



# Senate

General Assembly

**File No. 641**

January Session, 2011

Senate Bill No. 1096

*Senate, April 27, 2011*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

**AN ACT CONCERNING THE CRIMINAL POSSESSION AND SEIZURE OF FIREARM AMMUNITION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 53a-217 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) A person is guilty of criminal possession of a firearm,  
4 ammunition or an electronic defense weapon when such person  
5 possesses a firearm, ammunition or an electronic defense weapon and  
6 (1) has been convicted of a felony, (2) has been convicted as delinquent  
7 for the commission of a serious juvenile offense, as defined in section  
8 46b-120, (3) knows that such person is subject to (A) a restraining or  
9 protective order of a court of this state that has been issued against  
10 such person, after notice and an opportunity to be heard has been  
11 provided to such person, in a case involving the use, attempted use or  
12 threatened use of physical force against another person, or (B) a  
13 foreign order of protection, as defined in section 46b-15a, that has been  
14 issued against such person in a case involving the use, attempted use

15 or threatened use of physical force against another person, (4) knows  
16 that such person is subject to a firearms seizure order issued pursuant  
17 to subsection (d) of section 29-38c, as amended by this act, after notice  
18 and an opportunity to be heard has been provided to such person, or  
19 (5) is prohibited from shipping, transporting, possessing or receiving a  
20 firearm pursuant to 18 USC 922(g)(4). For the purposes of this section,  
21 "convicted" means having a judgment of conviction entered by a court  
22 of competent jurisdiction.

23 (b) Criminal possession of a firearm, ammunition or an electronic  
24 defense weapon is a class D felony, for which two years of the sentence  
25 imposed may not be suspended or reduced by the court.

26 Sec. 2. Section 29-38c of the general statutes is repealed and the  
27 following is substituted in lieu thereof (*Effective October 1, 2011*):

28 (a) Upon complaint on oath by any state's attorney or assistant  
29 state's attorney or by any two police officers, to any judge of the  
30 Superior Court, that such state's attorney or police officers have  
31 probable cause to believe that (1) a person poses a risk of imminent  
32 personal injury to himself or herself or to other individuals, (2) such  
33 person possesses one or more firearms, and (3) such firearm or  
34 firearms are within or upon any place, thing or person, such judge may  
35 issue a warrant commanding a proper officer to enter into or upon  
36 such place or thing, search the same or the person and take into such  
37 officer's custody any and all firearms and ammunition. Such state's  
38 attorney or police officers shall not make such complaint unless such  
39 state's attorney or police officers have conducted an independent  
40 investigation and have determined that such probable cause exists and  
41 that there is no reasonable alternative available to prevent such person  
42 from causing imminent personal injury to himself or herself or to  
43 others with such firearm.

44 (b) A warrant may issue only on affidavit sworn to by the  
45 complainant or complainants before the judge and establishing the  
46 grounds for issuing the warrant, which affidavit shall be part of the  
47 seizure file. In determining whether grounds for the application exist

48 or whether there is probable cause to believe they exist, the judge shall  
49 consider: (1) Recent threats or acts of violence by such person directed  
50 toward other persons; (2) recent threats or acts of violence by such  
51 person directed toward himself or herself; and (3) recent acts of cruelty  
52 to animals as provided in subsection (b) of section 53-247 by such  
53 person. In evaluating whether such recent threats or acts of violence  
54 constitute probable cause to believe that such person poses a risk of  
55 imminent personal injury to himself or herself or to others, the judge  
56 may consider other factors including, but not limited to (A) the  
57 reckless use, display or brandishing of a firearm by such person, (B) a  
58 history of the use, attempted use or threatened use of physical force by  
59 such person against other persons, (C) prior involuntary confinement  
60 of such person in a hospital for persons with psychiatric disabilities,  
61 and (D) the illegal use of controlled substances or abuse of alcohol by  
62 such person. If the judge is satisfied that the grounds for the  
63 application exist or that there is probable cause to believe that they  
64 exist, such judge shall issue a warrant naming or describing the  
65 person, place or thing to be searched. The warrant shall be directed to  
66 any police officer of a regularly organized police department or any  
67 state police officer. It shall state the grounds or probable cause for its  
68 issuance and it shall command the officer to search within a reasonable  
69 time the person, place or thing named for any and all firearms and  
70 ammunition. A copy of the warrant shall be given to the person named  
71 therein together with a notice informing the person that such person  
72 has the right to a hearing under this section and the right to be  
73 represented by counsel at such hearing.

