

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 1112 (Delegate Trueschler)
 Judiciary

Public Safety - Gun Control Act of 2004

This bill increases penalties for specified firearms crimes, requires reports from State’s Attorneys on specified plea bargains, establishes an illegal gun hotline and amnesty program, and requires market saturation advertising of the hotline and amnesty program.

Fiscal Summary

State Effect: General fund expenditures for the State Police would increase by about \$2,150,000 in FY 2005 due to one-time costs associated with installation of bomb disposal safes in all barracks and an annual market saturation media campaign. Out-years reflect the cost of the continuing media campaign. In addition, the Division of Correction (DOC) would have potentially significant additional inmate costs beginning in FY 2007.

| (in dollars) | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|----------------|---------------|---------------|---------------|---------------|---------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 2,150,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 |
| Net Effect | (\$2,150,000) | (\$1,000,000) | (\$1,000,000) | (\$1,000,000) | (\$1,000,000) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None. It is assumed that the bill’s provisions relating to annual memoranda on certain plea bargain agreements could be handled with the existing budgeted resources of each State’s Attorney’s office.

Small Business Effect: None.

Analysis

Bill Summary: This bill changes the crime of using a handgun or antique firearm in the commission of a crime of violence or felony from a misdemeanor to a felony. The bill increases the mandatory minimum penalty for this offense from five to 10 years and eliminates the possibility of parole for convicted persons (except for those persons at the Patuxent Institution). In addition, if the firearm used was an assault weapon, the mandatory minimum sentence is increased to 15 years. The bill makes sentences for these offenses nonsuspendable, and does not alter current law consecutive sentencing requirements for subsequent offenses. The bill prohibits probation for such offenders.

The bill prohibits a person from using such an antique firearm or any handgun in the commission of specified drug crimes. A violator is guilty of a felony and, in addition to any other penalty imposed for the drug crime, must be sentenced to imprisonment for not less than 10 years and not more than 20 years. Except for provisions governing release from the Patuxent Institution, the person is not eligible for parole. In addition, if the firearm used was an assault weapon, the mandatory minimum sentence is increased to 15 years. The bill makes sentences for these offenses nonsuspendable, and provides that subsequent offenses require the violator to receive consecutive sentencing with any other sentence imposed for the drug crime. The bill prohibits probation for such offenders.

The bill requires a State's Attorney to annually prepare a written memorandum of each plea bargain agreement for any charge brought under the above cited prohibitions during the previous calendar year, by February 15 of each year. The bill specifies the required contents of each memorandum.

The bill provides that a judicial review panel may not order a decrease in a mandatory minimum sentence of more than 40% of the mandatory minimum for the above cited offenses or violation of State statutory restrictions on the possession of regulated firearms.

Under penalty provisions restricting the possession of regulated firearms, the bill provides that a violator with a previous conviction of a crime of violence or specified drug crimes is subject to a mandatory minimum, nonsuspendable, nonparolable sentence of 10 years and a maximum sentence of 20 years, and a violator with a previous conviction of a crime of violence or specified other drug crimes is subject to a nonsuspendable, nonparolable mandatory minimum sentence of five years and a maximum sentence of 10 years. If the firearm used was an assault weapon, the mandatory minimum sentence must be increased by five years.

The Department of State Police (DSP) is required to establish a toll-free Maryland illegal gun hotline that operates at all times, as specified. DSP is required to develop a methodology to track the number and types of calls received by the hotline and provide an annual report to the General Assembly. The Governor is required to provide funds in the annual budget bill for these purposes.

DSP is required to establish an illegal gun amnesty program to reduce the number of unregistered and illegal weapons in the State and to allow the safe disposal of illegal guns. The annual amnesty period is required to be during the first week of June. The Secretary of State Police is required to adopt implementary regulations. The bill provides specified directions for the operation of the amnesty program, including that: (1) a person may deliver or abandon a firearm or destructive device to a law enforcement unit, which precludes the arrest of the person; and (2) no money may be paid for any firearm, destructive device, or ammunition delivered or abandoned under the program. The Governor is required to provide funds in the annual budget bill for these purposes.

In addition, DSP is required to procure marketing, public relations, and advertising services and products to develop and implement a media initiative with messages, as specified, to promote the hotline and amnesty programs, as well as the increased penalties for illegal possession of guns and other messages designed to reduce the number of illegal guns in the State.

