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Office of Research
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S.B. 221
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 221's Bill Analysis](#)

Version: As Introduced

Primary Sponsor: Sen. Dolan

Local Impact Statement Procedure Required: Yes

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Highlights

- The Department of Rehabilitation and Correction will realize an increase in GRF-funded incarceration costs, likely in the millions of dollars annually, as a result of an increase in the number of offenders being sentenced to prison or sentenced for longer terms for certain weapons offenses.
- The bill enacts a mechanism for the emergency evaluation of a person for alcohol or other drug abuse and modifies the existing court-ordered treatment mechanism. As a result, it is possible that treatment costs could increase for various public entities. The amount will depend on a number of factors including the number of persons impacted and whether they have health insurance.
- Law enforcement agencies across the state will need to develop policies and procedures regarding acceptance, storage, and the return of firearms that have been retrieved under a safety protection order (SPO). The annual costs for a local law enforcement agency to perform these duties will depend upon the number of SPOs issued, the number of firearms retrieved, and the length of time such firearms are in their possession.
- County criminal justice systems generally are likely to see increased expenditures, as a result of having additional persons to prosecute, adjudicate, and sanction for felony weapons transactions violations.
- Probate courts will likely incur increased expenses to accommodate an increase in the number of petitions for involuntary treatment and to deliver notifications to the Attorney General within the bill's timelines including the potential need for additional staff or staff time.

- The Attorney General and the Department of Public Safety will incur costs to establish and maintain processes regarding notifications from courts and seller's protection certificates (SPCs), respectively.
- County sheriffs will see increased administrative costs to process requests for SPC background checks, offset somewhat by the collection of a permissible fee of not more than \$10. The volume of background checks and subsequent fees is unknown.

Detailed Analysis

Court-ordered evaluation and treatment

The bill modifies, as described in more detail below, the procedures under current law through which a probate court may order involuntary treatment for a person determined to be a "mentally ill person subject to court order," or suffering from alcohol or other drug abuse (see the LSC bill analysis).

Alcohol or drug abuse treatment mechanisms

Emergency evaluation

The bill enacts a mechanism for the emergency evaluation of a person for "alcohol or other drug abuse" and a need for court-ordered treatment in specified circumstances. The bill outlines the procedures relating to this new mechanism. It specifies that parole officers, police officers, and sheriffs who have reason to believe that a person is intoxicated and may be suffering from alcohol or other drug abuse that is subject to court-ordered treatment and the person represents a substantial risk of physical harm to self or others may take the person into custody for evaluation. If a person is taken for an evaluation and a qualified health professional believes the person is suffering from alcohol or other drug abuse, the professional may detain the person for up to three court days and file a petition to a court to order involuntary treatment.

This provision could increase the number of persons who will receive treatment, which could increase treatment costs. The amount of any increase will depend on the following factors: the number of individuals impacted, whether the individual has health insurance, and whether the services rendered are reimbursable by the person's health insurance. If a person is enrolled in Medicaid, it is possible that Medicaid might realize an increase in treatment costs. If the person is uninsured, it is possible that costs could increase for Alcohol, Drug Addiction and Mental Health Services (ADAMHS) boards, courts, or hospitals.

Court-ordered alcohol or drug abuse treatment

Existing law contains a mechanism whereby a probate court may order involuntary treatment for a person suffering from alcohol or drug abuse. The bill modifies this existing mechanism in several ways and enacts new aspects. For instance, the bill eliminates the provision that requires that the petition must be filed by a spouse, relative, or guardian of the respondent and removes the requirement that a person pay a filing fee to a probate court for a petition. In addition, the bill eliminates the requirement that a petition for court-ordered mental health treatment be accompanied by or contain a security deposit that covers half of the estimated cost of treatment for the respondent. This provision may increase treatment costs for Medicaid, ADAMHS boards, or courts. The total increase will depend on the number of persons impacted and the individual's health insurance status among other factors.

