

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 858

(The Minority Leader, *et al.*)
(By Request – Administration)

Judiciary

Crimes - Firearms - Project Exile

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

Fiscal Summary

State Effect: General fund expenditures would increase due to the bill's penalty provisions. General fund expenditures for the Attorney General would increase by \$392,300 in FY 2004, and grow to \$573,300 by FY 2008, for additional gun crime prosecutions. 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: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services disagrees with this assessment as discussed below.

Analysis

Bill Summary: This bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with a crime relating to deadly weapons on school

property, use of a firearm in the commission of a felony or a crime of violence, use of a weapon as a separate crime (under provisions relating to controlled dangerous substance offenses), illegal possession of a regulated firearm, or illegal possession of a regulated firearm by a convicted felon. The bill requires a judge to consider as a rebuttable presumption that such a defendant will flee and pose a danger to another person or the community.

The bill prohibits a review panel of judges, when reviewing a sentence, from decreasing a mandatory minimum sentence imposed for specified crimes involving firearms. The bill makes it a felony to possess and intend to use a firearm, display a firearm in a threatening manner, or use or attempt to use a firearm on school property. The bill exempts from school property restrictions persons legally authorized to possess or carry a weapon. The bill makes violations of the prohibition against the use or display of a firearm on school property a felony, and subjects a violator to a mandatory minimum nonsuspendable, nonparolable sentence of five years and a maximum sentence of 20 years.

The bill expands the current law prohibition against the use of a handgun or concealable antique firearm in the commission of a crime of violence or a felony to any firearm, without regard to its capability of being concealed, and makes the offense a felony rather than a misdemeanor. The bill makes the current law mandatory minimum five-year sentence for such offenses nonsuspendable. The bill increases minimum penalties applicable to second or subsequent violations of provisions relating to assault pistols and detachable magazines by subjecting such violators to a mandatory minimum nonsuspendable, nonparolable sentence of ten years.

Under provisions relating to penalties for the use of a weapon as a separate crime (under provisions relating to controlled dangerous substance offenses), the bill limits ineligibility for parole to the period of the mandatory minimum sentence.

Under provisions of the new Public Safety Article relating to regulated firearms, the bill: (1) expands certain prohibitions against possessing a firearm to apply to all firearms; (2) includes conspiracy to commit certain crimes of violence as a crime of violence; (3) includes an attempt or conspiracy to commit a misdemeanor that carries a statutory penalty of more than two years or a felony under the disqualifying crimes pertaining to firearm applications.

Under provisions applicable to restrictions on the possession of regulated firearms, the bill provides that “crime of violence” does not include second degree assault if the defendant received a term of imprisonment of two years or less, not including any suspended portion of that sentence. Under provisions relating to the prohibition against possession of a firearm by a person previously convicted of a crime of violence or other

felony, the bill includes certain crimes committed in another state or under federal law as disqualifying offenses. The bill makes the five-year minimum felony penalty applicable to these provisions a mandatory minimum nonparolable, nonsuspendable sentence, and establishes a maximum sentence of 20 years for the same offenses.

The bill also establishes that a person may not possess a firearm if the person was previously convicted of a felony, or an attempt or conspiracy to commit a felony. A violator is guilty of a felony and subject to a mandatory minimum nonsuspendable, nonparolable sentence of two years, and a maximum sentence of ten years. Each violation is a separate offense.

Under provisions of the Criminal Law Article relating to State restrictions on handguns, the bill defines “firearm” as an antique firearm, handgun, machine gun, rifle, short-barreled rifle, short-barreled shotgun, or shotgun.

Current Law: A District Court commissioner may not authorize the pretrial release of a defendant charged with a crime of violence if the defendant has been previously convicted: (1) in this State of a crime of violence; or (2) in any other jurisdiction of a crime that would be a crime of violence if committed in this State. A judge may authorize the pretrial release of such a defendant on: (1) suitable bail; (2) any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community; or (3) both bail and other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community. There is a rebuttable presumption that such a defendant will flee and pose a danger to another person or the community.

A judicial review panel, which must consist of three or more circuit court judges of the judicial circuit in which the sentencing court is located, must consider each application for review of a sentence. A review panel may not order a decrease in a mandatory minimum sentence unless the decision of the review panel is unanimous.

