

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 622
Judiciary

(Delegate Cadden, *et al.*)

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: General fund expenditures would increase 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 in expenditures due to the changes 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: Potentially 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 offenders of certain handgun violations to mandatory minimum sentences and prohibits pretrial release 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) requires a mandatory minimum, non-parolable sentence of five years and a maximum sentence of 20 years for felony possession of a handgun with a prior conviction of a crime of violence; and (3) makes it a misdemeanor to possess a handgun with a prior conviction of any 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 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 felonies which subject violators to a minimum penalty of imprisonment for five years.

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 Fiscal Effect: 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 largely determine, 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.

General fund expenditures could increase as a result of the bill's mandatory minimum sentences and bail requirements due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of pretrial inmate costs. 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. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$288 per month.

DOC estimates an average of 580 intakes annually for handgun-related crimes. The average time served for this population is 40 months. In fiscal 2000 approximately 170 of these intakes were for illegal possession of a handgun. A portion of these 170 intakes include individuals with a prior conviction for a violent crime. Thus, the bill would only affect a relatively small portion of the DOC inmate population. To the extent that sentences may increase in length of incarceration beyond the present norm, the average amount of time served would increase for handgun-related offenders from the current 40-month average.

For illustrative purposes only, the total variable cost for each intake in fiscal 2000 was \$11,520 given the average time served. The same intake would cost the State an additional \$3,450 if the average sentence increased by 30% to 52 months. Because it is not known to what extent the bill would increase the average length of stay for intakes, the increase in general fund expenditures cannot be reliably estimated. In any event, any increase in expenditures due to longer sentences under the bill would not affect State finances until fiscal 2007 since DOC already incarcerates violators under the present mandatory five-year sentence for possession of a handgun with a prior violent crime or felony.

State expenditures could also increase due to the bill's bail provisions. Any increase in the number of persons denied bail would require additional State expenditures for reimbursements of pretrial inmate costs to local jurisdictions. 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 2002 are estimated to range

from \$11 to \$54 per inmate depending upon the jurisdiction. (Persons denied bail in Baltimore City are generally incarcerated in DOC facilities.) The increase in the number of persons denied bail under the bill cannot be reliably estimated, but any increase in bail denials would affect the State's total outlay for per diem payments.

There are two factors that could mitigate the bill's potential to increase State expenditures. First, to some extent, 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. Second, the bill also reduces the penalty provisions for persons in possession of a handgun with a prior felony conviction. The bill repeals the mandatory five-year sentence and makes it a misdemeanor punishable by imprisonment for a minimum of two years. This provision could decrease the average length of stay and thereby counteract the effects of the bill's other handgun provision.

Local Fiscal Effect: Expenditures could increase significantly as a result of the bill's changes relating to bail and bail review for handgun charges. The magnitude of such increases cannot be reliably quantified, but are expected to strain current capacities for pretrial detentions. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence; part of the cost is shared with the State after 90 days on a per diem basis. Per diem operating costs of local detention facilities are expected to range from \$22 to \$83 per inmate in fiscal 2002.

The effect of denying bail for persons arrested for the specified crimes on or after October 1, 2001 will be immediate, since persons historically released pretrial would be held in local detention facilities. This could cause significant increases in local expenditures. 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.

Additional Information

Prior Introductions: HB 166 was introduced in the 2000 session. It was unfavorably reported from the House Judiciary Committee.

Cross File: SB 475 (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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