 AGO. For this reason the estimated cost is for both the State's Attorney and the AGO, combined.

Department of Mental Health – NO COST

Due to the removal of the report on New Hampshire's Gun Shop Project that was in an earlier version of the bill, there is no cost associated with this legislation.

Department of Public Safety – NO COST

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

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.