74 (c) The applicant for the warrant shall file a copy of the application  
75 for the warrant and all affidavits upon which the warrant is based with  
76 the clerk of the court for the geographical area within which the search  
77 will be conducted no later than the next business day following the  
78 execution of the warrant. Prior to the execution and return of the  
79 warrant, the clerk of the court shall not disclose any information  
80 pertaining to the application for the warrant or any affidavits upon  
81 which the warrant is based. The warrant shall be executed and  
82 returned with reasonable promptness consistent with due process of

83 law and shall be accompanied by a written inventory of all firearms  
84 and ammunition seized.

85 (d) Not later than fourteen days after the execution of a warrant  
86 under this section, the court for the geographical area where the  
87 person named in the warrant resides shall hold a hearing to determine  
88 whether the [seized] firearm or firearms and any ammunition seized  
89 should be returned to the person named in the warrant or should  
90 continue to be held by the state. At such hearing the state shall have  
91 the burden of proving all material facts by clear and convincing  
92 evidence. If, after such hearing, the court finds by clear and convincing  
93 evidence that the person poses a risk of imminent personal injury to  
94 himself or herself or to other individuals, it may order that the firearm  
95 or firearms and any ammunition seized pursuant to the warrant issued  
96 under subsection (a) of this section continue to be held by the state for  
97 a period not to exceed one year, otherwise the court shall order the  
98 [seized] firearm or firearms and any ammunition seized to be returned  
99 to the person named in the warrant. If the court finds that the person  
100 poses a risk of imminent personal injury to himself or herself or to  
101 other individuals, it shall give notice to the Department of Mental  
102 Health and Addiction Services which may take such action pursuant to  
103 chapter 319i as it deems appropriate.

104 (e) Any person whose firearm or firearms and ammunition have  
105 been ordered seized pursuant to subsection (d) of this section, or such  
106 person's legal representative, may transfer such firearm or firearms  
107 and ammunition in accordance with the provisions of section 29-33 or  
108 other applicable state or federal law, to any person eligible to possess  
109 such firearm or firearms. Upon notification in writing by such person,  
110 or such person's legal representative, and the transferee, the head of  
111 the state agency holding such seized firearm or firearms and  
112 ammunition shall within ten days deliver such firearm or firearms and  
113 ammunition to the transferee.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2011</i>	53a-217
Sec. 2	<i>October 1, 2011</i>	29-38c

**JUD**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Judicial Dept.	GF - Potential Revenue Gain	3,750	5,000

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill makes criminal possession of ammunition a class D felony, which will result in an annual revenue gain to the General Fund of up to \$3,750 in FY 12<sup>1</sup> and \$5,000 in FY 13. The estimate assumes that the establishment of a fine and/or imprisonment for this offense will increase the likelihood that an estimated five offenders annually would be prosecuted and receive harsher penalties than under current law.<sup>2</sup>

It is anticipated that law enforcement personnel and court staff will be able to seize ammunition without incurring additional costs.

**The Out Years**

The annualized ongoing revenue identified above would remain constant into the future since fine amounts are set by statute.

Sources: *Judicial Department Offenses and Revenue Database*

<sup>1</sup> This figure reflects an October 1, 2011 effective date.

<sup>2</sup> In 2010, four convictions were made for criminal possession of a firearm, with \$4,000 in fine revenue collected.

**OLR Bill Analysis****SB 1096*****AN ACT CONCERNING THE CRIMINAL POSSESSION AND SEIZURE OF FIREARM AMMUNITION.*****SUMMARY:**

This bill makes it illegal for people prohibited from possessing firearms or electronic defense weapons to possess ammunition. The bill makes this crime, like criminal possession of a firearm or electronic defense weapon, a class D felony punishable by imprisonment of one to five years, with a two year mandatory minimum sentence; a fine of up to \$5,000; or both.

The bill does not amend CGS § 53a-217c, which makes it a criminal offense (also a Class D felony) for ineligible people to possess handguns (pistols and revolvers). Because the range of people prohibited under this law is much broader than under the law as amended, some people prohibited from possessing handguns will still be able to possess ammunition under the bill (see BACKGROUND).