With certain exceptions, a person may not carry or possess a firearm, knife, or deadly weapon of any kind on public school property. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

A person may not use an antique firearm capable of being concealed on the person or any handgun in the commission of a crime of violence or any felony, whether the antique firearm or handgun is operable or inoperable at the time of the crime. A violator is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, is subject to a minimum nonparolable sentence of five years and a maximum

sentence of 20 years. For each subsequent violation, the sentence must be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

A person who uses an assault pistol, or a magazine that has a capacity of more than 20 rounds of ammunition, in the commission of a felony or a crime of violence is guilty of a misdemeanor and on conviction, in addition to any other sentence imposed for the felony or crime of violence, must be sentenced as follows: (1) for a first violation, a minimum nonsuspendable, nonparolable sentence of five years and a maximum sentence of 20 years; (2) for each subsequent violation, a minimum sentence of ten years and a maximum sentence of 20 years. Such a sentence must be consecutive to and not concurrent with any other sentence imposed for the felony or crime of violence.

Under provisions relating to penalties for the use of a weapon as a separate crime (under provisions relating to controlled dangerous substance offenses), a convicted person is ineligible for parole.

Under provisions relating to controlled dangerous substance offenses, a person may not possess, own, carry, or transport a firearm if that person has been convicted of: (1) a felony under these provisions; (2) a crime under the laws of another state or of the United States that would be a felony under these provisions if committed in this State; (3) conspiracy to commit such a crime; or (4) an attempt to commit such a crime. A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$10,000.

Under provisions of the new Public Safety Article, "crime of violence" does not include conspiracy to commit any of the enumerated offenses. Under provisions applicable to restrictions on the possession of regulated firearms, the disqualifying offenses are: (1) a crime of violence; (2) a violation classified as a felony in the State; or (3) a violation classified as a misdemeanor in the State that carries a statutory penalty of more than two years.

A person may not possess a regulated firearm if the person was previously convicted of: (1) a crime of violence; (2) a violation of certain crimes involving controlled dangerous substances; or (3) any other violation classified as a felony in the State. A violator is guilty of a felony and subject to a nonsuspendable, nonparolable minimum sentence of five years. Each violation is a separate crime.

With certain exceptions, a person who is under the age of 21 may not possess a regulated firearm or ammunition solely designed for a regulated firearm.

With certain exceptions, a dealer or other person may not knowingly participate in the illegal sale, rental, transfer, purchase, possession, or receipt of a regulated firearm. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$10,000. Each violation is a separate crime.

Background: “Project Exile” was 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.” To date, reviews of the success of the program have been mixed. State funding for Virginia Exile for fiscal 2004 has been eliminated.

In February 2003, U.S. Attorney Thomas M. DiBiagio announced an agreement to launch a Virginia-style Project Exile gun prosecution program in Baltimore City and Prince George’s County, the jurisdictions with the highest murder rates in the State. DiBiagio informed the State’s Attorneys in the two jurisdictions by letter that Project Exile would now be implemented in Maryland. Under the new program, the U.S. Attorney’s Office will accept certain gun possession cases from local prosecutors. The letter said, in part, “We will accept for federal prosecution under 18 USC Sec. 922 G any felon in possession case where the evidence is strong enough to support a successful prosecution and the defendant has a single prior violent felony or drug offense conviction.”

In the past, the U.S. Attorney’s Office in Baltimore had resisted blanket acceptance of gun possession cases, in part because the State law passed in 2000 (the Responsible Gun Safety Act of 2000) set a five-year minimum sentence in such cases, which can be a longer sentence than a federal court would impose.

Over the past three years the State’s Attorney’s office in Baltimore City has received an additional \$1.6 million in State general funds to increase prosecutions for gun violations and homicides. For fiscal 2003, the budget proposes for the Office of the Public Defender a deficiency appropriation of \$803,598 to attend to the crisis in the Baltimore City felony caseload, and the office is seeking additional funds to apply to this continuing problem.