Additionally, current law specifies that if a respondent fails to attend an examination scheduled before a petition hearing, the probate court must issue a summons to the respondent that commands the respondent to appear at a specified time and place. If the respondent fails to appear, the court may order the sheriff or any other peace officer to transport the respondent to a hospital for treatment. The sheriff may authorize an ADAMHS board or ambulance or private services provider under contract with a board to transport the respondent. The transportation costs are included in the costs of treatment to be paid by the petitioner. The bill states that transportation costs are included in the costs of treatment without reference to them being paid by the petitioner. As a result, transportation costs could increase for local ADAMHS boards or others, depending on who is responsible for such costs.

Providing false information

The bill prohibits a person from providing false information on an affidavit filed as part of an action in the probate court to find a person to be a “mentally ill person subject to court order” or suffering from alcohol or other drug abuse. A violation of the prohibition is a first degree misdemeanor. County and municipal criminal justice systems may realize increased expenditures as a result of having more persons to prosecute, adjudicate, and sanction for providing false information as part of an affidavit filed in a proceeding to determine whether an individual is a mentally ill person, or a person suffering from alcohol or other drug abuse. Violations of first degree misdemeanor offenses are punishable by not more than 180 days in jail, a fine of up to \$1,000, or both.

Counties and municipalities may gain relatively small amounts of annual revenue collected from violators pursuant to the order of the sentencing court. Of note is that the court rarely imposes the maximum permissible fine, and collecting the fine can be problematic. This is because offenders can be financially unable or unwilling to pay. The potential annual gain will be negligible.

In addition, a violator will be assessed \$29 in state court costs for a misdemeanor violation, of which \$20 is credited to the Indigent Defense Support Fund (Fund 5DY0) and the remainder, or \$9, is credited to the Victims of Crime/Reparations Fund (Fund 4020). The total amount of state revenue collected annually will be negligible, as the number of violators is expected to be relatively small.

Safety protection orders

The bill creates a mechanism for the issuance of a safety protection order (SPO). The mechanism allows a court to order the temporary removal of firearms from the possession of a respondent when (1) the person is drug dependent, in danger of drug dependence, or a chronic alcoholic, or (2) the person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by the court to be a “mentally ill person subject to court order,” or is an involuntary patient subsequent to a finding that the respondent is not guilty by reason of insanity (NGRI) or incompetent to stand trial (IST).

If firearms are retrieved by a law enforcement officer under an SPO, upon relief from firearms disability, the court that grants relief is required to issue an order to the law enforcement agency that possesses the firearms requiring the agency to return the firearms to the respondent. If a different court issued the SPO, the court that issues the relief from

disability order is required to notify the court that issued the SPO that the relief from disability order has been issued and the SPO has no further force and effect.

The annual costs for any given court will be dependent upon the frequency with which it uses the SPO mechanism.

Law enforcement agencies

When an SPO is issued, the local law enforcement agency with jurisdiction is required to serve the order and, no later than three business days after service, file with the court a form which lists, among other requirements, the serial number, make, model, and description of each firearm and dangerous ordnance retrieved by law enforcement.

A law enforcement agency that has taken possession of a respondent's firearms pursuant to an SPO must maintain the integrity and identity of the firearms in such a manner that, if they are to be returned to the respondent, they can be identified and returned to the respondent in a condition similar to the condition they were in when they were retrieved. Upon receipt of an order from the court that firearms must be returned, the agency is required to return the firearms to the respondent.

All law enforcement agencies will need to develop policies and procedures regarding acceptance, storage, possible insurance, and the return of firearms and dangerous ordnance that have been surrendered or seized. The annual costs for a local law enforcement agency to perform these duties will depend upon the number of SPOs issued, the number of firearms retrieved, and the length of time such firearms are in their possession. Those costs may be offset to some degree, as the bill establishes a procedure for the sale or transfer of firearms being held by law enforcement by the respondent.

