

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1133 (Delegate Wilson, *et al.*)
Health and Government Operations and
Judiciary

**Public Safety - Restrictions on Possession of Firearms - Convicted Felons and
People with Mental Disorders**

This bill establishes a statutory maximum incarceration penalty of 15 years for each separate felony conviction of possessing a firearm if the person (1) has been convicted of a felony; (2) suffers a “mental disorder” and has 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 firearm without undue danger to the person or to another; or (3) has been confined for more than 30 consecutive days to a mental health “facility,” unless the person has a physician’s certificate that the person is capable of possessing a firearm without undue danger to the person or to another. Each violation of this prohibition is a separate offense.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill’s incarceration penalty provisions. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: 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.

A regulated firearm is any handgun or any of the 45 assault weapons (or copies) identified under Title 5 of the Public Safety Article. Among other restrictions, a person may not possess a regulated firearm in the State if the person was convicted of a "disqualifying crime," or convicted of a violation classified as a common law crime and received a term of imprisonment of more than two years. A "disqualifying crime" means a crime of violence, a felony, or a misdemeanor that carries a statutory penalty of more than two years. A violator is guilty of a felony and subject to a nonsuspendable, nonparolable, mandatory minimum sentence of 5 years and a maximum sentence of 15 years. Each violation of this prohibition is a separate offense. Under a separate prohibition relating to knowing participation in a violation of this title, a violator is subject to maximum penalties of five years imprisonment and/or a fine of \$10,000. Each violation of this prohibition is also 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 is 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.

Under federal law, it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person has been adjudicated as a mental defective or has been committed to any mental institution.

For more information on federal and state laws relating to the possession of a firearm by the mentally ill, see **Appendix – Laws Relating to Possession of a Firearm by the Mentally Ill.**

Background: Chapter 131 of 2012 (HB 618) established a Task Force to Study Access of Individuals with Mental Illness to Regulated Firearms, with three specified areas of concern to consider. The task force is staffed by the Governor's Office of Crime Control and Prevention and filed its report of findings and recommendations on December 31, 2012. The task force established three workgroups and assigned them specified tasks.

- The first workgroup studied the adequacy of State laws and policies relating to the access of law enforcement officers to mental health records and whether, and to what extent, the State should expand access of law enforcement officers to certain mental health records.
- The second workgroup studied whether existing statutory and regulatory provisions adequately protect the public, as well as the civil rights of individuals with mental illness.
- The third workgroup studied the adequacy of State laws and policies relating to the access of individuals with a history of mental illness to all regulated firearms.

The task force report has seven findings, with nine recommendations. The recommendations include the need for additional research; additional mandated reporting by mental health professionals and law enforcement; mandatory firearm seizures under certain circumstances; additional training for law enforcement personnel and mental health professionals; expansion of crisis intervention teams; changes in funding allocations for continuing education and local jurisdictions; and the establishment of a process for full restoration of firearms possession and purchasing rights in accordance with specified federal standards. The detailed findings and recommendations of the task force are contained in the full task force report which can be found online at: <http://www.goccp.maryland.gov/legislation/guns-mental-illness-task-force.php>.

On January 16, 2013, President Obama signed 23 executive actions to strengthen existing gun laws and to take related steps addressing mental health and school safety. The President also asked Congress to reinstate and strengthen the assault weapons ban that expired in 2004, to restrict ammunition magazines to no more than 10 rounds, and to expand background checks to virtually all gun transactions. All of these presidential actions can be found online at: <http://www.whitehouse.gov/briefing-room/presidential-actions>.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities for longer periods of time and increased payments to counties for

reimbursement of inmate costs. The number of people subject to the bill's penalty provisions is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 per month.

Additional Information

Prior Introductions: A similar bill, HB 1100 of 2012, received an unfavorable report by the House Judiciary Committee.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, National Conference of State Legislatures, Department of Legislative Services

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Appendix – Laws Relating to Possession of a Firearm by the Mentally Ill

Federal Law

Under 18 U.S.C. § 922(d), it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person has been adjudicated as a mental defective or has been committed to any mental institution.

