

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0698
Prime Sponsor(s): Rep. Buck
 Sen. Steadman

Date: February 14, 2014
Bill Status: House Judiciary
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SHORT TITLE: RESTORATION OF FIREARM CARRY RIGHT FOR SOME FELONS

| Fiscal Impact Summary* | FY 2014-2015 | FY 2015-2016 |
|--------------------------------------|----------------------|----------------------|
| State Revenue | <u><(\$5,000)</u> | <u><(\$5,000)</u> |
| Cash Funds | <(\$5,000) | <(\$5,000) |
| State Expenditures | | <u>(\$20,517)</u> |
| General Fund | | (\$20,517) |
| FTE Position Change | | |
| Appropriation Required: None. | | |

* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

Summary of Legislation

Under current law, a person who was convicted of a felony is prohibited from using, possessing, or carrying a firearm or any other weapon. This bill creates a process to allow a person convicted of certain nonviolent felonies to have his or her right to carry a firearm or other weapon restored after five years. Under the bill, individuals convicted of specified nonviolent felonies are eligible for the process set in place by the bill.

Petition process. To restore the right to possess a firearm or weapon, the person must file a petition in district court after five years have passed from the completion of any sentence, including any period of supervision, and provide a lawful purpose for restoration. The bill specifies that the court may issue a certificate of restoration if, after review of the petition, the criminal history of the person, and any submission to the court by the district attorney or by any victim in the case and any other relevant court evidence, the court finds by a preponderance of the evidence that:

- the person is engaged in or seeking to be engaged in a lawful occupation or activity, or the person has a lawful source of income;
- the person has not had any criminal convictions since the completion of his or her sentence, excluding minor traffic violations, and criminal charges are not pending against the person;
- the person has presented lawful and substantial reasons for the restoration of his or her right to possess a firearm or any other weapon; and
- granting the petition would not impose an unreasonable risk to the safety or welfare of the public or of any person.

The court may engage in a hearing to consider a petition to restore the right to carry a firearm or weapon. If the court denies the petition, the individual must wait until at least one year after the denial to file a subsequent petition.

Background

Under current law, any person who was previously convicted of a felony or conspiracy to commit a felony (or adjudicated for a felony as a juvenile) and who knowingly possesses, uses, or carries a weapon commits the crime of possession of a weapon by a previous offender. The penalty for this offense ranges from a class 6 to a class 4 felony. Table 1 below summarizes the classification of the crime of possession of a weapon by a previous offender.

| Table 1: Classification and Penalties for the Crime of Possession of a Weapon by a Previous Offender | | | |
|---|-----------------------|---|---|
| Description of Crime | Classification | Penalty | Citation |
| A second or subsequent offense of possession of a weapon by a previous offender when the weapon is a dangerous weapon or when the conviction or adjudication was based on an offense involving burglary, arson, or any felony involving the use of force or the use of a deadly weapon. | Class 4 Felony | 2 to 6 years in prison; a fine of \$2,000 to \$500,000; or both the fine and the imprisonment. | Section 18-12-108 (5), C.R.S. |
| Possession of a weapon by a previous offender when the previous conviction was for burglary, arson, or any felony involving the use of force or a deadly weapon, within certain timelines. | Class 5 Felony | 1 to 3 years in prison; a fine of \$1,000 to \$100,000; or both the fine and the imprisonment. | Section 18-12-108 (2)(c) and (4)(c), C.R.S. |
| Possession of a weapon by a previous offender when the weapon is a dangerous weapon, as defined by law. | Class 5 Felony | 1 to 3 years in prison; a fine of \$1,000 to \$100,000; or both the fine and the imprisonment. | Section 18-12-108 (2)(b) and (4)(b), C.R.S. |
| Possession of a firearm or other weapon by a previous offender that is not otherwise covered by the situations listed above. | Class 6 Felony | 1 year to 18 months in prison; a fine of \$1,000 to \$100,000; or both the fine and the imprisonment. | Section 18-12-108 (2)(a) and (4)(a), C.R.S. |

State Revenue

Beginning in FY 2014-15, this bill is anticipated to reduce state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for either a class 5 felony or a class 6 felony is \$1,000 to \$100,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue has not been estimated, but is expected to be minimal.

Assumptions. This fiscal note assumes that the bill would only affect individuals who could potentially be charged with class 6 felony possession of a weapon by a previous offender or class 5 felony possession of a weapon by a previous offender when the weapon is a dangerous weapon. According to data from the Judicial Department and the Department of Corrections, approximately 1,000 cases of possession of a weapon by a previous offender are filed per year, most of which are for class 6 felonies.

The bill has the potential to reduce state revenue from criminal fines because individuals who qualify for and complete the process to restore their right to carry a firearm will no longer be eligible for charges of possession of a weapon by a previous offender. However, this fiscal note assumes that those individuals represent a small proportion of the individuals who are charged with possession of a weapon by a previous offender, particularly because such charges are often filed in relation to other crimes. Therefore, the overall impact of this bill on state revenue is expected to be minimal.

State Expenditures

Overall the bill will increase workload for the Judicial Department, although additional appropriations are not required, and is expected to reduce appropriations by \$20,517 General Fund per year at the Department of Corrections, for a five-year reduction of \$82,068 General Fund. The explanation and Table 2 below provide additional detail.

