

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 1097

(Senator Smith)

Judicial Proceedings

Judiciary

Public Safety - Firearm Safety and Firearm Crimes

This bill (1) exempts an employee of the Department of Natural Resources (DNR) in the course of performing official duties from existing prohibitions against wearing, carrying, or transporting a firearm in an area for children or vulnerable individuals, a government or public infrastructure area, or a special purpose area; (2) excludes theft of a firearm from the general theft statute, classifies theft of a firearm as a separate felony offense, and establishes penalties for theft of a firearm; (3) reclassifies as a felony the prohibition against transporting a regulated firearm into the State for the purpose of unlawfully selling or trafficking of the regulated firearm; and (4) establishes requirements for a gun buyback program and penalties for violations of those requirements.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues due to cases shifting from the District Court to the circuit courts, as discussed below. Minimal increase in general fund expenditures due to the bill's incarceration penalties.

Local Effect: Minimal increase in revenues due to the bill's monetary penalties. Minimal decrease in expenditures due to the bill's incarceration penalties.

Small Business Effect: Minimal or none.

Analysis

Bill Summary:

Theft of a Firearm: A person convicted of theft of a firearm is guilty of a felony and subject to a maximum penalty of five years imprisonment and/or a \$1,000 fine.

“Firearm” means (1) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; (2) the frame or receiver of such a weapon; or (3) an unfinished frame or receiver, as defined in § 5-701 of the Public Safety Article. “Firearm” includes a starter gun.

Gun Buyback Programs: A federal firearms licensee or law enforcement agency operating a gun buyback program must destroy each firearm, including every component and part attached to the firearm, that is surrendered to the federal firearms licensee or law enforcement agency at a gun buyback program; the destruction must be completed within six months after the firearm was surrendered in the program and make the firearm and every component and part attached to the firearm permanently inoperable and unrepairable. A federal firearms licensee or law enforcement agency may contract with a law enforcement agency or a business to satisfy the firearm destruction requirement.

A federal firearms licensee or law enforcement agency that violates these provisions is subject to a maximum fine of \$10,000 per violation. If the violator is a licensed firearms dealer, in addition to the maximum \$10,000 fine per violation, the Secretary of State Police must revoke the dealer’s license.

Nothing in these provisions may be interpreted as an exception to any other requirement or restriction under State or federal law relating to the purchase, rental, loan, or transfer of a firearm. In addition, these provisions do not apply to a firearm if a law enforcement agency determines that the firearm is stolen or is evidence of a crime.

“Gun buyback program” means a program that is operated by a federal firearms licensee or a law enforcement agency and that (1) allows firearm owners to voluntarily surrender firearms; (2) is operated, either explicitly or impliedly, for the purpose of reducing the number of firearms in a community; and (3) advertises that firearms that are surrendered to the program will be destroyed or made permanently inoperable.

Current Law:

Wearing, Carrying, or Transporting a Firearm – Specified Areas

A person must have a handgun permit before the person carries, wears, or transports a handgun in the State. Existing statutory requirements and background relating to the issuance of handgun permits are summarized in the **Appendix – Handgun Permit Requirements – Current Law/Background**.

Prohibitions: Generally, Chapter 680 of 2023 prohibits a person from wearing, carrying, or transporting a firearm in an “area for children or vulnerable individuals,” “a government or public infrastructure area,” or “a special purpose area.” A government or public

infrastructure area that is a building or any part of a building owned or leased by a unit of State or local government must display a clear and conspicuous sign at the main entrance indicating that it is not permissible to wear, carry, or transport a firearm in the building or that part of the building.

Nothing in these provisions limits the power of an administrative head of a Maryland court to punish for contempt or to adopt rules or orders regulating, allowing, restricting, or prohibiting the possession of weapons in any building housing the court or any of its proceedings, or on any grounds appurtenant to the building.

Exceptions: The above listed prohibitions generally do not apply to:

- law enforcement officials or police officers;
- on-duty employees of a law enforcement agency authorized by the agency to possess firearms on duty or whose duty assignment involves the possession of firearms;
- members of the U.S. Armed Forces, the National Guard, the uniformed services, or a Reserve Officer Training Corps program, as specified;
- correctional officers or wardens of a correctional facility in the State;
- a railroad police officer, as specified;
- an employee of an armored car company, as specified;
- a person who has retired as a law enforcement official in good standing from a law enforcement agency of the United States, the State, another state, or a local unit in the State or another state who possesses a firearm, as specified;
- for a location that is not owned by, leased by, or otherwise under the control of the State or a political subdivision of the State, the owner or lessee of the location or a person who is authorized by the owner or lessee of the location to wear, carry, or transport a firearm at the location for the purpose of employment as a licensed security guard or protecting any individual or property at the location with an express agreement between the parties, remuneration, or compensation;
- a location being used with the permission of the person or governmental unit that owns, leases, or controls the location for specified purposes; or
- a firearm that is carried or transported in a motor vehicle if the firearm is locked in a container or is a handgun worn, carried, or transported in compliance with specified statutory limitations by a person to whom a handgun permit has been issued.