State Laws

Arizona	Ariz. Rev. Stat. §§ 13-3101 - 02, 13-925	A person may not possess a firearm if found to constitute a danger to themselves or others pursuant to court order under § 36-540, and whose right to possess a firearm has not been restored pursuant to § 13-925.
Arkansas	Ark. Code § 5-73-103	A person may not possess or own any firearm if the person has been: <ul style="list-style-type: none"> • adjudicated mentally ill; or • committed involuntarily to any mental institution.
California	Cal. Welfare and Inst. Code §§ 8100 - 8108	A person may not possess, purchase, receive, attempt to purchase or receive, or have control or custody of any firearm if the person: <ul style="list-style-type: none"> • is receiving in-patient treatment for a mental illness at a mental health facility and the attending professional opines that the patient is a danger to self or others. The prohibition applies even if the person has consented to the treatment, and ends when the patient is discharged; • has been adjudicated to be a danger to others as a result of a mental disorder or mental illness or has been adjudicated to be a mentally disordered sex offender. The prohibition does not apply, if the court issues, upon release, a certificate stating that the person may possess a firearm without endangering others; • has been found not guilty by reason of insanity of enumerated violent felonies. A person who is found not guilty by reason of insanity of other crimes is barred from possessing firearms unless a court finds that the person has recovered sanity; • has been found mentally incompetent to stand trial, unless there is a subsequent finding that the person has become competent; or • is currently under a court-ordered conservatorship because the person is gravely disabled as a result of a mental disorder or impaired by chronic alcoholism.

		A person may not possess, have custody or control, or purchase or receive, or attempt to purchase or receive, any firearms or any other deadly weapon for a period of six months whenever the person communicates to a licensed psychotherapist a serious threat of physical violence against a reasonably identifiable victim(s). Licensed psychotherapists are required to immediately report to a local law enforcement agency the identity of such a person [see § 8105(c)].
Connecticut	Conn. Gen. Stat. § 53a-217c	A person may not obtain a handgun eligibility certificate if the person: <ul style="list-style-type: none"> • has been discharged from custody within the preceding 20 years after having been found not guilty of a crime due to mental disease or defect pursuant to § 53a-13; • has been confined in a mental hospital for persons with psychiatric disabilities within the preceding 12 months by order of a probate court.
Delaware	Del. Code Title 11, § 1448	A person may not purchase, own, possess, or control a firearm or ammunition if the person was ever committed for a mental disorder to any hospital, mental institution, or sanitarium, unless the person possesses a certificate from a medical doctor or psychiatrist licensed in Delaware stating that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons.
District of Columbia	D.C. Code § 7-2502.03	An applicant for a firearms registration certificate must pass a background check conducted by the Chief of Police (in addition to the NICS check required under <i>Brady</i> when purchasing from a federally licensed dealer). Section 7-2502.03 requires that the chief confirm that the applicant within the five years immediately preceding the application: <ul style="list-style-type: none"> • has not been acquitted of any criminal charge by reason of insanity or has not been adjudicated a chronic alcoholic by any court; or • has not been voluntarily or involuntarily committed to any mental hospital or institution.
Florida	Fla. Stat. § 790.065 and § 790.06	Florida follows federal law regarding gun sales, but will not issue a license to carry a concealed weapon if the applicant has been committed to a mental institution under Chapter 394, or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist stating that the person has not suffered from disability for at least five years prior to the date of the application.