Assumptions. This fiscal note assumes that the bill will only affect individuals who could potentially be charged with class 6 felony possession of a weapon by a previous offender or class 5 felony possession of a weapon by a previous offender when the weapon is a dangerous weapon. According to data from the Judicial Department and the Department of Corrections, approximately 1,000 cases of possession of a weapon by a previous offender are filed per year, most of which are for class 6 felonies. Judicial Department data indicates that almost half of those convicted of possession of a weapon by a previous offender are sentenced to the DOC. In FY 2012-13, 73 offenders were sentenced to the DOC with possession of a weapon as a previous offender as their most serious charge. Approximately thirty percent, or 23, of those offenders were not convicted of any other crime, and had no prior violent offense on their record.

Judicial Department. The overall effect of the bill will be to increase the workload of the Judicial Department to process petitions to restore the right to own a firearm and to create forms and advisements related to this right. This fiscal note assumes that the workload does not require an increase in appropriations at this time. According to data provided by the Judicial Department, there are approximately 6,400 convictions for nonviolent felonies each year. Assuming that 20 percent of those offenders (1,280 offenders) file a petition to restore firearms each year, and that 20 percent of those petitions qualify for consideration, workload will increase by approximately 128 additional hours per year (30 minutes per petition, with 256 petitions considered). This fiscal note assumes that the Judicial Department does not require additional appropriations to meet this workload. If the number of petitions substantially exceeds this estimate, adjustments to appropriations may be requested through the annual budget process.

It should be noted that the bill applies to all individuals who have previously been convicted of specified nonviolent felonies. On July 1, 2014, any individual who completed his or her sentence and supervision prior to June 30, 2009, is eligible to file a petition for a restoration of firearm rights. Therefore, it is reasonable to assume that the initial workload at the Judicial Department will be higher than in later years to meet this demand for the petition process established by the bill. In later years, petitions filed will stabilize. This fiscal note assumes that the bill will result in 128 additional hours of work per year for the first few years after implementation, and will then stabilize to a lower number in future years.

The bill also has the potential to reduce case filings for the offense of possession of a weapon by a previous offender. However, because such charges are often filed in conjunction with other felony charges, the number of cases filed in or workload for courts are not expected to decline significantly. In addition, the process to restore the right to possess a firearm established by the bill is not automatic and requires that the offender demonstrate a substantial reason for the restoration of his or her right to carry a firearm. For these reasons, this fiscal note assumes that any reduction in case filings will be minimal, and will not require a reduction in appropriations.

Department of Corrections. This bill is anticipated to reduce state General Fund expenditures by an estimated \$20,517 per year beginning in FY 2015-16 for the DOC, for a five-year reduction of \$82,068. This decrease assumes that one fewer offender per year will be convicted of a class 6 felony, which has an average length of stay of 11.5 months. This fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons. It should be noted that the DOC will also see a reduced length of stay for offenders who have their firearm rights restored, are later convicted of a felony, and would have, but for the bill, also been convicted of possession of a weapon by a previous offender and sentenced to consecutive terms. This additional potential bed reduction has not been estimated.

Under current law, approximately 73 offenders per year are sentenced to the DOC with possession of a weapon by a previous offender as their most serious offense. According to data provided by the DOC, 23 of those offenders, or approximately 31 percent, were not charged with another offense and had no prior violent offenses. This fiscal note assumes that previous fiscal years followed the pattern of last fiscal year. Assuming that, as a result of the bill, 20 percent of the 23 offenders with no other charges and no previous violent offenses would petition for a restoration of firearms rights, and that 20 percent of those petitions would be considered and granted, this fiscal note assumes that the bill will result in one fewer offender per year sentenced to the DOC for a class 6 felony of possession of a weapon by a previous offender.

Offenders placed in a private contract prison cost the state about \$58.86 per offender per day, including the current daily rate of \$53.74 and an estimated \$5.12 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for the offender to file a successful petition. Table 2 shows the estimated impact of the bill over the next five fiscal years.

| Table 2. Five-Year Fiscal Impact On Correctional Facilities under HB14-1230 | | | | |
|--|--------------------------|--------------------------|-----------------------|-------------------|
| Fiscal Year | Inmate Bed Impact | Construction Cost | Operating Cost | Total Cost |
| FY 2014-15 | 0.0 | \$0 | \$0 | \$0 |
| FY 2015-16 | (1.0) | \$0 | (\$20,517) | (\$20,517) |
| FY 2016-17 | (1.0) | \$0 | (\$20,517) | (\$20,517) |
| FY 2017-18 | (1.0) | \$0 | (\$20,517) | (\$20,517) |
| FY 2018-19 | (1.0) | \$0 | (\$20,517) | (\$20,517) |
| Total | | | (\$82,068) | (\$82,068) |

Local Government Impact

The bill will increase workload for district attorneys to notify victims when offenders petition for a restoration of their right to possess firearms or weapons. The fiscal impact of this increased workload is anticipated to be minimal. Workload may also decrease for cases in which possession of a weapon by a previous offender is the only charge involved. This decrease is expected to be minimal.

Effective Date

The bill takes effect July 1, 2014, and applies to offenses of possession by a previous offenders committed on or after that date and to petitions filed on or after that date.

State and Local Government Contacts

Corrections
Human Services
Local Affairs
Public Safety

Counties
Judicial
Municipalities
Sheriffs

District Attorneys
Law
Natural Resources