

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2015**

Bill Number: S.O31 Name of Bill: An act related to possession and transfer of firearms

Agency/Dept: VSP Author of Bill Detective Sergeant Larry Smith  
Review: \_\_\_\_\_

Date of Bill Review: 01/28/15 Related Bills and Key Players: USC 18 Section 922

Status of Bill: (check one)

Upon Introduction       As passed by 1<sup>st</sup> body       As passed by both bodies

Recommended Position:

Support       Oppose       Remain Neutral       Support with modifications identified in # 8 below

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**Analysis of Bill**

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**1. Summary of bill and issue it addresses.**

The intent of this bill is to give local and state Law Enforcement officers the authority to arrest individuals who are in possession of a firearm and have been previously deemed a prohibited user under the Federal guidelines. To make it a state law that all persons be required to undergo a criminal background check when purchasing a firearm. To mandate that court administrative staff report to the National Instant Criminal Background Check System established by the Brady Handgun Violence Prevention Act of 1993 when a person is:

(A) subject to a hospitalization order or non-hospitalization order after a determination by a court that the person is a danger to himself or herself or others;

(B) found not responsible for a crime by reason of insanity or incompetent to stand trial due to a mental illness and is committed to the Department of Mental Health after a determination by a court that the person is a danger to himself or herself or others.

**2. Is there a need for this bill?**

No, under Federal law, United States Code 18 section 922 there already exist a mechanism to charge persons whom have violated the proposed sections above. The emphasis should be focused on Federal Authorities and enforcement of laws currently in place, rather than implementing state laws to accomplish the same task.

**3. What are likely to be the fiscal and programmatic implications of this bill for this Department?**

This bill as introduced would increase the work load on the current VSP staff. The volume of arrest would increase, the storage of weapons would increase, the amount of case follow up required to

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determine if a background check was completed accurately would be a drain on our current staffing levels and ultimately over time cost would rise. More studies need to be conducted to determine the volume of incidents currently incurred by VSP staff. The cost associated with the destruction, care and storage of the firearms mentioned.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The States Attorney's in the state would see a large increase in related gun cases. They would be looking at the possibility of enhanced sentencing for gun possession crimes. The Department of Corrections would be affected when more offenders receive greater or more restrictive sentencing for possessing firearms. The Department of Corrections would see an increase in inmate populations, thus an increase in operating expenditures. The court staff would now be tasked with complying with the mandate to report all court resolutions as they pertain to a subject's mental health status pursuant to the Brady Bill of 1993.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?

Licensed gun dealers would now be subject to audit by local, state and federal authorities upon request, potentially resulting in loss work time and increased accounting fees. Gun dealers would inherit more responsibility conducting background checks on private sales when the fee amounts for this service have not been clearly established.

6. Other Stakeholders:

- 6.1 Who else is likely to support the proposal and why?

On 01/29/15 I spoke with Orleans County Victim's Advocate Amanda Jensen. Jensen advised that in regards to incidents of domestic violence, they as advocates would support the law. Jensen advised in cases where a victim was not involved IE: traffic stops, hunting cases the bill as introduced could prove too costly. In cases of domestic violence or other family related crimes, having the authority to arrest for being in possession of a firearm would be a great asset according to Jensen. These type cases could be adjudicated simultaneously at the county level rather than waiting for the gun possession portion of the case to be settled at the federal level. Gun control advocates would also support the bill as introduced. Advocates for gun control are in favor of any legislation that restricts or enhances current regulations with no regard to cost or implementation. Federal prosecutors may support the bill as written as a way to reduce or deflect current cases back to the local level.

- 6.2 Who else is likely to oppose the proposal and why?

On 01/29/15 I spoke with Game Wardens Hazard and Syminowski concerning the proposed bill. The Wardens would be in favor of having the ability to arrest on violations of gun possession by felons however; were not interested in having to potentially follow up on the background portions of the bill as written. The Wardens advised the current system of referring these types of crimes to the ATF is working fine.

On 02/11/2015 I spoke with Caledonia County States Attorney Lisa Warren concerning the bill. SA Warren advised she has read and understands the bill and would be in support of sections 1 and 3 of the bill as introduced. Warren advised cases involving convicted felons in possession of firearms along with subjects deemed by the court as a prohibited person for mental health reasons, are violations she encounters on a regular basis. Warren advised she had no interest in cases involving background checks and private sales. Warren added that in her experience, firearms being possessed during the commission of a crime, were not legally obtained and would not have been deterred by way of the background check.

Gun rights advocates would oppose the bill. These advocates would argue there are federal laws in place currently that address the issues proposed. There would be no need for the state to in act a law to try and supersede the Federal Statutes. The average citizen would oppose the bill as it now requires them to utilize a licensed dealer to purchase a firearm from a non-family member.

7. Rationale for recommendation: I oppose the bill as proposed for the following reasons;

1. The proposal mirrors that of the laws already in place at the federal level.
2. The bill does not address the need for the state to relieve the federal authorities (having jurisdiction over these matters) of these cases.
3. More emphasis or pressure needs to be applied at the federal level to adopt these state cases and move on prosecution.
4. Transferring these cases over to the local level would inherently increase operating cost. These cost increases have not been studied to estimate the actual fiscal impact on VSP, Corrections and the States Attorneys. In these difficult financial times all cost increases need to be scrutinized more thoroughly.

8. Specific modifications that would be needed to recommend support of this bill;

If section 1. 13 VSA 4017 were a standalone amendment, support for the bill among the law enforcement community would be greater. The other sections as introduced, require more training, investigation and follow up ultimately resulting in higher operating cost and work load for VSP.

9. Gubernatorial appointments to board or commission?

Secretary/Commissioner has reviewed this document

Date: