

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 638

(Senators Pugh and McFadden)

Judicial Proceedings

Possession of Loaded Handgun or Regulated Firearm - Enhanced Penalties

This bill establishes increased incarceration penalties for the violation of certain laws regarding carrying a handgun or possessing a regulated firearm if the weapon is loaded with ammunition at the time of the violation.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's incarceration penalty provisions. Minimal decrease in general fund revenues due to the elimination of the application of existing monetary penalties in specified cases under the bill.

Local Effect: Minimal increase in general fund expenditures due to the bill's incarceration penalty provisions. Minimal decrease in local revenues due to the elimination of the application of existing monetary penalties in specified cases under the bill.

Small Business Effect: None.

Analysis

Bill Summary: The bill applies to (1) the prohibition against wearing, carrying, or transporting a handgun without a permit, whether concealed or open, on or about the person or in a vehicle on a road, highway, waterway, or airway; (2) specified prohibitions against certain persons possessing a regulated firearm; and (3) the prohibition against certain persons younger than age 21 possessing a regulated firearm.

The bill specifies that a person who violates any of these prohibitions while the handgun or firearm is loaded with ammunition is (1) for a first offense, guilty of a misdemeanor,

punishable by imprisonment for up to 5 years and subject to a nonsuspendable, nonparolable mandatory minimum sentence of 1 year and (2) for a second or subsequent offense, guilty of a felony, punishable by imprisonment for up to 20 years and subject to a nonsuspendable, nonparolable mandatory minimum sentence of 5 years. The court may not order probation before judgment, and each violation of one of these prohibitions is a separate offense.

If the State intends to proceed against a person as a subsequent offender, the State must comply with procedures in the Maryland Rules for the indictment and trial of a subsequent offender. A mandatory minimum sentence may not be imposed unless the State's Attorney notifies the defendant in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.

Current Law: With specified exceptions, a person may not (1) wear, carry, or transport a handgun, whether concealed or open, on or about the person or (2) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State. For the vehicular prohibition, there is a rebuttable presumption that a person who transports the handgun does so knowingly. A violator is guilty of a misdemeanor and, depending on the circumstances of the violation, subject to a mandatory minimum sentence ranging from 30 days to 5 years and a maximum imprisonment penalty of 3 years for a first offense or 10 years if the violator has specified prior convictions. Certain circumstances also subject the person to monetary fines of amounts between \$250 and \$2,500.

The Secretary of State Police may issue a permit to wear, carry, or transport a handgun to a person who meets certain requirements and who has a "good and substantial" reason. "Good and substantial reason" includes a finding that the permit is necessary as a reasonable precaution against apprehended danger.

A regulated firearm is any handgun or any of the 45 assault weapons (or copies) identified under Title 5 of the Public Safety Article. A person may not possess a regulated firearm in the State if the person was convicted of a disqualifying crime or meets other specified criteria (*e.g.*, incompetent to stand trial, not criminally responsible, involuntary commitment, etc.). With specified exceptions, such as for a member of the U.S. Armed Forces or the National Guard while performing official duties, a person younger than age 21 also may not possess a regulated firearm. Each violation is a separate offense. Under a separate prohibition relating to knowing participation in a violation of certain laws regarding the possession of a regulated firearm, a violator is guilty of a misdemeanor and subject to imprisonment for up to five years and/or a fine of up to \$10,000.

Background: The Department of Public Safety and Correctional Services advises that in fiscal 2015, 170 offenders entered State correctional facilities for wearing/carrying a

handgun. For 53 of these offenders, this was their most serious offense. Their sentences averaged 17.3 months. During fiscal 2015, 173 offenders entered State correctional facilities for possession of a regulated firearm. For 63 of these offenders, this was their most serious offense. Their sentences averaged 33.9 months. Information is not available as to how many of these offenders had ammunition in their handguns/firearms and how many of these offenders were repeat offenders.

State Revenues: Under the bill, specified cases involving misdemeanor offenses currently eligible for monetary penalties are no longer subject to monetary penalties but are subject to alternative incarceration penalties. Thus, general fund revenues decrease minimally from fines imposed in the District Court.

State Expenditures: Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

According to the Office of the Public Defender (OPD), by increasing penalties, cases are less likely to be resolved in pretrial dispositions, resulting in an increase in litigation in cases of this type. The resulting increase in courtroom time for trials, as well as the additional preparation necessary for litigation, will be based on a multitude of factors. OPD is unable to quantify such operational effects.

In any case, general fund expenditures increase minimally as a result of the bill's increased incarceration penalties due to people being committed to State correctional facilities for longer periods of time. While the number of people convicted under these increased criminal penalties is unknown, the number of violations for the covered firearm-related offenses is not expected to change.

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: Under the bill, specified cases involving misdemeanor offenses currently eligible for monetary penalties are no longer subject to monetary penalties but are subject to alternative incarceration penalties. Thus, local revenues decrease minimally from fines imposed in the circuit courts.

Local Expenditures: Expenditures may increase as a result of the bill's increased incarceration penalties. 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: HB 1199 of 2014, a similar bill, received a hearing in the House Judiciary Committee. No further action was taken on the bill. HB 252 of 2011, another similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 239, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 573 (Delegate Clippinger, *et al.*) - Judiciary. Also, although not designated as a cross file, HB 1263 (Delegate Clippinger, *et al.* - Judiciary) is identical.

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

Fiscal Note History: First Reader - March 7, 2016
kb/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510