Current Law: 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, must be sentenced to imprisonment for not less than five years and not exceeding 20 years. Except for provisions governing release from the Patuxent Institution, the person is not eligible for parole in less than five years.

For the purposes of this bill, “crime of violence” means:

- abduction;
- first degree arson;
- first or second degree assault;
- first, second, or third degree burglary;
- carjacking and armed carjacking;
- first degree escape;
- kidnapping;

- voluntary manslaughter;
- maiming;
- mayhem;
- first or second degree murder;
- first or second degree rape;
- robbery;
- robbery with a dangerous weapon;
- first, second, or third degree sexual offense;
- an attempt to commit any of these crimes; or
- assault with intent to commit any of these crimes or a crime punishable by imprisonment for more than one year.

A person may not possess a regulated firearm if previously convicted of a crime of violence or specified drug-related crimes. A violator is guilty of a felony and subject to a nonparolable, nonsuspendable mandatory minimum sentence of five years. Each violation is a separate crime.

Maryland Rule 4-243 allows a defendant to enter into a plea bargain agreement with the State's Attorney. If the defendant pleads guilty or *nolo contendere*, the State's Attorney may amend the charging document, enter a *nolle prosequi* or stet, agree to acquittal on certain charges, agree not to charge the defendant with certain charges, recommend or agree to make no comment to the court regarding a sentence, or submit a plea agreement proposing a certain sentence to the judge for consideration. There is no limitation under the rule that prohibits a plea bargain agreement where a defendant is charged with certain offenses.

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.

Background: The State Fire Marshal annually receives about 500 calls from citizens who discover suspected explosives devices at or near their residences. Some of these devices cannot be moved and must be disposed of on site. There are "nationally accepted" procedures for such disposals.

State Expenditures: Changing crimes from misdemeanors to felonies means: (1) that such cases will likely 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. It is not known whether, under this bill's provisions, the prospect of a jury trial might spur more plea bargains and affect actual sentencing practices for this offense.

In any case, this bill would shift some unknown number of cases from the District Court to the circuit courts.

General fund expenditures could increase as a result of the bill's mandatory minimum sentences, elimination of parole for the covered offenses, and limitations on outcomes stemming from judicial review due to more people being committed to DOC facilities for longer periods of time. 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. 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 or \$1,440.

Under this bill, a person convicted of using a handgun or antique firearm in the commission of a crime of violence or felony would serve a mandatory minimum sentence of 120 months, rather than 60 months. In fiscal 2003, DOC received approximately 427 persons convicted of handgun offenses with mandatory minimum sentences of five years. These inmates are already ineligible for parole. Under this bill, these persons would now receive mandatory minimum sentences of 10 years, an increase in mandatory time served of 60 months. However, because of provisions governing diminution credits and mandatory releases due to such credits, this bill would actually increase the average length of stay by roughly 3.5 years (70% of the additional five years), or 42 months. In terms of bed space needs for DOC, this bill would create the need for an additional 1,495 beds (427 inmates x 3.5 years). Using variable inmate costs, for all 427 inmates, this would translate to additional costs of \$614,880 per year over 3.5 years for each annual intake, or \$2,152,080 in all.

In addition, it is estimated that as many as 200 additional intakes who do not now receive a mandatory minimum sentence could receive a mandatory minimum sentence under the bill. If such inmates are now expected to serve about two years, this bill would increase actual time served by 18 months for each inmate, or by an additional 300 beds (200 inmates x 18 months). Using variable inmate costs, for all 200 inmates, this would translate to additional costs of \$288,000 per year over one and one-half years for each annual intake, or \$432,000 in all.

Eventually, 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 \$101,000 per bed, the cost of building a new medium security 1,300-bed prison facility is currently estimated at \$131.3 million.

DSP reports that this bill's provisions relating to an amnesty program would also involve "destructive devices" and would require installation of an adequate "bomb disposal safe" at all 23 DSP barracks. The estimated cost of each installed safe is \$50,000, for a total cost of \$1,150,000 statewide.

The bill's requirement for a toll-free illegal gun hotline would be handled by DSP with existing budgeted resources.

The bill's requirement for DSP to develop and implement a media initiative to "saturate the market" with messages promoting the hotline, the amnesty program, increased penalties, and other messages is estimated to cost between \$1 million and \$1.5 million annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2004
ncs/jr

Analysis by: Guy G. Cherry

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