Georgia	Ga. Code § 16-11-129	A person may not be issued a license to carry a firearm if the person has been hospitalized as an inpatient in any mental hospital or alcohol or drug treatment center within five years of the application date.
Hawaii	Haw. Rev. Stat. § 134-7	<p>A person may not own, possess, or control any firearm or ammunition if the person:</p> <ul style="list-style-type: none"> • has been acquitted of a crime on the grounds of mental disease, disorder, or defect; or is or has been diagnosed as having a significant behavioral, emotional, or mental disorder, or for treatment for organic brain syndromes; • is a minor who (1) is or has been under treatment for addiction to any dangerous drug, intoxicating compound, or intoxicating liquor or (2) has been determined not to have been responsible for a criminal act or has been committed to any institution on account of a mental disease, disorder, or defect; or • is or has been diagnosed as having a significant behavioral, emotional, or mental disorder as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes. <p>An exception exists if the person has been medically documented to be no longer adversely affected by the addiction, abuse, dependence, mental disease, disorder, or defect.</p>
Idaho	Idaho Code § 18-3302(1)	<p>A license to carry a concealed weapon <u>must</u> be issued to an applicant <i>unless</i> the person is currently suffering, or has been adjudicated as, based on substantial evidence as:</p> <ul style="list-style-type: none"> • lacking mental capacity, per Idaho Code Ann. § 18-210; • mentally ill, per § 66-317; • gravely disabled, per § 66-317; or • an incapacitated person, per § 15-5-101(a).
Illinois	Ill. Rev. Stat. Ch. 720, § 5/24-3.1	<p>A person commits the offense of unlawful possession of firearms or firearm ammunition when the person:</p> <ul style="list-style-type: none"> • has been a patient in a mental hospital within the past five years and possesses any firearms or firearm ammunition; or • is mentally retarded and possesses any firearms or firearm ammunition.
Indiana	Ind. Code § 35-47-2-7	A person may not transfer a handgun to an individual who the person has reasonable cause to believe is mentally incompetent.

Iowa	Iowa Code § 724.15	Any person who acquires ownership of any pistol or revolver must first obtain an annual permit. An annual permit must be issued to any person unless prohibited by federal law from shipping, transporting, possessing, or receiving a firearm.
Kansas	Kans. Stat. § 21-4204	A person may not possess a firearm if the person is or has been a mentally ill person subject to involuntary commitment for care and treatment as defined in § 59-2946, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in § 59-29B46, unless the person has received a “certificate of restoration.”
Louisiana	La. Rev. Stat. § 40:1379.3	A carry permit may not be issued to a person who: <ul style="list-style-type: none"> • suffers from “mental or physical infirmity due to disease, illness, or retardation” which prevents the safe handling of a handgun; • has been adjudicated to be mentally deficient or has been committed to a mental institution.
Maine	Me. Rev. Stat. Title 15, § 393	A person may not own, possess, or have under that person’s control a firearm if the person has been convicted of committing, or found not criminally responsible by reason of insanity of committing certain enumerated crimes.
Maryland	Md. Pub. Safety Code § 5-133	A person may not possess a regulated firearm if the person: <ul style="list-style-type: none"> • suffers from a mental disorder as defined in § 10-101(f)(2) of the Health-General Article and has 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 • has been confined for more than 30 consecutive days to a facility as defined in § 10-101 of the Health-General Article, 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.
Massachusetts	Mass. Gen. Laws Ch. 140, § 131	A Class A or B license to carry a firearm may be issued if the applicant has been confined to any hospital or institution for mental illness, unless the applicant submits a physician’s affidavit attesting that the person is familiar with the applicant and that the applicant is not disabled by such an illness in a manner that would prevent the person from possessing a firearm.

Michigan	Mich. Comp. Laws § 28.422	A person may not purchase, carry, possess, or transport a pistol without a license to do so. A person may qualify for a license if the person has not been adjudged insane or legally incapacitated and is not under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
Minnesota	Minn. Stat. § 624.713	A person may not possess a firearm if the person: <ul style="list-style-type: none"> • is, or has ever been, confined to a treatment facility as a person who is mentally ill, mentally retarded, or mentally ill and dangerous to the public; or • has ever been found incompetent to stand trial or not guilty by reason of mental illness, unless there is satisfactory proof that the person no longer suffers from this disability.
Mississippi	Miss. Stat. Rev. § 45-9-101	A license to carry concealed handguns <u>must</u> be issued by the Department of Public Safety, pursuant to § 45-9-101(2), if the applicant: <ul style="list-style-type: none"> • has not been adjudicated mentally incompetent, or has waited five years from the date of restoration of mental capacity by court order; • has not been voluntarily or involuntarily committed to a mental institution or mental health treatment facility unless the person possesses a certificate from a psychiatrist licensed in Mississippi stating that the person has not suffered from disability for a period of five years.
Missouri	Mo. Rev. Stat. § 571.070	A person commits the crime of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and is currently adjudged as mentally incompetent.
Montana	Mont. Code § 45-8-321	A permit to carry a concealed weapon may be denied to a person who has been adjudicated in any state or federal court to be mentally ill, defective, or disabled, and remains subject to a disposition order.
Nebraska	Neb. Rev. Stat. § 69-2433	An applicant for a permit to carry a concealed handgun must not have been found in the previous 10 years to be a mentally ill and dangerous person and not be currently adjudged mentally incompetent.
Nevada	Nev. Rev. Stat. § 202.360	A person may not own or possess a firearm if the person has been adjudicated mentally ill or has been committed to any mental health facility.
New Jersey	N.J. Rev. Stat. § 2c:58-3	A person may not be issued a handgun purchase permit or firearms purchaser identification card if the person: <ul style="list-style-type: none"> • is confined for a mental disorder to a hospital, mental institution or sanitarium, or is presently an habitual drunkard;