Seller's protection certificates

The bill allows a person (transferor) who is not a federally licensed firearms dealer to require a prospective firearms purchaser or transferee to acquire a seller's protection certificate (SPC) prior to sale or transfer of a firearm. To accomplish this, the bill requires the Department of Public Safety (DPS) to conduct background checks upon filing of a petition by any such person with a county sheriff. The bill specifies that the prohibition against unlawful transactions in weapons as described below does not apply to a transferor when the transferee presents a valid SPC at the time of sale or transfer.

A county sheriff is required to verify the identity of the applicant for the SPC, and to immediately contact DPS to request the background check. Upon receipt of the SPC or notification of denial from DPS, the sheriff is required to transmit the certificate to the applicant (in person, electronically, or by mail) or notify the applicant of the denial. The sheriff may collect a fee of up to \$10 for these services. The sheriff will see increased administrative costs to process requests for SPC background checks, the volume of which is unknown. The increased costs may be offset somewhat by the collection of the permitted fee.

DPS is required to prescribe a form to be used for an application for an SPC, to conduct background checks immediately upon request, to notify sheriffs of results or delays, and to establish a system for challenge and review of those denied an SPC. When conducting a background check, DPS is required to search all federal and state databases necessary. The

costs for DPS to establish and then maintain the SPC process are indeterminate. It may be necessary for DPS to hire additional staff to perform the required duties.

Reporting requirements

Courts

The bill requires courts to issue all criminal and civil protection orders in a format that ensures each order is accepted into the National Crime Information Center (NCIC) Protection Order Database maintained by the Federal Bureau of Investigation, and to cause each order to be entered into the Law Enforcement Automated Data System (LEADS) by the close of business on the day following the day in which the order is issued. When an order is terminated or canceled, a court is required to take all steps necessary to ensure the record is removed from LEADS by the close of business on the day following the day in which the order was terminated or canceled, and ensure that the record is removed from the NCIC Protection Order Database.

The bill requires a court which finds an individual to be not guilty by reason of insanity (NGRI), incompetent to stand trial (IST), a chronic alcoholic, or a drug dependent person to notify the Attorney General of the finding not later than seven days after the adjudication. The court is required to notify the Attorney General of terminations, clearances, cancelations, or findings that the person is no longer a chronic alcoholic or drug dependent person within the same timeframe.

The costs for the courts to establish and maintain a system to comply with these reporting requirements are indeterminate. It may be necessary for courts to hire additional staff to perform the required duties.

Attorney General

The bill requires the Attorney General to enter findings, terminations, clearances, and cancelations of NGRI, IST, chronic alcoholism, and drug dependency into LEADS upon notification from a court by the close of the next business day after the day on which notification is received from the court which makes the finding. The Attorney General is required to ensure the entry and removal of findings of chronic alcoholism and drug dependency into and from the NCIC database.

Additionally, the bill requires the Attorney General to make forms available to all probate courts to enable the notification by the courts to the Attorney General of a person found to be a chronic alcoholic or a drug dependent person. The Attorney General is required to maintain and compile notices described above.

The costs for the Attorney General to establish and maintain a system to comply with these reporting requirements are indeterminate. It may be necessary for the Attorney General to hire additional staff to perform the required duties.

Firearms offenses

Having a weapon while under disability

The bill increases the penalties for knowingly acquiring, having, carrying, or using a firearm or dangerous ordnance. Under current law, a violation of this prohibition is a third degree felony punishable by a definite prison term of one to five years, a fine of up to \$10,000, or both. Under the bill, a violation of this prohibition is a second degree felony punishable by a

definite prison term of up to eight years, a fine of up to \$15,000, or both. Subsequent violations under the bill are a first degree felony punishable by a definite prison term of up to 11 years, a fine of up to \$20,000, or both.¹