The bill also allows police, after investigating and determining probable cause, to get a court warrant and seize ammunition, not just firearms, from anyone posing an imminent risk of harming himself or herself or someone else. The procedures that police must follow are the same as current law's procedures governing firearm seizures.

EFFECTIVE DATE: October 1, 2011

**BACKGROUND*****Criminal Possession of a Firearm or Electronic Defense Weapon (CGS § 53a-217)***

By law, a person commits the crime of criminal possession of a firearm if he possesses a firearm or electronic defense weapon and:

1. has been convicted of a felony or a serious juvenile offense;
2. knows that he or she is subject to a firearm seizure order issued after notice and a hearing;
3. knows that he or she is under a protective or restraining order for using, threatening to, or attempting to, use physical force and, if the order was issued in Connecticut, he or she was notified and given a hearing opportunity; or
4. is prohibited under federal law from possessing, transporting, receiving, or shipping firearms because he or she was adjudicated as a mental defective or committed to a mental institution (except in cases where the Treasury Department grants relief from this disability).

***Criminal Possession of a Handgun (CGS § 53a-217c)***

By law, a person possessing a handgun is guilty of criminal possession of a handgun if he or she is an illegal alien or:

1. was discharged from custody in the preceding 20 years after a finding of not guilty of a crime by reason of mental disease or defect;
2. was confined by the probate court to a mental hospital in the 12 months before applying for a permit or certificate;
3. was convicted of a serious juvenile offense;
4. knows that he or she is subject to a firearm seizure order issued after notice and a hearing;
5. is prohibited under federal law from possessing, transporting, receiving or shipping firearms because he or she was adjudicated as a mental defective or committed to a mental institution (except in cases where the Treasury Department grants relief from this disability);

6. knows that he or she is under a protective or restraining order for using, threatening or attempting to use force and if the order was issued in-state, he or she was notified and given a hearing opportunity; or
7. was convicted of any felony or specified misdemeanors (CGS §§ 29-28, 29-36f and 53a-217c).

The specified misdemeanors are:

1. criminally negligent homicide (excluding deaths caused by motor vehicles) (CGS § 53a-58);
2. 3<sup>rd</sup> degree assault (CGS § 53a-61);
3. 3<sup>rd</sup> degree assault of a blind, elderly, pregnant, or mentally retarded person (CGS § 53a-61a);
4. 2<sup>nd</sup> degree threatening (CGS § 53a-62);
5. 1<sup>st</sup> degree reckless endangerment (CGS § 53a-63);
6. 2<sup>nd</sup> degree unlawful restraint (CGS § 53a-96);
7. 1<sup>st</sup> degree riot (CGS § 53a-175);
8. 2<sup>nd</sup> degree riot (CGS § 53a-176);
9. inciting to riot (CGS § 53a-178);
10. 2<sup>nd</sup> degree stalking (CGS § 53a-181d); and
11. first offense involving possession of (a) controlled or hallucinogenic substances (other than a narcotic substance or marijuana) or (b) less than four ounces of a cannabis-type substance (CGS § 21a-279(c)).

### **Gun Seizure Law**

The law allows any two police officers (or a state's attorney), under limited circumstances, to get warrants and seize firearms from anyone

who poses an imminent risk of injuring himself or herself or someone else. The officials may seek the warrant only after (1) conducting an independent investigation to establish probable cause and (2) determining that no reasonable alternative exists to avert the risk of harm.

In determining grounds and probable cause for issuing a warrant, the judge must consider any recent threat or violent act the person directed at himself or herself, others, or animals. In determining whether the threats or acts constitute probable cause to believe a risk of injury is imminent, the judge may consider, among other things, if the person (1) recklessly used, displayed, or brandished a gun; (2) has a history of using, attempting, or threatening to use physical force against people; (3) was ever involuntarily confined to a psychiatric hospital; (4) abused alcohol; or (5) illegally used controlled substances. If satisfied that probable cause exists and there is no reasonable alternative to prevent the person from causing imminent harm, the judge must issue the warrant (CGS § 29-38c).

The court must hold a hearing within 14 days after a seizure to determine whether to return the guns or order them held for up to one year.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 26 Nay 17 (04/12/2011)