		<ul style="list-style-type: none"> has ever been confined for a mental disorder, or is an alcoholic unless producing a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that the person is no longer suffering from that particular disability in such a manner that would interfere with or handicap the person in the handling of firearms.
New Mexico	N.M. Stat. § 29-19-4	The New Mexico Department of Public Safety must issue a license to an applicant who has not been adjudicated mentally incompetent or committed to a mental institution.
New York	N.Y. Pen. Law § 400.00; Mental Health Law Art. 9, 10 & 15; Crim. Proc. Law Art. 730, § 330.20; Corr. Law §§ 402 & 508; Fam. Ct. Act §§ 322.2 & 353.4	<p>No person may be issued a license to carry, possess, or dispose of a firearm unless the person:</p> <ul style="list-style-type: none"> has stated whether they have ever suffered any mental illness; has not been involuntarily committed to a facility under the jurisdiction of an office of the Department of Mental Hygiene in accordance with state law; or has not been civilly confined in a secure treatment facility.
North Carolina	N.C. Gen. Stat. § 14-404	A person may not obtain a permit to purchase a handgun if the person has been adjudicated mentally incompetent or has been committed to a mental institution.
North Dakota	N.D. Cent. Code § 62.1-02	A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in North Dakota or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under § 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a mentally ill person as defined in § 25 03.1-02, or as a mentally deficient person as defined in § 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
Ohio	Ohio Rev. Stat. § 2923.125	A person may not acquire, possess, carry, or use any firearm if the person is under adjudication for mental incompetence, has been adjudicated as a mental defective, is committed to a mental institution, has been found to be mentally ill subject to hospitalization by court order, or is an involuntary mentally ill patient.
Oklahoma	Okla. Stat. § 21-1289.10	A person may not knowingly transfer a firearm to a mentally or emotionally unbalanced person.
Oregon	O.R.S. § 166.250	<p>A person may not possess a firearm if the person:</p> <ul style="list-style-type: none"> was committed to the Oregon Health Authority under ORS 426.130;

		<ul style="list-style-type: none"> • was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness; or • has been found guilty except for insanity under ORS 161.295 of a felony.
Pennsylvania	Pa. Con Stat. Title 18, § 6105(c)	A person may not possess a firearm if ever having been adjudicated as incompetent or involuntarily committed to a mental institution.
Rhode Island	R.I. Gen. Laws § 11-47-6	A person who is under guardianship or treatment or confinement by virtue of being a mental incompetent, ...may not purchase, own, carry, transport, or possess or personally control any firearm. Any person affected by these provisions, other than a person who has been pronounced criminally insane by competent medical authority, after the lapse of a period of five years from the date of being pronounced cured by competent medical authority, may, upon presentation of an affidavit issued by competent medical authority to the effect that the person is a mentally stable person and a proper person to possess firearms, make application for the purchase of the firearm(s).
South Carolina	S.C. Code §§ 16-23-30, 44-23-1080	A person may not possess or acquire a handgun if the person has been adjudicated mentally incompetent. In addition, patients and prisoners under the jurisdiction of the South Carolina Department of Mental Health may not have access to firearms.
South Dakota	S.D. Codified Laws § 23-7-7.1	The sheriff of the county in which the applicant resides <u>must</u> issue a permit to carry a concealed weapon if the applicant has not been found in the previous 10 years to be a “danger to others” or a “danger to self” as defined in § 27A-1-1, or is not currently adjudged mentally incompetent.
Tennessee	Tenn. Code Ann. § 39-17-1351	A carry permit may not be issued to any person who has been adjudicated as a mental defective; has not been judicially committed to or hospitalized in a mental institution pursuant to Title 33; has not had a court appoint a conservator for the applicant by reason of a mental defect; has not been judicially determined to be disabled by reason of mental illness, developmental disability, or other mental incapacity; and has not, within seven years from the date of application, been found by a court to pose an immediate substantial likelihood of serious harm, as defined in Title 33, Chapter 6, Part 5, because of mental illness.
Texas	Tex. Gov’t Code § 411.172	A person is ineligible for a license to carry a concealed weapon if the person:

