


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 28, 2018

SUBJECT: Fiscal Impact Statement – Firearms Safety Omnibus Amendment Act of 2018

REFERENCE: Bill 22-588, Draft Committee Print as shared with the Office of Revenue Analysis on November 27, 2018

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill.

Background

The bill expands the mental health-related prohibitions¹ for potential gun registrants to include individuals determined to be incapacitated by the Superior Court or adjudicated as mentally defective within the five-year period preceding the application. The bill establishes a prescriptive process whereby a person who has been prohibited for mental health reasons can petition the court for relief. The process includes filing a written petition that states the reasons for prohibition, provides facts supporting the claim that the petitioner should not be prohibited, includes a court-approved form signed by a medical professional, includes any other supporting documents, and is also served upon the Office of the Attorney General (OAG). The bill gives OAG sixty days to file a response to the petition in support or opposition² and the court sixty days from receiving the OAG response to hold a hearing. The court should grant the petition if the petitioner establishes, by a preponderance of the evidence, that she or he is not a danger to public safety and it is not against the public interest. The court should file the order granting the petition with OAG, the Metropolitan

¹ Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2502.03(a)).

² OAG should conduct a search of all available records, run a criminal history background check, and request any records, if necessary, from the Metropolitan Police Department. Any findings should be included in the response.

Police Department (MPD),³ and any other law enforcement agencies. If the court denies the petition, it should state the reasons.

The bill imposes a penalty of up to three years imprisonment, a fine, or both⁴ for the possession of a large capacity ammunition feeding device.

The bill establishes a process for a petitioner⁵ to file a petition with the court to impose an extreme risk protection order (protection order) against an individual (respondent) that would prevent the respondent from possessing or purchasing any firearm or ammunition. A petition must be served upon the Attorney General and must include facts supporting that the respondent poses a significant risk of causing bodily injury to her or himself or others through the possession of firearms or ammunition, details on the types of firearms and ammunition in the respondent's possession, and any appropriate exhibits or documents.⁶ The bill authorizes OAG to provide legal representation to any petitioner until the court denies a petition, the protection order expires, or OAG otherwise withdraws from representation.

The bill requires the court to hold a hearing within fourteen days of a filed petition and MPD to serve notice of the petition and hearing on the respondent at least five days prior to the hearing. Prior to a hearing, OAG must search records to determine if the respondent owns firearms, search records to determine the petitioner's mental health status, perform a national criminal history background check, and submit the findings to the court. The court should consider the following when deciding to issue a final or ex parte protection order or to renew or terminate a protection order:

- A history or pattern of threats or acts of violence;
- Recent threats or acts of violence;
- Recent (within one year) acquisitions of firearms or ammunition;
- Respondent's criminal history;
- Reckless use or brandishing of a firearm;
- Violation of a court order;
- Evidence of a mental health crisis; or
- Use of a controlled substance.

The court should issue a final protection order if the petitioner establishes, by a preponderance of the evidence, that the protection order is necessary. The protection order bars the respondent from possessing or purchasing a firearm or ammunition for one year⁷ and should include the date and time it was issued and will expire, the reasons it was issued, the procedures for renewal and termination of the order, and the procedure for the surrender or transfer of any firearms or ammunition.

³ MPD should also clear the petitioners record in the National Instant Criminal Background Check System.

⁴ In accordance with the Crime Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).

⁵ The petitioner must be related to the respondent, be a sworn member of MPD, or a mental health professional.

⁶ There does not need to be existing legal action between the two parties for a petition to be filed.

⁷ Unless otherwise terminated by the court in response to a motion to terminate by the respondent.

The court may also issue an ex parte protection order that does not require notice to the respondent and is based solely on the testimony of the petitioner the respondent poses a significant risk and less restrictive measures would be inadequate. The court should issue or deny an ex parte protection order the same day the request was made, which bars the respondent from possessing or purchasing firearms or ammunition immediately. The ex parte protection order should include the same information as a final protection order and be served at the same time MPD service the notice of the petition and hearing for the final protection order. An ex parte protection order expires upon the issuance of a final protection order.

The court must file a copy of a final, ex parte, or renewal protection order with MPD on or before the next business day and MPD must then serve the respondent with the protection order within five business days.⁸ If the respondent is present in court when the protection order is issued, then MPD does not need to further serve notice. MPD should submit proof of service to the court within one business day of service.