Based on the Department of Rehabilitation and Correction's (DRC) commitment reports for FYs 2015-2019, an average of 835 offenders were sentenced to prison annually for having a weapon while under disability. The average time served for those committing a third degree felony offense of having a weapon under disability and released in calendar year (CY) 2016 was 1.67 years. The average time served for a second degree felony generally for those released in that same year was 4.38 years. The bill potentially increases the length of time served by a person who violates this prohibition by 2.71 years. Using the FY 2018 average daily cost per inmate (\$76.26), the additional cost to DRC per inmate is \$75,432.58 ($\$76.26 \times 365 \times 2.71$) over the additional time served. This suggests that approximately two years subsequent to the bill's effective date, DRC will start to experience a prison population stacking effect that stabilizes roughly three years later. The resulting effect on DRC's incarceration costs could be in the millions of dollars annually.

Improperly furnishing firearms to a minor

The bill increases the penalties for improperly furnishing firearms to a minor. Under current law, a violation of this prohibition is a fifth degree felony punishable by a definite prison term of six to 12 months, a fine of up to \$2,500, or both. Under the bill, a violation of this prohibition is a third degree felony punishable by a definite prison term of one to five years, a fine of up to \$10,000, or both.

DRC annual commitment reports, from FY 2015 to FY 2019, suggest that no one was committed to DRC for an offense of improperly furnishing firearms to a minor. The number of offenders who may be committed to DRC under the bill is not known, but likely to increase, as fifth degree felony violations under current law may not result in incarceration, while third degree felony violations are more likely to result in the imposition of a prison term. The annual marginal cost for adding an additional offender to the prison system is \$3,000 to \$4,000.

Unlawful transactions in weapons

The bill modifies the offense of unlawful transactions in weapons by (1) applying the prohibition against selling, lending, giving, or furnishing a firearm to a person prohibited from acquiring, possessing, or using a firearm under federal law, and generally lowering the required mens rea for this offense from acting recklessly to acting negligently,² (2) including in the offense instances in which the transferor knows that the results of a background check as described above prohibits the transferee from acquiring, possessing, or using a firearm (see the

¹ For first and second degree felonies committed after March 22, 2019, the sentencing court is required to impose a minimum sentence and to specify a maximum sentence that is 50% greater than the minimum sentence. The court may, after a hearing, reduce the minimum sentence by 5% to 15% upon recommendation of the Department of Rehabilitation and Correction.

² The mens rea required for an offense of unlawful transactions in weapons when the person to whom the weapon is supplied is under the influence of alcohol or any drug of abuse remains recklessly.

LSC bill analysis for exceptions), and (3) raising the offense levels for felony violations generally from fourth degree to third degree felonies, and from third degree to second degree felonies depending on the type of violation.

The modifications described above have the potential to increase the number of persons who may be subject to arrest and prosecution and subsequently sanctioned, including the potential imposition of a prison term, and to increase the length of time a person sentenced to DRC for a violation of the offenses described above may remain in the custody of the state. The number of persons that may be so affected is unknown, however, from FY 2015 through FY 2019, six people were committed to DRC for a violation of unlawful transactions in weapons.

County criminal justice systems generally are likely to see increased expenditures, as a result of having additional persons to prosecute, adjudicate, and sanction for weapons transaction violations, the annual magnitude of which is uncertain. The state will also realize some increase in GRF-funded incarceration costs as a result of a possible increase in the number of offenders being sentenced to prison for having a weapon while under disability.

Fines, fees, and court costs

The state and counties may gain annual revenue from violators pursuant to the order of the sentencing court, the latter of which would receive fines and court costs and fees. Of note is that the court rarely imposes the maximum permissible fine, and in the particular case of felonies, collecting the fine can be problematic. This is because offenders can be financially unable or unwilling to pay. The state's potential gain will be in the form of court costs that, if collected, are then forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).³

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³ The court is generally required to impose state court costs totaling \$60 for a felony divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020.