		<ul style="list-style-type: none"> • has been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability; • suffers from a psychiatric disorder or condition described above that (1) is in remission but is reasonably likely to redevelop at a future time or (2) requires continuous medical treatment to avoid redevelopment; • has been diagnosed by a licensed physician, determined by a review board or similar authority, or declared by a court to be incompetent to manage the person’s own affairs; or • has entered in a criminal proceeding a plea of not guilty by reason of insanity. <p>The following constitutes evidence that a person has a psychiatric disorder or condition described above:</p> <p>(1) involuntary psychiatric hospitalization;</p> <p>(2) psychiatric hospitalization;</p> <p>(3) inpatient or residential substance abuse treatment in the preceding five-year period;</p> <p>(4) diagnosis in the preceding five-year period by a licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or</p> <p>(5) diagnosis at any time by a licensed physician that the person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to:</p> <p>(a) schizophrenia or delusional disorder;</p> <p>(b) bipolar disorder;</p> <p>(c) chronic dementia, whether caused by illness, brain defect, or brain injury;</p> <p>(d) dissociative identity disorder;</p> <p>(e) intermittent explosive disorder; or</p> <p>(f) antisocial personality disorder.</p>
Utah	Utah Code § 53-5-704	A person 21 or older may be issued a permit to carry a concealed firearm for lawful self defense, unless the person has been adjudicated by a state or federal court as mentally incompetent (unless the adjudication has been withdrawn or reversed).
Virginia	Va. Code §§ 18.2-308.1:2-:3	<p>A person is prohibited from the:</p> <ul style="list-style-type: none"> • purchase, possession, or transportation of any firearm by any person adjudicated “legally incompetent,” “mentally incapacitated,” or “incapacitated,” whose competency or capacity has not been restored; and

		<ul style="list-style-type: none"> • purchase, possession, or transportation of a firearm by a person who has been involuntarily committed, during the period of commitment.
Washington	Wash. Rev. Code § 9.41.040	A person may not own, possess, or have in their control any firearm, if that person has been involuntarily committed for mental health treatment and their right to own a firearm has not been restored.
West Virginia	W. Va. Code § 61-7-7	A person may not possess a firearm if the person has been adjudicated as a mental defective or has been involuntarily committed to a mental institution.
Wisconsin	Wis. Stat. § 941.29	<p>Any handgun transfer may not be approved if the recipient has been:</p> <ul style="list-style-type: none"> • found not guilty of a felony in Wisconsin by reason of mental disease or defect; • found not guilty or not responsible for a crime elsewhere that would be a felony in Wisconsin by reason of insanity or mental disease, defect, or illness; or • committed to a treatment facility (because the individual is mentally ill, drug dependent, or developmentally disabled) and ordered not to possess a firearm.
Wyoming	Wyo. Stat. § 6-8-404	<p>To possess a personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Wyoming and that remains exclusively within the borders of Wyoming, a person must not:</p> <ul style="list-style-type: none"> • currently be adjudicated to be legally incompetent; and • have been committed to a mental institution.

Source: National Conference of State Legislatures, January 2013