A petitioner may request the renewal of a protection order that would prohibit the respondent from possessing or purchasing firearms or ammunition for an additional year. The court should notify the petitioner that the protection order is set to expire at least 120 days prior to expiration and the petitioner can request the renewal at any point within 120 days prior to expiration. The court should schedule a hearing and MPD should serve notice on the respondent at least fifteen days prior to the hearing. If the court determines the respondent continues to pose a danger and the renewal is approved, the protection order should include the same information included in the initial final protection order.

The bill authorizes the court to issue a search warrant to obtain the firearms and ammunition of a respondent upon the issuance of a final, ex parte, or renewal protection order. MPD should execute the search warrant at the time it serves the protection order and request all firearms and ammunition be surrendered and take possession and store those items and any others discovered through MPD's search. MPD should provide a detailed receipt to the respondent of any items taken and file a copy of that receipt with the court and the Chief of Police with seventy-two hours. If anyone other than the respondent claims title of any seized firearms or ammunition, MPD may return them to that individual so long as the individual removes them from the respondent's control and ensures the respondent cannot get access to them. The bill authorizes MPD to charge the respondent a fee to cover actual costs incurred for storage while a protection order is in effect and up to six months after one terminates. If a respondent peaceably surrenders firearms or ammunition, the respondent cannot be arrested or prosecuted for the violation of certain firearms and ammunition laws.⁹

The bill provides one opportunity for a respondent to file a motion with the court requesting that the protection order be terminated. The court should hold a hearing within fourteen days of the motion and ensure that notice of the hearing is served upon the petitioner. If the respondent establishes, by a preponderance of the evidence, that she or he does not pose a significant risk through the possession or purchase of firearms or ammunition, the court can terminate the protection order. If the court grants the motion, it should submit a copy to MPD on or before the

⁸ MPD should notify the petitioner if the service cannot be completed within five days.

⁹ An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 651; D.C. Official Code §§ 22-4503 & 22-4504).

next business day and MPD should serve notice upon the petitioner that the protection order has been terminated.

Upon the termination, expiration, or non-renewal of a protection order, MPD must notify the respondent that she or he can request the return of her or his lawfully owned firearms or ammunition. MPD should return the firearms and ammunition at the request of the respondent only after confirming that they were lawfully owned. If the respondent no longer wants the firearms or ammunition or is no longer eligible to possess them, then she or he can sell or transfer them to a licensed firearms dealer. If the firearms are not requested within six months of the termination, expiration, or non-renewal of a protection order, MPD should consider the items to be surrendered.¹⁰

The bill requires MPD to maintain a searchable database of all issued, renewed, and terminated protection orders, make the information available to any other law enforcement entities upon request, and submit the information to the National Instant Criminal Background Check System.

The bill imposes upon a person who violates a protection order punishment of imprisonment up to 180 days, fined, or both¹¹ and prohibits custody or purchasing of a firearm or ammunition for five years from being convicted of violating the order.

The bill bans the possession of a bump stock in the District of Columbia.¹² A bump stock is any device that is part of, or added to, a semiautomatic firearm to increase its rate of fire.

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed bill.

MPD is the District's gun registration agency and can implement the expanded mental health related prohibitions with existing budgeted resources. OAG can review any petitions for relief from the mental health prohibitions with existing budgeted resources. MPD can also enforce the penalties for large capacity ammunition feeding devices with existing resources.

The bill establishes an extreme risk protection order that a petitioner can petition for to prohibit a respondent from possessing or purchasing weapons for one year upon the issuance of a final protection order. MPD plays an active role the protection order process through the service of notice of petitions, hearings, and final orders. MPD is responsible for the executing search warrants, receiving the surrendered weapons, and storing them. MPD must also maintain a database of issued, renewed, or terminated protection orders and keep the National Instant Criminal Background Check System up-to-date with protection order information. MPD can absorb the costs associated with these efforts within existing budgeted resources.

¹⁰ Firearms Control Regulation Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2507.05).

¹¹ Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).

¹² The bill is an amendment to An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code § 22-4501 et seq.).

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The bill requires OAG to provide legal counsel to a petitioner. OAG can also absorb this cost within its existing budgeted resources.

The evaluation of a petition for relief from mental health related gun registration prohibitions and the evaluation and issuance of protection orders are the responsibility of the Superior Court which is federally funded.

Current law bans most, if not all, the types of semiautomatic weapons¹³ upon which bump stocks are used and enforcement of this ban would be consistent with those current enforcement efforts. The bill's implementation will not require additional budgeted resources.

¹³ Firearms Registration Amendment Act of 2008, effective March 31, 2009 (D.C. Law 17-372; D.C. Official Code § 7-2501.01 et seq.).