

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: H.567 Name of Bill: Charter Change – Burlington – Confiscation of Deadly Weapons

Agency/Dept: DPS - VSP Author of Bill Eric Jollymore
Review: _____

Date of Bill Review: 1.26.2016 Related Bills and Key Players: H.568 & H.566

Status of Bill: (check one)

Upon Introduction As passed by 1st body As passed by both bodies

Recommended Position:

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

Analysis of Bill

1. Summary of bill and issue it addresses.

This bill is seeking to approve an amendment to a charter change for the City of Burlington that was passed by the city council in 2014. This bill is part of a three bill series (H.568, H.566) that are all aimed at approving a charter pertaining specifically to the regulation of firearms within the municipal borders of the City of Burlington. Specifically this bill review covers H.567. This bill proposes the approval to empower a police officer who has probable cause to believe that a person has been the victim of domestic assault in violation of state statute to confiscate any firearm, ammunition, or deadly or dangerous weapon that is in the immediate possession or control of the person believed to have committed the offense.

2. Is there a need for this bill?

No. The City of Burlington is not a unique island to which they experience unique problems that are unlike any situation faced by any law enforcement officer. This bill does not address the aspect that realistically any item found within the average home could be used as a dangerous or deadly weapon.

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

Research was completed to determine the relationship between the City of Burlington Police Department and other law enforcement entities such as the Vermont State Police. The impact of this bill was studied by researching law enforcement activity compiled from various sources of data. The City of Burlington and all municipalities surrounding the city maintain their own police departments. These departments are generally well funded and adequately equipped. As a result, members of the Williston Barracks rarely, if ever, respond to a non-special teams related incident in any capacity within the city. If members of the Vermont State Police were to perform a law enforcement function within the city that would trigger the effects of this bill, it would cause the Vermont State Police to be responsible for the handling and storing firearms, or dangerous weapons that were seized pursuant to that law enforcement function.

The City of Burlington is a member of the Vermont League of Cities and Towns as well as a significant percentage of the municipalities in this state. Many of these other towns are covered almost exclusively by the Vermont State Police. If the City of Burlington were to succeed in passing this legislation, it might be foreseeable that other communities may draw upon this experience and seek to pass similar legislation. In this hypothetical situation it could cause significant fiscal costs and programmatic implications for this department. In the City of Burlington, a relative luxury of ample police coverage would make this law fairly easy to enforce. For nearly all other communities outside of Chittenden County staffing remains a persistent issue. The search of a residence even constricted to a single room in that residence that could be considered within the immediate control of a suspect would burden already strained staffing resources.

Further this bill leads a significant degree of discretion to the individual officer to make these decisions in the moment. It would force a degree of creativity to be employed by that officer to decide what may or may not be considered a deadly or dangerous weapon. Depending on the actions taken on-scene by an officer it may expose the agency to risk and liability if a suspect were to use creativity in utilizing an item as a dangerous weapon that an officer did not believe to be worthy of confiscation.

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 Chittenden County States Attorney Office, the Public Defenders Office, the Vermont Department of Corrections and the Vermont Superior Court – Chittenden Criminal Division may all be impacted by this bill. In their various capacities they may all be burdened with additional pieces to their caseloads, additional hearings, and all aspects related to the enforcement of the criminal penalties that would be enacted by this law. All of these agencies as a result of this law might see an increase in costs as more of the limited resources are used to support this law.

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

The City of Burlington and their internal stakeholders would support this bill.

6. Other Stakeholders:

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

I am unsure of external stakeholders outside of the City of Burlington that would weigh-in with support on this proposal.

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

I am unsure of external stakeholders outside of the City of Burlington that would weigh-in with opposition on this proposal.

7. Rationale for recommendation:

This bill states, “that is in the immediate possession or control of the person believed to have committed the offense.” Does this mean where the suspect was found when the police arrived or where the victim

and/or suspect state the violation took place? What if the suspect departed prior to police arrival and was later stopped in their motor vehicle? Are the contents of their motor vehicle subject to search for immediate control? What if the suspect is in a different residence such as that of a relative? Is that area subject to search in addition to the vehicle they traveled in and the areas where the incident is suspected to have taken place? Under this bill what would define immediate possession or control? Leaving this up to discretion might cause a wide range of responses even amongst individual officers employed by the City of Burlington.

How is the agency held accountable if they miss an item later used as a deadly weapon? If a suspect is released on conditions, how might that fall back on the agency if a suspect uses a kitchen knife to harm a victim because their firearms were taken? In its current form it leaves a lot of discretion, few rules, and a large gap for liability. In the right hands and circumstances anything could be used as a deadly or dangerous weapon.

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

This bill may be considered by many especially within the City of Burlington as well meaning and written with good intentions. However I am reading it to see too wide of net and leaving too much discretion, particularly with the area of immediate control or possession of the suspect. It should not be the intention of the legislature to legislate every foreseeable circumstance any officer on-scene and in the moment might find them in. However, this bill as it has been introduced could be interpreted any number of ways which could cause legal trouble for the officer(s) or agencies involved should they interpret it incorrectly.

In a hypothetical situation a weapon is involved in a criminal act such as a domestic violence situation. A suspect points a firearm or a dangerous weapon at a victim and threatens them with it. That firearm or dangerous weapon is already evidence of a crime and is subject to seizure without this law in place. With this law in place as written a suspect could punch a victim and cause a domestic violence situation. The police would then be enabled to search and seize any number of items they believe to be dangerous from the area wherever it may be.

This bill should focus on establishing a nexus between an instrument or dangerous weapon involved in a criminal act and the crime that had taken place, is taking place or is about to be taking place. This mechanism already exists and this bill would create grey area and redundancy.

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many?

I do not believe that this would impact any existing boards, their membership or lead to the creation of any new boards.

Secretary/Commissioner has reviewed this document



Date: 2/1/16

Please return this bill review as a Microsoft Word or PDF document to Jahala.Dudley@vermont.gov and Jessica Mishaan@vermont.gov