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House Bill 356 – Crimes - Firearms - Penalties and Procedures (Violent Firearms Offender Act of 2020)

House Judiciary Committee
February 4, 2019

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House Bill 356, the Violent Firearms Offender Act, increases penalties for those who use and repeatedly, illegally possess firearms as well as people who knowingly supply guns to criminals.

Of the 348 people killed in Baltimore in 2019, 87% were killed with a firearm. Statewide, firearms were used in 78% of murders in 2017. Often, these murders occurred as a direct result of violent drug trade and involved rival drug gangs disputing turf or retaliating for past acts of violence.

Criminals are using and repeatedly carrying firearms to commit violent crimes. Of the homicide suspects in Baltimore City, 81.4% had a prior record. Forty-four percent of homicide suspects had previous arrests for gun crimes. If we are going to get a handle on rampant gun violence, we must stem the flow of illegal guns into the hands of criminals. We must send a message that this will not be tolerated and we must provide our criminal justice system with tools to hold violent offenders accountable.

HB 356 contains approximately ten provisions aimed at those who use and repeatedly, illegally possess firearms, as well as people who supply guns to criminals.

Increases penalties for criminals who use and repeatedly, illegally possess firearms

Increases penalties for those who use guns to commit violent crimes

HB 356 proposes to increase from five to ten years the minimum sentence for repeat offenders who use a firearm to commit a violent crime. It would also require a sentence for a violation of Criminal Law Article § 4-204 to be served consecutively, rather than concurrently, with any other sentence imposed for the underlying violent crime or felony. The use of a firearm in commission of a violent crime would be reclassified as a felony, and conforming changes would be made to existing provisions of law related to use of an assault weapon or machine gun.

Increases the maximum penalty for those who repeatedly, illegally possess guns

Current law provides for a maximum penalty of five years for prohibited persons who illegally possess regulated firearms; HB 356 proposes to increase the maximum penalty for repeat offenders to ten years.

Prohibited persons are those who meet one of the current statutory disqualifiers under Public Safety Article § 5-133(b), which includes people convicted of a disqualifying crime and those who suffer from a mental disorder or have a history of violent behavior against themselves or another.

Creates a five year minimum for convicted gang members who illegally possess firearms

HB 356 adds previous gang-related convictions to the predicate offenses that trigger a five year minimum penalty under Public Safety Article § 5-133(c). People convicted of gang offenses who then possess regulated firearms should not be carrying firearms.

Provides prosecutors with the ability to appeal a court's decision not to include evidence during a trial for certain firearm offenses

Current law allows the State to appeal from a decision of a trial court that excludes evidence offered by the State in violent crime and drug felony cases. HB 356 proposed to expand the existing statute to include the following firearm offenses: use of a firearm during drug trafficking; possession of a firearm by someone previously convicted of a drug felony; illegal possession of a gun; illegal possession of ammunition; illegal transfer of a firearm to a prohibited person; knowing and willful straw purchase of a firearm; possession of a stolen firearm; transporting a firearm for the purpose of unlawfully selling or trafficking a regulated firearm; and obliterating a serial number.

Requires an offender currently on pretrial supervision for a firearms charge to see a judge before they can be released for subsequent firearms charges

Currently, a District Court commissioner cannot authorize pretrial release of a defendant charged with certain firearms crimes if the defendant has a previous conviction for a crime of violence or certain firearm related crimes. HB 356 would expand that prohibition to defendants currently on pretrial release for crimes of violence or certain firearms offenses. The bill also proposes to expand the list of disqualifying firearms offenses.

Allows a judge or parole commissioner to exceed revocation caps for offenders who use or possess firearms

Under current law, unless an offender is charged with a new crime, the use or possession of a firearm is a technical violation of probation, parole, or mandatory supervision. Technical violations are capped at 15, 30, and 45 day revocation caps for first, second, and third violations respectively. People on community supervision who are found to be using or possessing a firearm inherently pose a risk to public safety, and should not be defined as technical violators of supervision.

Increases penalties for those who illegally supply guns to criminals

Increases the maximum penalty from five to 15 years for those who knowingly and illegally transfer a gun to someone who has a previous violent crime conviction or plans to use the gun to commit a crime

Firearms used in crimes often do not belong to the offender. Current law prohibits the transfer of a regulated firearm to a person who the transferor knows or has reasonable cause to believe is a prohibited person or intends to use the firearm to commit a crime or harm someone. The maximum penalty for this offense is currently five years. HB 356 proposes to increase the maximum penalty to 15 years for a transferor who has actual knowledge that the transferee has a previous violent or gun-related conviction or intends to use the firearm to commit a crime or harm someone.

Classifies theft of a firearm, possession of a stolen firearm, and selling a stolen firearm as felony offenses and increases penalties for those offenses

In 2019, Maryland law enforcement agencies entered 974 guns stolen in the National Criminal Information Center. Of those, 940 are still considered stolen. In addition, 186 firearms were reported stolen from federal firearms licensees in Maryland to the ATF in 2019.

Maryland law treats the theft of a firearm like the theft of any other item. HB 356 proposes to increase minimum penalties to two years for first time offenders and five for repeat offenders. Identical penalties are applied to those who possess, sell, transfer or otherwise dispose of a stolen regulated firearm if the person knows or has reasonable cause to believe the firearm is stolen.

Increases penalties for straw purchases to a minor or prohibited person

HB 356 proposes to create a five year minimum sentence and increase the maximum sentence from 10 to 15 years for straw purchases to a minor or person prohibited from possessing a regulated firearm.

Increases the maximum sentence from 5 to 10 years for obliterating a serial number

The current maximum penalty for obliterating or altering a manufacturer's serial number on a firearm is five years. HB 356 proposes to increase the maximum penalty to ten years.

HB 356 increases penalties for those who pose a danger to our communities by using and repeatedly, illegally possessing firearms with impunity. The legislation also increases penalties for those who facilitate guns getting into the hands of criminals who should not have them. HB 356 increases accountability

The Administration respectfully requests a favorable report on HB 356.