

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 615

(Senator Jennings)

Judicial Proceedings

Criminal Law - Theft of a Firearm

This bill specifically prohibits a person from knowingly or willfully removing or taking a firearm, as defined under § 4-204 of the Criminal Law Article, from the owner's lawful possession, custody, or control without the owner's consent. Also, a person may not receive, possess, transfer, buy, or conceal a firearm obtained in this manner knowing or having reason to know that the firearm was obtained illegally.

A violator is guilty of the felony of theft of a firearm and on conviction, subject to imprisonment for up to five years and/or a \$5,000 maximum fine. The bill does not preclude a prosecution under the general theft statute. If a person is convicted of the offense created by the bill and convicted under the general theft statute for the same act or transaction, the convictions must merge for sentencing purposes into the conviction under the general theft statute.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues from penalties shifted from the District Court to the circuit courts. Minimal increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) if individuals are subject to longer incarceration sentences as a result of the bill.

Local Effect: Minimal increase in local revenues due to the bill's monetary penalty provisions. Minimal increase in local expenditures if the bill increases the amount of time individuals spend in local detention facilities.

Small Business Effect: None.

Analysis

Current Law: Section 4-204 of the Criminal Law Article defines a “firearm” to mean a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive or the frame or receiver of such a weapon. “Firearm” includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

Under the general theft statute, a person may not, under specified circumstances (1) willfully or knowingly obtain or exert unauthorized control over property; (2) obtain control over property by willfully or knowingly using deception; (3) possess stolen property knowing that it has been stolen, or believing that it probably has been stolen; or (4) obtain control over property knowing that the property was lost, mislaid, or was delivered under a mistake as to the identity of the recipient or nature or amount of the property. A violator is required to restore the owner’s property or pay the owner the value of the property or services and is subject to the penalties listed below:

<u>Value of Property and/or Services</u>	<u>Maximum Penalty</u>
Less than \$100	Misdemeanor – 90 days imprisonment and/or a \$500 fine
Less than \$1,000	Misdemeanor – 18 months imprisonment and/or a \$500 fine
Less than \$1,000 (two or more prior convictions)	Misdemeanor – 5 years imprisonment and/or a \$5,000 fine
Between \$1,000 and \$10,000	Felony – 10 years imprisonment and/or \$10,000 fine
Between \$10,000 and \$100,000	Felony – 15 years imprisonment and/or \$15,000 fine
\$100,000 or more	Felony – 25 years imprisonment and/or \$25,000 fine

Under § 5-138 of the Public Safety Article, a person may not possess, sell, transfer, or otherwise dispose of a stolen regulated firearm if the person knows or has reasonable cause to believe that the regulated firearm has been stolen. Violators who knowingly participate in such an act or transaction are guilty of a misdemeanor and subject to imprisonment for up to five years and/or a maximum fine of \$10,000.

Background: According to the Judiciary, in fiscal 2015, there were 853 total violations of the sale, transfer, or disposal of stole regulated firearms statute, with 444 adjudicated in the District Court and 409 adjudicated in the circuit courts. A violation is a charge/count filed in the courts. It is not a conviction, and one defendant may be charged with multiple violations.

According to DPSCS, 447 offenders entered State correctional facilities for felony theft; theft was the most serious offense for 269 of these offenders, whose average sentence was 52.6 months. Misdemeanor theft was the most serious offense for 285 of the 547 offenders who entered State correctional facilities during fiscal 2015 for that offense. Their average sentence was 17.7 months.

Information is not available on how many of these cases involve the theft of a firearm or the value of any firearms that may be the subject of these cases.

State Revenues: Assuming that the majority of stolen firearms are valued at less than \$1,000 and that most individuals convicted of the crime created by the bill do not have two prior convictions for general theft, general fund revenues decrease minimally from penalties shifted from the District Court to the circuit courts. In general, misdemeanors are prosecuted in the District Court and felonies are prosecuted in the circuit courts.

State Expenditures: General fund expenditures for DPSCS increase minimally as a result of the bill's incarceration penalty due to people being committed to State correctional facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Public Safety and Correctional Services, Department of State Police, Department of Legislative Services

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