

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 318
Judiciary

(Delegate Cadden, *et al.*)

Firearms Offenses - Project Exile

This bill creates the felony of possessing and intending to use a firearm on public school property, sets mandatory minimum sentencing requirements for possession of firearms charges, adds conditions that a court or District Court commissioner may include as conditions of release pretrial, and gives the State the authority to appeal bail determinations.

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: 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 business with persons illegally possessing handguns or committing crimes with a handgun.

Analysis

Bill Summary: The bill prohibits a person on public school property from possessing and intending to use a firearm, displaying a firearm in a threatening manner, or attempting to use a firearm. A violator is guilty of a felony and subject to a mandatory minimum, nonparolable sentence of 5 years and a maximum of 20 years. The sentence must be served consecutive to any other sentence.

The bill provides that a person who possesses a regulated firearm and who has been convicted of a crime of violence is guilty of a felony and subject to a mandatory minimum, nonparolable sentence of 5 years and a maximum of 20 years. The sentence must be served consecutive to any other sentence. The bill reduces, from five years to two years, the mandatory minimum sentence for persons with certain prior felony drug convictions, and requires a mandatory minimum two-year sentence if there are any other prior felony convictions.

A person who possesses a regulated firearm who has been convicted of a felony is guilty of a misdemeanor and on conviction is subject to a mandatory minimum sentence of two years and a maximum sentence of ten years.

The bill provides that a District Court commissioner may not authorize the release pretrial of a defendant if the defendant is charged with:

- a crime of violence;
- possessing a firearm on public school property;
- possessing a firearm in connection with a drug trafficking crime; or
- illegal possession of a firearm and has previously been convicted of a crime of violence, a felony, a misdemeanor that carries a statutory penalty of more than two years, or a common law offense that carries a term of imprisonment of more than two years.

The bill authorizes a court or District Court commissioner to consider including as an additional condition of release pretrial a requirement that the defendant:

- maintain employment or, if unemployed, actively seek employment;
- maintain or begin an educational program;
- avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the crime;
- comply with a specified curfew;

- refrain from possessing a firearm, destructive device, or other dangerous weapon;
- refrain from use of alcohol or controlled dangerous substances; or
- submit to drug or alcohol testing until the disposition of the defendant's case.

The bill allows the State to apply to the Court of Special Appeals for leave to appeal a decision by the circuit court setting the amount and conditions of bail, if the State believes the amount or conditions to be insufficient. Similarly, the State may appeal to the circuit court from a decision of the District Court that sets the amount and conditions of bail.

Current Law: A person is prohibited from carrying or possessing a rifle, gun, knife, or deadly weapon of any kind on any public school property. A violator of this prohibition using any weapon other than a handgun is guilty of a misdemeanor and subject to maximum penalties of a fine of \$1,000 or imprisonment for three years. The misdemeanor penalties for a violator using a handgun are as follows: (1) for a first offense, a fine of not less than \$250 and not more than \$2,500 and/or a sentence of not less than 90 days nor more than 3 years; (2) for a second offense, a mandatory minimum sentence of 3 years and a maximum sentence of 10 years; and (3) for a third or subsequent offense, a mandatory minimum sentence of 5 years and a maximum sentence of 10 years. These are the same penalties applicable to the State's general misdemeanor prohibition against illegally wearing, carrying, or transporting a handgun.

The commission of any felony or crime of violence with a handgun or assault pistol subjects a person to a mandatory minimum five-year term of imprisonment. If an assault pistol is used in a second offense, the mandatory minimum term is ten years.

A person who has been convicted of a crime of violence or of certain felonies involving controlled dangerous substances and possesses a regulated firearm is guilty of a misdemeanor and on conviction is subject to imprisonment for not less than five years.

A District Court commissioner may not authorize the release pretrial of a defendant charged with a crime of violence if the defendant has been previously convicted of a crime of violence.

If a defendant is charged with stalking, a felony, or a delinquent act committed by a child that would be a felony if committed by an adult, a court, juvenile intake officer, or District Court commissioner is required to consider as a condition of release reasonable protections for the safety of the alleged victim. In addition, a judge may allow release pretrial of a defendant charged with committing a crime of violence if the defendant has been previously convicted of a crime of violence, on: (1) suitable bail; or (2) any other conditions that will reasonably assure that the defendant will not flee or pose a danger to

another person or the community. Similarly, a judge may allow release pretrial on the same conditions for a defendant charged with violating an ex parte order or protective order.

The State may not seek an appeal from a decision setting pretrial or post-conviction bail.

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 firearm and 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 \$1,850 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 \$300 per month.

In fiscal 2001 there were 448 intakes for handgun violations. The average sentence received was 50 months. A portion of these intakes include individuals with a prior conviction for a violent crime. It is believed that the bill’s incarceration provisions would only affect a relatively small portion of the DOC inmate population.

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 2008 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 2003 are estimated to range from \$10 to \$61 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, increased pretrial detention time would count toward time served, including the mandatory minimum portion. Second, the bill reduces the penalty provisions for persons in possession of a handgun with a prior felony conviction. The bill repeals the mandatory five-year sentence for certain prior drug convictions 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 \$20 to \$84 per inmate in fiscal 2003.

The effect of denying bail for persons arrested for the specified crimes on or after October 1, 2002 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: Similar bills were introduced in 2000 and 2001. HB 166 of 2000 and HB 622 received an unfavorable report from the House Judiciary Committee. SB

475 of 2001 passed the Senate and received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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