

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 456
 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. General fund expenditures for the Attorney General would also increase by \$396,700 in FY 2005, and grow to \$561,000 by FY 2009, for additional gun crime prosecutions. Any changes in responsibilities for the Judiciary could be handled with existing budgeted resources. Revenues would not be affected.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	396,700	477,800	503,700	531,400	561,000
Net Effect	(\$396,700)	(\$477,800)	(\$503,700)	(\$531,400)	(\$561,000)

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

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 his business with persons accused of 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, nonparolable sentence of five years and a maximum sentence of 20 years; (2) requires a mandatory minimum, nonparolable sentence of five years and a maximum sentence of 20 years for felony possession of a firearm with a prior conviction of specified crimes or a conspiracy to commit such crimes, including crimes of violence; and (3) makes it a misdemeanor to possess a firearm or ammunition with a prior conviction of any felony violation other than a crime of violence, subjecting violators to a mandatory minimum, nonparolable sentence of two years and a maximum sentence of 10 years.

In addition, the bill prohibits a District Court commissioner from releasing pretrial a defendant charged with a certain school property firearm offense, use of a firearm in a drug trafficking offense, or possession of a firearm by someone previously convicted of a crime of violence or felony. 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.

Under Chapter 2 of 2000 (the Responsible Gun Safety Act of 2000), 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, and the person is not eligible for a suspended sentence or parole. Each violation is a separate offense.

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.” To date, reviews of the success of the program have been mixed. State funding for Virginia Exile was eliminated in fiscal 2004.

Beginning in 1994, a program known as DISARM targeted gun-related violence in Maryland by seeking federal prosecution for individuals arrested while in possession of a gun who have a substantial record of convictions for violent crime or drug trafficking. In federal court, these felons face up to life imprisonment and mandatory minimums for gun possession, including a minimum sentence of 15 years for gun possession associated with three prior felonies.

The program began as a cooperative effort of the U.S. Attorney’s Office; the Bureau of Alcohol, Tobacco, and Firearms (ATF); the Baltimore City Police; and the State’s Attorney’s Office. It has been expanded to include Baltimore, Montgomery, and Prince George’s counties and all parts of the High-Intensity Drug Trafficking Area (HIDTA) program, which now funds it. The program also is available to any jurisdiction in Maryland that contacts the U.S. Attorney’s Office.

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 accepts gun possession cases from local prosecutors that are in violation of 18 USC Section 922(g) 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.

From January 1 to December 1, 2003, the U.S. Attorney had 176 firearms indictments in Maryland. Of that number, 152 were for Section 922(g) offenses – 93 were in Baltimore City and 15 in Prince George’s County. The average sentence for a conviction in 2003 was 92 months. In 2002, during the same time period, 133 indictments were brought,

with 108 being Section 922(g) offenses – 57 in Baltimore City and 21 in Prince George’s County. The average sentence for a conviction in 2002 was 101 months.

Over a three-year period 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 2005, the Office of the Public Defender has requested \$1.6 million to accommodate a nearly 20% increase in the Baltimore City felony caseload attributable, in part, to gun offenses.

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.

Based on fiscal 2002 data, DOC has an annual intake of about 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 was \$5,760 given the average time served (48 months). 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 2010 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 2005 are estimated to range from \$14 to \$58 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.

The bill's provisions relating to bail review, and allowing the State to appeal bail decisions, may impact both the operations of the Judiciary and the Office of the Attorney General (OAG). While such impacts cannot be reliably quantified, they are assumed to be minimal.

While the bill does not specifically mention OAG, for the past few years, OAG 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 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 \$396,697 in fiscal 2005, which accounts for the bill's October 1, 2004 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	\$333,324
One-time Equipment Purchases	41,180
Office Space Rent	15,760
Other Operating Expenses	<u>6,433</u>
Total FY 2005 State Expenditures	\$396,697

Future year expenditures are estimated, due to annualization and inflation, to be \$477,840 in fiscal 2006; \$503,749 in fiscal 2007; \$531,433 in fiscal 2008; and \$561,042 in fiscal 2009. These out-year costs reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

There are three 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. Third, 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, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

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.

Additional Information

Prior Introductions: In 2003, SB 280 and HB 127, similar bills, had a hearing before the Senate Judicial Proceedings Committee and House Judiciary Committee, respectively, and had no further action taken on them. Similar bills were also 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: None.

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

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