

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 402  
Judiciary

(Delegate A. Miller, *et al.*)

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Public Safety – Firearms Disqualifications – Antique Firearm  
(Shadé’s Law)

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This bill applies the prohibitions that disqualify a person from possessing a rifle or a shotgun to an “antique firearm.” In addition, the bill applies provisions authorizing relief from a firearms disqualification and transport with a civil protective order of a rifle or shotgun to an antique firearm.

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Fiscal Summary

**State Effect:** The bill’s changes can be handled with existing budgeted resources. Revenues are not materially affected.

**Local Effect:** None.

**Small Business Effect:** Minimal or none.

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Analysis

**Current Law:** An “antique firearm” means:

- a firearm, including a firearm with a matchlock, flintlock, percussion cap, or similar ignition system, manufactured before 1899; or
- a replica of such a firearm that (1) is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition or (2) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

## *Prohibitions*

Generally, a person is prohibited from possessing a rifle or a shotgun, with the exception of an antique firearm, if the person:

- has been convicted of a disqualifying crime;
- has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than two years;
- is a fugitive from justice;
- is a habitual drunkard;
- is addicted to a controlled dangerous substance or is a habitual user;
- suffers from a mental disorder and has a history of violent behavior against the person or another;
- has been found incompetent to stand trial;
- has been found not criminally responsible;
- has been voluntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders;
- has been involuntarily committed to a facility that provides treatment or other services for mental disorders;
- is under the protection of a guardian of the person or property of a disabled person appointed by a court, except for cases in which the appointment of a guardian is solely a result of a physical disability;
- is a respondent against whom a current non ex parte civil protective order has been entered in this State or an order for protection has been issued by a court of another state or a Native American tribe and is in effect; or
- if younger than age 30 at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

A violator is guilty of a misdemeanor and is subject to maximum penalties of three years imprisonment and/or a \$1,000 fine.

In addition, a person is prohibited from possessing a rifle or a shotgun if the person was previously convicted of (1) a crime of violence; (2) a violation of specified controlled dangerous substances law; (3) an offense under the laws of another state or the United States that would constitute one of these crimes if committed in this State. A violator is guilty of a felony and is subject to a maximum penalty of 15 years imprisonment.

### *Mental Health Provisions*

Under Chapter 427 of 2013, a person may not possess a regulated firearm, rifle, or shotgun if the person:

- suffers from a mental disorder as defined in § 10-101(i)(2) of the Health-General Article and has a history of violent behavior against the person or another;
- has been found incompetent to stand trial or not criminally responsible in a criminal case;
- has been voluntarily admitted for more than 30 consecutive days to a facility as defined in § 10-101 of the Health-General Article;
- has been involuntarily committed to a facility as defined in § 10-101 of the Health-General Article; or
- is under the protection of a court-appointed guardian of the property or guardian of the person, except for cases in which the appointment of a guardian is solely a result of a physical disability.

If a hearing officer enters an order for involuntary commitment to a facility and the hearing officer determines that the individual cannot safely possess a firearm based on credible evidence of dangerousness to others, the hearing officer must order the individual who is subject to the involuntary commitment to surrender to law enforcement authorities any firearms in the individual's possession and refrain from possessing a firearm unless the individual is granted relief from firearms disqualification in accordance with § 5-133.3 of the Public Safety Article.

A court is required to promptly report to the National Instant Criminal Background Check System (NICS), through a secure portal approved by the Department of Public Safety and Correctional Services, the date of the court determination or finding, and the name and identifying information of a person:

- determined to be not criminally responsible;
- found to be incompetent to stand trial; or
- found to be in need of the protection of a guardian under specified provisions of the Estates and Trusts Article relating to the protection of minors and disabled persons, except for cases in which the appointment of a guardian is solely a result of a physical disability.

A mental health care facility must similarly report to NICS the name and identifying information of a person admitted or committed to the facility, the date of admission or commitment, and the name of the facility to which the person was voluntarily admitted, if

the person has been admitted to a facility for 30 consecutive days or more, or if the person has been involuntarily committed.

A person seeking relief from firearms disqualification may file an application with the Department of Health and Mental Hygiene (DHMH). An application for relief from a firearms disqualification must include, along with any other information required by DHMH, (1) a statement explaining why the applicant is prohibited from possessing a regulated firearm, rifle, or shotgun; (2) a statement why the applicant should be relieved from that prohibition; (3) a signed authorization allowing DHMH to access specified health and criminal records; (4) three statements related to the applicant's reputation and character; and (5) if the applicant is prohibited from possessing a firearm for certain mental health reasons, a certificate issued within 30 days of the submission of the application on a form signed by an individual licensed in the State as a physician who is board certified in psychiatry or as a psychologist stating:

- the length of time that the applicant has not had symptoms that cause the applicant to be a danger to self or others;
- the length of time that the applicant has been compliant with the treatment plan for the applicant's mental illness; and
- an opinion as to whether the applicant, because of mental illness, would be a danger to the applicant or to another person if allowed to possess a firearm.

Additional information is required to be included in the application for individuals who are prohibited on the basis of guardianship orders.

DHMH may not approve an application if a determination is made that (1) the applicant supplied incomplete or false information; (2) the application is not properly completed; or (3) the applicant has not shown by a preponderance of the evidence that the applicant will be unlikely to act in a manner dangerous to self or public safety and that granting a permit to possess a regulated firearm or authorizing the possession of a rifle or shotgun would be contrary to the public interest.

Within 60 days from the receipt of a completed application, DHMH must provide the applicant with a certificate affirming the applicant's mental competence to possess a regulated firearm or a written statement that the applicant is not mentally competent to possess a firearm. An aggrieved applicant may request a hearing in accordance with the Administrative Procedure Act, and judicial review may be sought.

A physician or psychologist who acts in good faith and with reasonable grounds in providing the statements and opinions required by the restoration process may not be held civilly or criminally liable for those actions.

## *Transporting – Civil Protective Order*

Any statutory restrictions on the possession of rifles or shotguns do not apply to a person transporting a rifle or shotgun if the person is carrying a civil protective order requiring the surrender of the weapon and (1) the rifle or shotgun is unloaded; (2) the person has notified a law enforcement unit that it is being transported in accordance with the protective order; and (3) the person transports it directly to the law enforcement unit.

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### **Additional Information**

**Prior Introductions:** HB 318 of 2017 received a hearing in the House Judiciary Committee, but no further action was taken on the bill. Its cross file, SB 467, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 703 of 2016, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken on the bill.

**Cross File:** SB 448 (Senator Feldman, *et al.*) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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