

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 269

(Delegate Anderson, *et al.*)

Judiciary

Public Safety - Imitation Firearms - Prohibition

This bill prohibits the sale, offer of sale, possession, use, attempt to use, or transfer of an “imitation firearm.” A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000 for each violation. An exception is provided for the possession, use, or display of an imitation firearm as part of a television program, theatrical production, or motion picture.

The bill also authorizes the Attorney General to file a civil action to enjoin violation of the Act. A circuit court is authorized to enjoin a violation of the Act.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions. The bill’s injunction authorization involving the Attorney General could be handled with existing budgeted resources.

Local Effect: Minimal increase in local revenues and expenditures due to the bill’s penalty provisions. The bill’s injunction authorization involving the circuit courts could be handled with existing budgeted resources.

Small Business Effect: Minimal.

Analysis

Current Law: State law does not currently directly address imitation firearms.

A person may not knowingly manufacture, sell, rent, or offer for sale any toy that is designed to depict torture or to resemble any instrument that is designed specifically for torture. This prohibition does not apply to any toy gun or any model of an aircraft, ship, motor vehicle, railroad engine, car, rocketship or other spacecraft, or any part of the model.

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. The court may not impose less than the minimum sentence of five years and, with a certain exception, the person is not eligible for parole in less than five 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 law enforcement officer may make an inquiry and conduct a limited search of a person if the officer, in light of the officer’s observations, information, and experience, reasonably believes that: (1) the person may be illegally wearing, carrying, or transporting a handgun; (2) because the person possesses a handgun, the person is or presently may be dangerous to the officer or to others; (3) under the circumstances, it is impracticable to obtain a search warrant; and (4) to protect the officer or others, swift measures are necessary to discover whether the person is wearing, carrying, or transporting a handgun.

Background: Federal law prohibits a person from manufacturing, entering into commerce, shipping, transporting, or receiving any toy, look-alike, or imitation firearm unless it contains (or has affixed) a specified marking approved by the U.S. Secretary of Commerce. A look-alike firearm means any imitation of an original firearm which is manufactured, designed, and produced since 1898, including and limited to guns, water guns, replica nonguns, and airguns firing nonmetallic projectiles. It does not include any look-alike, nonfiring, collector replicas of an antique firearm developed since 1898, or traditional BB, paint-ball, or pellet-firing guns that operate by air pressure.

The Bureau of Justice Statistics has been authorized and directed to conduct a study of the criminal misuse of toy, look-alike, and imitation firearms.

A New York City ordinance bans the manufacture, sale, holding for sale, or distribution within the state of any imitation weapon unless it is imported, manufactured, sold, held for sale and distributed solely for: (1) subsequent transportation in interstate commerce;

or (2) lawful use in a theatrical production, including a motion picture, television or stage production.

The Attorney General of New York is authorized to bring an action to file a civil action for up to \$1,000 for each violation and enjoining continuation of the violation.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. 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 sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC 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.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (District Court, Administrative Office of the Courts), Office of the Attorney General, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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