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) actual “Project Exile” prosecutions by the U.S. Attorney in federal court for cases arising in Baltimore City and Prince George’s County, sending convicted persons to federal prisons, may significantly reduce State and local costs associated with gun offenses; (3) felony and misdemeanor sentencing patterns beyond the bill’s mandatory minimums are

unknown; and (4) 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 18 months 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. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

In fiscal 2002, DOC had an intake of 465 persons with a handgun violation and, for 117 of those persons, the handgun violation was the most serious offense. The average time served for the 117 persons is expected to be 48 months. An unknown portion of the entire handgun violation intake includes 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 48-month average to 60 months.

For illustrative purposes only, the total variable cost for each intake in fiscal 2002 was \$5,760 given the average time served. The same intake would cost the State an additional \$1,440 if the average sentence increased to 60 months (an average increase in sentence of one year). Because it is not known to what extent the bill would actually 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 2009 since DOC already incarcerates violators under the present mandatory five-year sentence for possession of a handgun with a prior violent crime or felony.

DOC believes that the bill's changes effectively expanding the current law prohibition against possession of a regulated firearm by a convicted felon could have a significant fiscal impact. In fiscal 2002, there were over 500 probation cases opened with convictions for handgun violations. Under this bill, if only 20% of such cases each year had a prior felony conviction, DOC would experience an additional intake of 100 persons, annually. Such a person would be expected to have a stay of three to four years.

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 2004 are estimated to range from \$14 to \$59 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.

For the past two years, the Office of the Attorney General has operated a Gun Trafficking Unit with one prosecuting attorney, one investigator, and one paralegal. Funding for this unit, including ongoing operating expenses, is twofold: (1) the attorney position is funded with Byrne Grant funds (as Operation Gun Crime II), in an amount of approximately \$100,000 for each of the two grant years; and (2) the investigator and paralegal positions have been funded via a grant from the State Police's Cease Fire Council in the amount of \$100,000 for fiscal year 2003. The terms of the Byrne Grant direct the grant resources to be applied to prosecutions of: (1) false firearm applications; (2) straw purchases; (3) secondary sales violations; and (4) sales of ammunition to juveniles.

Under the provisions of this bill, general fund expenditures for the Gun Trafficking Unit could increase by an estimated \$392,322 in fiscal 2004, which accounts for the bill's October 1, 2003 effective date. This estimate reflects the cost of hiring two Assistant Attorneys General, three investigators, one paralegal, and one legal secretary to expand gun crime prosecutions under the bill's expanded prohibitions and penalties. This represents an assumption of the current three positions in the unit, and adds four additional positions. The estimate includes salaries, fringe benefits, one-time start-up costs, office space, and ongoing operating expenses.

Salaries and Fringe Benefits	\$327,482
One-time Equipment Purchases	33,180
Office Space Rent	15,760
Other Operating Expenses	<u>15,900</u>
Total FY 2004 State Expenditures	\$392,322

Future year expenditures are estimated, due to annualization and inflation, to be \$485,102 in fiscal 2005; \$512,319 in fiscal 2006; \$541,650 in fiscal 2007; and \$573,315 in fiscal

2008. These out-year costs reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

There are two factors that could mitigate the bill's potential to increase State expenditures. First, the number of successful "Project Exile" prosecutions by the U.S. Attorney in Baltimore City and Prince George's County over time is unknown. Significant numbers of such prosecutions would alleviate the many needs of the State's Attorneys in those jurisdictions associated with gun violence. Second, 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.

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, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$28 to \$84 per inmate in fiscal 2004.

The effect of denying bail for persons arrested for the specified crimes on or after October 1, 2003 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.

Small Business Effect: This bill could have a meaningful negative impact on the bail bonds industry. While the full and actual impact of such an effect is unknown, the bill could meaningfully impact any particular bail bondsman currently engaged in doing a significant part of his business with persons accused of illegally possessing handguns or committing crimes with a handgun.

Additional Information

Prior Introductions: Bills referred to as "Project Exile," but with somewhat dissimilar features, were introduced in 2001 and 2000. HB 622 of 2001 and HB 166 of 2000 each received an unfavorable report from the House Judiciary Committee. SB 475 of 2001

and SB 303 of 2000 each passed the Senate and received an unfavorable report from the House Judiciary Committee.

Cross File: SB 389 (The President, *et al.*) – Judicial Proceedings.

Information Source(s): State’s Attorneys’ Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Office of the Attorney General, Department of Public Safety and Correctional Services, Virginia Criminal Sentencing Commission, Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2003
ncs/cer

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510