

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

House Bill 166 (Delegate Cadden. *et al.*)

Judiciary

Firearms Offenses - Project Exile

This bill alters prohibitions, penalties, and bail review provisions governing the possession and use of handguns in the State.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures due to the bill's penalty provisions. Any changes in responsibilities for the Judiciary could be handled with existing budgeted resources. Revenues would not be affected.

Local Effect: Potential significant increases and decreases in expenditures due to the bill's penalty provisions and changes in provisions relating to the accessibility of bail. Any changes in responsibilities for the circuit courts or State's Attorneys could be handled with existing budgeted resources. Revenues would not be affected.

Small Business Effect: Potential meaningful. The full and actual impact of this bill on the bail bond industry is unknown. However, the bill could meaningfully impact any particular bail bondsman currently engaged in doing a significant part of their business with persons illegally possessing handguns or committing crimes with a handgun.

Analysis

Bill Summary: This bill subjects all offenders of handgun violations to mandatory minimum sentences and prohibits pretrial releases of persons charged with handgun violations, including illegal possession of a handgun. Specifically, the bill: (1) makes it a felony to use a firearm in specified ways on school property, subjecting violators to a mandatory minimum, non-parolable sentence of five years and a maximum sentence of 20

years; (2) makes it a felony to possess a handgun with a prior conviction of a crime of violence, subjecting violators to a mandatory minimum, non-parolable sentence of five years and a maximum sentence of 20 years; and (3) makes it a misdemeanor to possess a handgun with a prior conviction of any violation classified as a felony, subjecting violators to a mandatory minimum, non-parolable sentence of two years and a maximum sentence of ten years. All such sentences are required to be served consecutive to any other sentence.

In addition, the bill prohibits a District Court commissioner from releasing pretrial a defendant charged with a firearms offense. The bill eliminates the need for there to have been a prior crime of violence to preclude a commissioner from authorizing the pretrial release of a person charged with a crime of violence. The bill adds specified requirements that a commissioner may consider as a condition of any pretrial bail release.

The bill allows the State to appeal from decisions by District Court judges setting the amount and conditions of bail, and to apply to the Court of Special Appeals for leave to appeal from similar orders in the circuit courts.

Current Law: Prohibitions against carrying or possessing firearms or other weapons on school property are misdemeanors which subject violators to maximum penalties of a fine of \$1,000 and/or imprisonment for three years. The provisions do not reference intent, display, or use.

Prohibitions against a person possessing a firearm after having been convicted of certain crimes are misdemeanors which subject violators to maximum penalties of a fine of \$1,000 and/or imprisonment for one year.

District Court commissioners perform, among other functions, bail review hearings and may authorize the pretrial release of defendants except for those charged with a crime of violence when there was a previous conviction of a crime of violence, even if the prior conviction occurred out of State.

The State is not currently authorized to appeal from bail review decisions in the District Court or the circuit courts.

Background: This bill is generally modeled on the codification of a program in the Commonwealth of Virginia that began as a demonstration project in the cities of Richmond and Norfolk. While originally referred to as “Project Exile,” it has now been codified as “Virginia Exile.”

State Expenditures: There are several inherent difficulties in assessing any potential fiscal impact arising from this bill: (1) the discretion of prosecutors to actually bring charges for specific statutory offenses will determine largely, and perhaps differently by jurisdiction, the extent to which the bill's new penalty structure for handgun offenses has State and local fiscal impact; (2) felony and misdemeanor sentencing patterns beyond the bill's mandatory minimums are unknown; and (3) the extent to which the State may have the inclination to, or success in, contesting bail determinations in State or local courts is unknown.

In addition, changing crimes from misdemeanors to felonies means that: (1) such cases will be filed in the circuit courts rather than the District Court; and (2) some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions.

In fiscal 1999, the Division of Correction (DOC) had 574 intakes for handgun-related violations, and the Division of Parole and Probation had 740 such intakes. Accordingly, it is assumed that this bill would increase both the number of persons incarcerated per year by over 1,300 persons. It is also estimated that the term of incarceration for each new handgun offense intake would increase by 18 months. The new intakes represented here do not include those with misdemeanor handgun convictions who now serve their sentence (less than one year) in a local detention facility.

In any event, general fund expenditures could increase significantly as a result of the bill's stiffer incarceration penalties due to significantly more people being committed to DOC facilities for longer periods of time and increased payments to counties for reimbursement of pretrial inmate costs. This bill could increase the average daily population in DOC facilities to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility will be necessary. Based on a cost of approximately \$105,000 per bed, the cost of building a new medium security 1,300 bed prison facility is currently estimated at \$136.5 million.

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,700 per month. The average variable cost of housing a new inmate (food, medical costs, etc.), excluding overhead, is \$260 per month. For illustrative purposes only, under the bill's mandatory minimum sentencing provisions, the average time served would be 18 months greater than that for current intakes. Assuming full inmate costs of \$1,700 per month, State costs could increase by \$30,600 for each person imprisoned under the bill, and by \$40,208,400 assuming that 1,300 persons are subject to the sentencing provisions of the bill. Such an increase in costs would not be felt until after fiscal 2006. However, this does not

count the extent to which a greater number of pretrial detentions would serve to mitigate these costs via sentence reductions for time served which could be applied to the overall postconviction sentence, including the mandatory minimum portion.

The bill could also provide for some minimal temporary savings for the Division of Parole and Probation. The estimated number of all intakes for the Division of Parole and Probation for fiscal 2001 is 52,200. A reduction in intakes of 740 persons represents a decrease of less than 1.5%. Such a decrease is not expected to have a measurable effect on the agency's operations and finances. In any case, the convicted persons not immediately remanded to the Division of Parole and Probation are presumed to eventually represent new intakes for the agency after the mandatory minimum sentence is served. It is noted that the agency's fiscal 2001 budget request includes nearly \$1.6 million to hire an additional 54 agents as part of a caseload reduction initiative.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2001 are estimated to range from \$11 to \$54 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures could increase significantly as a result of the bill's changes relating to bail and bail review for handgun charges as well as charges of crimes of violence. The magnitude of such increases cannot be reliably quantified, but they may be expected to strain current capacities for pretrial detentions.

The effect of denying bail for persons arrested for the specified crimes on or after October 1, 2000, will be immediate. For persons historically released pretrial, the effect may only be from the time of bail denial by a court commissioner until judicial review and release. For those instances where the State successfully contests a bail release of a person historically released pretrial, the effect would be more significant.

However, since handgun offenders would be subject to mandatory minimum sentences of either two years (for misdemeanors) or five years (for felonies), some convicted persons would be remanded to the Division of Correction rather than to local detention facilities for post-conviction incarcerations. Thus, incarceration costs for local facilities arising from this bill would also go down by unknown amounts.

In any event, counties pay the full cost of incarceration for people in their facilities for the

first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$22 to \$83 per inmate in fiscal 2001.

Additional Information

Prior Introductions: None.

Cross File: SB 303 (Senator Jimeno, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (The District Court), Department of Public Safety and Correctional Services (Division of Correction), Office of the Public Defender, Department of Health and Mental Hygiene, Virginia Criminal Sentencing Commission, Department of Legislative Services

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