Penalties: A person who willfully violates the prohibitions on wearing, carrying, or transporting a firearm in “an area for children or vulnerable individuals,” “a government or public infrastructure area,” or “in a special purpose area,” as specified, is guilty of a misdemeanor and on conviction is subject to imprisonment for up to one year and/or a fine

of up to \$1,000. A conviction under these provisions may not merge with a conviction for any other crime based on the act establishing the violation. A sentence imposed under these provisions may be imposed separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation.

Definitions: “Area for children and vulnerable individuals” means:

- a preschool or prekindergarten facility or the grounds of the facility;
- a private primary or secondary school or the grounds of the school; or
- a health care facility, as specified.

“Government or public infrastructure area” means:

- a building or any part of a building owned or leased by a unit of State or local government;
- a building of a public or private institution of higher education, as specified;
- a location that is currently being used as a polling place or for canvassing ballots, as specified;
- an electric plant or electric storage facility, as specified;
- a gas plant, as specified; or
- a nuclear power plant facility.

“Special purpose area” means:

- a location licensed to sell or dispense alcohol or cannabis for on-site consumption;
- a stadium;
- a museum;
- a racetrack; or
- a video lottery facility, as specified.

Theft of a Firearm

Theft of a firearm is subject to the general theft statute, which imposes penalties based on the value of the stolen property or services.

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; (4) obtain control over property knowing that the property was lost, mislaid, or delivered

under a mistake as to the identity of the recipient or nature or amount of the property; or (5) obtain the services of another that are available only by compensation by deception or with knowledge that the services are provided without the provider's consent. 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 in **Exhibit 1**.

Exhibit 1
Penalties for Theft

<u>Value of Property and/or Services</u>	<u>Maximum Penalty</u>
Less than \$100*	Misdemeanor – 90 days imprisonment and/or \$500 fine
At least \$100 but less than \$1,500*	Misdemeanor – 6 months imprisonment and/or \$500 fine (first conviction) or 1 year imprisonment and/or \$500 fine (second or subsequent conviction)
Less than \$1,500 (four or more prior theft convictions)**	Misdemeanor – 5 years imprisonment and/or \$5,000 fine
At least \$1,500 but less than \$25,000	Felony – 5 years imprisonment and/or \$10,000 fine
At least \$25,000 but less than \$100,000	Felony – 10 years imprisonment and/or \$15,000 fine
\$100,000 or more	Felony – 20 years imprisonment and/or \$25,000 fine

* Subject to two-year statute of limitations.

** Subject to specified notice requirements.

Source: Department of Legislative Services

Section 7-110 of the Criminal Law Article specifies presumptions and permitted and prohibited defenses to the crime of theft. The District Court has concurrent jurisdiction with the circuit courts over felony theft violations.

Transporting Regulated Firearm for Unlawful Sale or Trafficking

A dealer or other person may not transport a regulated firearm into the State for the purpose of unlawfully selling or trafficking of the regulated firearm. A violator is guilty of a misdemeanor and on conviction is subject to a maximum penalty of 10 years imprisonment and/or \$25,000 fine. Each violation is a separate crime.

Gun Buyback Programs

There are no statutory provisions directly applicable to gun buyback programs.

The Department of State Police regulates firearms and regulated firearms dealer licensees under provisions of the Public Safety Article. A person must lawfully possess a regulated firearms dealer's license issued by the Secretary of State Police before the person engages in the business of selling, renting, or transferring regulated firearms. One dealer's license is required for each place of business where regulated firearms are sold.

State licensees must also have a federal firearms license issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

State Fiscal Effect: General fund revenues likely decrease minimally from fines imposed in District Court cases that shift to the circuit courts under the bill. General fund expenditures increase minimally as a result of the bill's incarceration penalties due to people being committed to State correctional facilities rather than local facilities as a result of the bill's increased penalty provisions. This estimate assumes (1) that the majority of stolen firearms have a value of less than \$1,500 and (2) that the number of people convicted of theft of a firearm and trafficking of firearms under the bill is expected to be minimal. The bill's provisions that establish an exemption for a DNR employee in the course of performing official duties from prohibitions against wearing, carrying, or transporting a firearm in specified areas and that establish requirements for gun buyback programs are not anticipated to materially affect State operations or finances.

