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FISCAL IMPACT STATEMENT

LS 7098

BILL NUMBER: SB 493

NOTE PREPARED: Feb 21, 2009

BILL AMENDED: Feb 19, 2009

SUBJECT: Handgun License Revocation Procedures.

FIRST AUTHOR: Sen. Waltz

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill does the following.

Handgun Licenses- The bill establishes a two-track procedure for the revocation or suspension of handgun licenses.

Transmission of Information- The bill provides that if a court or the Department of Correction (DOC) makes an adjudication or a finding concerning a person's mental health that may disqualify the person from possessing a firearm, the court or DOC shall transmit certain information concerning the finding or adjudication to the Division of State Court Administration (DSCA) for transmittal to the National Instant Criminal Background Check System (NICS).

License Revocation Track- The bill provides that, under the revocation track, the Superintendent of the State Police Department (SOSPD) may immediately suspend or revoke a person's handgun license based on: (1) the commission of certain crimes; (2) the fact that the person's license is already suspended; or (3) the person's age if the person is underage; if the SOSPD has documented evidence demonstrating these facts by clear and convincing evidence. The bill authorizes a de novo review of the SOSPD's determination, and provides that the SOSPD has the burden of establishing the person's ineligibility by clear and convincing evidence.

Reinstatement if Acquitted- The bill specifies that if a person is charged with a felony, the person may petition the court to order the SOSPD to reinstate the person's license if the person has been acquitted of all charges that would prohibit the person from possessing a license. The bill provides that the prosecuting attorney bears the burden of proving the person's ineligibility by clear and convincing evidence.

License Suspension Track- The bill provides that, under the suspension track, the SOSPD may conditionally suspend the handgun license of certain persons for a 90-day period (or longer if the person requests a continuance) if: (1) the SOSPD has documented evidence demonstrating by clear and convincing evidence that the person has a propensity for violent or emotionally unstable conduct; or (2) the SOSPD has clear and convincing evidence that the person's license should be suspended. The bill requires that the evidence relied upon by the SOSPD be based on written medical evidence. The bill provides that a person whose license has been suspended may seek de novo review of the SOSPD's suspension by filing a petition and a waiver of medical privacy concerning matters that bear on the person's eligibility to possess a license. The bill requires the prosecuting attorney to establish the person's ineligibility to possess a license by clear and convincing evidence.

Penalty Provision- The bill provides that a person who knowingly or intentionally fails to return a license promptly after written notice of suspension or revocation commits a Class A misdemeanor.

Changes & Repealer- The bill makes other changes and conforming amendments. The bill repeals a superseded provision.

Effective Date: July 1, 2009.

Explanation of State Expenditures: (Revised) *Transmission of Information-* If more persons appealed their status, there could be an increase in the workload of the DOC and DSCA. The impact would depend on the number of individuals who petition the DOC for an appeal and are granted a hearing. The NICS appeal process would determine if individuals who were included on the database would be able to again purchase or possess a handgun. Individuals are authorized to petition DOC to review their case if a staff psychiatrist made specific determinations. If a person is no longer deemed a danger to others or to act in a manner dangerous to public safety, and the requested relief is not contrary to the public interest, the court is required to transmit the information to DSCA for inclusion in the NICS.

Handgun Licenses- This provision could increase the workload of the Indiana State Police (ISP) to investigate, gather, and present evidence required of this provision. The ISP and the Attorney General (AG) could attend additional court hearings for the revocation or suspension of a handgun license. The workload of the AG may increase if the AG must represent the ISP in more judicial review proceedings. The bill does not provide an appropriation. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

In the case of revocation or suspension, the ISP would have to provide evidence to the court. Evidence would only have to be presented for revocation if the person whose license was revoked appealed to a court for judicial review. With suspension, the ISP would have to appeal to the court directly with evidence in support of suspension. The evidence would have to be based on scientific, medical, technical, or other specialized evidence. The evidence would have to be admissible under Indiana evidence rules.

(Revised) *Background Information-* Handgun License Hearings- The following table illustrates handgun license hearing statistics from recent years.

State Police Handgun License Hearings (2006-2008).			
	2006	2007	2008
Total Hearings	857	844	743
Suspension Hearings	790	779	647
Appeal Hearings	67	65	98
Appeal Denied	47	47	67
License Suspended	41	8	24
License Revoked	718	716	575
License Issued Upon Appeal	20	18	29

The ISP reverted \$3.2 M from the state General Fund and dedicated funds at the close of FY 2008.

NICS- The NICS was put in place in accordance with the federal Brady Gun Law. This database maintains a list of individuals that are considered ineligible for the purchase of handguns. In order to sell a handgun, handgun sellers and distributors in Indiana must run a purchase applicant's name through the NICS and receive approval from the NICS that the person is authorized to buy and possess a handgun. The penalty for violating the Brady Law in Indiana by a handgun seller or distributor is a Class A misdemeanor.

Explanation of State Revenues: *Criminal Penalty Provision-* A person failing to return a handgun license would commit a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Judicial Review- If more persons appealed to courts for review of a handgun license revocation, court fees to the state General Fund for civil proceedings would increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund when a case is filed in a court of record. Additional fees would be assessed as listed above, except for the DNA sample fee.

Explanation of Local Expenditures: (Revised) *Handgun Licenses-* Courts- Circuit or superior courts may see an increase in their workload if additional handgun cases are filed by the state or appeals for review are made.

Prosecutor- When suspension of a license expires, county prosecutors would be able to request the court to further suspend or revoke a license. When an accused person has been acquitted of charges and petitions the court to order the ISP to reinstate their license, the court would notify the county prosecutor. The prosecutor would be required to provide clear and convincing evidence that the person should not have their license reinstated.

Criminal Penalty Provision- A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Criminal Penalty Provision-* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Judicial Review– The \$100 filing fee for a civil case would be distributed in the same manner as criminal penalty fees to local governments.

State Agencies Affected: ISP; AG; DOC; DSCA.

Local Agencies Affected: Trial courts, local law enforcement agencies, county prosecutor.

Information Sources: Captain Sherry Beck, ISP; Indiana State Budget Agency: *General and Rainy Day Fund Summaries, June 30, 2008.*

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