

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2013

Bill Number: H.0078 Name of Bill: An act relating to bail, conditions of release, and the possession of dangerous or deadly weapons.

Agency/ Dept: Vermont State Police Author of Bill Review: Det. Sgt. David Sutton

Date of Bill Review: January 28, 2013 Status of Bill: (check one):

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies ☐ Fiscal

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 proposes that during the court's setting of a defendant's conditions of release, all judges must consider the fact a defendant possessed a dangerous or deadly weapon during the commission of their crime. As the statute is currently written, a judge's decision does not have to consider the aforementioned fact, but can consider it at his/her discretion. Thus this addition to the current law would become a directive rather than a recommendation.

2. Is there a need for this bill?

In conversation with Representative Peter Fagan, one of the authors of the purposed legislation, he stated the genesis for the bill came from the community drug crime meetings he attended last summer. He explained community members often expressed their concerns about how judges, while setting bail, do not have to take into account if a defendant was in possession of a deadly weapon during the commission of their crime. Representative Fagan commented, "What we are asking is that the judge takes that into account when setting bail." "He may not add to bail, he may not detract from bail, but he should take it into account."

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

One consideration to be looked at regarding this legislative bill is the court's interpretation of dangerous / deadly weapon. Depending on the view of this definition, the challenging issue for our department would be the expanded addition of evidence storage and the cost incurred in keeping it through adjudication. Furthermore, the cost to destroy all said weapons would also be an impact on the department.

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?

Representative Fagan believed one of the programmatic implications of this bill would be that some defendants would be unable to make bail, and ultimately be housed in a state correctional facility until bail could be made. This would increase cost

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to the state. Representative Fagan commented, “Is that a reason to keep someone who had a deadly weapon with them when they were arrested out of jail?” “No, I think they need to go to jail.”

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 bill does not state whether the weapon has to be in possession or in close proximity to the person. Representative Fagan stated, “I don’t care what they have at home locked-up in a safe, I don’t care what they have at home on their wall because they are a hunter, I care what their carrying on them when they commit the crime.”

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? *James Mongeon, retired Executive Director of the Vermont Department of State Attorneys and Sheriffs, as well as a former state’s attorney in Rutland County, was in favor of the change. He stated that it has enclosed a mandatory consideration on the judge if the person was in possession of a dangerous or deadly weapon during the commission of the crime. This bill does not restrict a judge’s discretion, but the fact has to be considered during sentencing.*

Stephen Klein, a defense attorney practicing law in Rutland County, advised he was in favor of the bill, as long as a judge still had discretion.

6.2 Who else is likely to oppose the proposal and why? *Nobody was identified during this investigator’s research who opposed this proposed legislation.*

7. Rationale for recommendation: *Based on my research, there is no reason not to support this bill. I have found no negative consequences for the Department of Public Safety if this bill was to be enacted into law.*

8. Specific modifications that would be needed to recommend support of this bill: *Clarify Dangerous and deadly weapon, as well as what is considered to be “in possession of” at the time of the offense.*