While the District Court has concurrent jurisdiction with the circuit courts over felony violations of the general theft statute, the bill places theft of a firearm as a felony offense within its own statute. As noted above, the bill also reclassifies as a felony the prohibition against transporting a regulated firearm into the State for the purpose of unlawfully selling or trafficking the regulated firearm. 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 more stringent 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 these offenses.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,110 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. The State provides assistance to the counties for locally sentenced incarcerated individuals and for (1) incarcerated individuals who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced incarcerated individuals confined in a local detention center between 12 and 18 months; and (3) incarcerated individuals who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 and cases shifting from the District Court to circuit courts.

Local Expenditures: Expenditures decrease minimally due to the bill's incarceration penalty from inmates shifting from local detention facilities to State correctional facilities.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 per inmate in recent years.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Howard and Prince George's counties; Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2024
km/lgc Third Reader - March 26, 2024
Revised - Amendment(s) - March 26, 2024

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Appendix

Handgun Permit Requirements – Current Law/Background

Generally, with certain exceptions, to be issued a handgun permit by the Secretary of State Police, an applicant (1) must be at least age 21 years or a member of the U.S. Armed Forces, the National Guard, or the uniformed services; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (4) must not be on supervised probation for conviction of a crime punishable by imprisonment for one year or more, a violation of § 21-902(b) or (c) of the Transportation Article (driving while under the influence or driving while impaired), or violating a protective order under § 4-509 of the Family Law Article (failure to comply with interim or final protective order); (5) must not suffer from a mental disorder and have a history of violent behavior against the person or another; (6) must not have been involuntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders; (7) must not be a respondent against whom a current non *ex parte* civil protective order has been entered under § 4-506 of the Family Law Article, a current extreme risk protective order has been entered under § 5-601 of the Public Safety Article, or any other type of current court order has been entered prohibiting the person from purchasing or possessing firearms; (8) must not exhibit a propensity for violence or instability, which may reasonably render possession of a handgun a danger to the applicant or another; (9) must have successfully completed, prior to application and each renewal, a specified firearms training course approved by the Secretary; (10) if younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; and (11) must not otherwise be prohibited by State or federal law from possessing a handgun.

The Secretary may not issue a handgun permit to a person who has been convicted on or after October 1, 2023, of a second or subsequent violation of § 4-104 of the Criminal Law Article (child access to firearms) or has been convicted on or after October 1, 2023, of a violation of that provision if the violation resulted in the use of a loaded firearm by a minor causing death or serious bodily injury to the minor or another person. The Secretary also may not issue a handgun permit to a person who has been convicted on or after October 1, 2023, of a violation of § 4-104 of the Criminal Law Article for five years following the date of the conviction.

A handgun permit applicant must successfully complete, prior to the application and each renewal, a firearms training course approved by the Secretary that includes (1) for an initial application, a minimum of 16 hours of instruction by a qualified handgun instructor, or 8 hours of instruction for a renewal application; (2) classroom instruction on State and federal firearm laws, home firearm safety, handgun mechanisms and operations, conflict de-escalation and resolution, anger management, and suicide prevention; and (3) a firearm qualification component that includes live-fire shooting exercise on a firing range and requires the applicant to demonstrate safe handling of a handgun and shooting proficiency with a handgun.

An applicant for a permit is not required to complete a certified firearms training course if the applicant:

- is a law enforcement officer or a person who is retired in good standing from service with a law enforcement agency of the United States, the State, or any local law enforcement agency in the State;
- is a member, retired member, or honorably discharged member of the U.S. Armed Forces or the National Guard;
- is a qualified handgun instructor; or
- has completed a firearms training course approved by the Secretary.

A handgun permit application costs \$125; two years after the initial permit and every three years thereafter, a \$75 renewal fee is due. In addition, the applicant must pay for fingerprint-based federal and State criminal history background checks for an initial application. A person who applies for a renewal of a handgun permit is not required to be fingerprinted unless the Secretary requires a set of the person's fingerprints to resolve a question of the person's identity.

Generally, a handgun permit expires on the last day of the holder's birth month following two years after the date the permit is issued; however, the Secretary may establish an alternative expiration date for a permit to coincide with the expiration of a private detective license, a security guard certification, or a special police officer commission. A permit may be renewed for successive periods of three years each if, at the time of an application for renewal, the applicant possesses the qualifications for the issuance of a permit and pays the renewal fee.

In 2023, the Department of State Police (DSP) received 64,724 new applications for handgun permits and 13,682 handgun permit renewal applications. DSP denied 2,258 applications in the same year. As of January 1, 2024, there are approximately 175,662 active handgun permits in the State. It generally takes less than two days to receive the results of a national criminal history records check from the FBI and approximately seven days to process and issue a permit.