

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 116

(Senator Garagiola, *et al.*)

Judicial Proceedings

Assault Weapons Criminal Penalty Enhancement Act of 2005

This bill provides for certain incarceration penalty enhancements for persons convicted of using an “assault rifle” or a “copycat weapon” in the commission of a felony or crime of violence.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for incarcerations due to the bill’s penalty provisions.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: This bill provides that a person who uses an “assault rifle” or a “copycat weapon” in the commission of a felony or a “crime of violence” is guilty of a misdemeanor and subject, in addition to any other imposed for the underlying offense, to penalties, as follows: (1) for a first violation, a maximum imprisonment of 20 years; and (2) for each subsequent violation, maximum imprisonment for 20 years. A sentence imposed under these provisions must be consecutive to, and not concurrent with, any other sentence imposed for the underlying felony or crime of violence.

The bill designates the 45 specified assault weapons or their copies now identified as “regulated firearms” under the Public Safety Article as “assault rifles.” An assault weapon is defined as an assault pistol, an assault rifle, or a copycat weapon, as defined.

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 weapon 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 a mandatory minimum, nonparolable imprisonment sentence of 5 years and not exceeding 20 years. For each subsequent violation, the sentence is required to be consecutive to, and not concurrent with, any other sentence imposed for the crime of violence or felony.

The term “handgun” means a pistol, revolver, or other firearm capable of being concealed on the person. It includes a short-barreled shotgun and a short-barreled rifle, but does not include a shotgun, rifle, or antique firearm.

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:

- for a first violation, a nonsuspendable, mandatory minimum sentence of 5 years and not exceeding 20 years, and the person is ineligible for parole while serving the mandatory minimum sentence; and
- for a subsequent violation, a mandatory minimum sentence of 10 years and not exceeding 20 years.

A sentence imposed under these provisions must be consecutive to and not concurrent with any other sentence imposed for the underlying felony or crime of violence.

The State regulates the possession and sale of assault weapons in the same manner as the possession and sale of handguns, both of which are defined together as regulated firearms. “Assault weapons” are defined as a list of 45 specific semiautomatic weapons and their copies (mostly types of semiautomatic rifles and shotguns, including most of the list of 19 specific weapons that were subject to the former federal ban). Before a person purchases, rents, or transfers a regulated firearm in the State, the person must submit to the State Police or other designated law enforcement agency a firearm application that identifies the applicant and the firearm that is the subject of the transaction. Applications are investigated by the State Police and are subject to a seven-day waiting period before the transaction may take place.

An applicant must be at least 21 years old; have never been convicted of a felony, crime of violence, or misdemeanor that carries a penalty of more than two years imprisonment; and must not be addicted to drugs or alcohol or have a history of mental disorder. An applicant is required to complete a certified firearms safety course through the Police Training Commission. An application may be denied by the Secretary of State Police if the Secretary determines that the application contained false information or was not properly completed, or if the Secretary receives notice from a physician that the applicant suffers from a mental disorder and is a danger to the applicant or others.

For purposes of this bill, a 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 the above crimes; or
- assault with intent to commit any of the above crimes or a crime punishable by imprisonment for more than one year.

Background: A federal assault weapons ban was enacted in 1994 (Title XI of the Federal Violent Crime Control and Law Enforcement Act of 1994) that prohibited the manufacture, transfer, or possession of specific models of semiautomatic assault weapons or their copies, as well as assault weapons that have a combination of certain military characteristics (such as large capacity ammunition magazines, flash suppressors, pistol grips on a rifle or shotgun, and barrel shrouds to cool gun barrels during multiround

firings). Lawful possession and transfers prior to the law's enactment date of September 13, 1994, were still authorized.

The federal ban also restricted the manufacture and sale of ammunition magazines capable of holding more than 10 rounds. Prior to the law, many firearms were sold standard with 30 round magazines. The law exempted assault weapons and large capacity magazines that were manufactured prior to the law's enactment date.

The federal ban terminated on September 13, 2004, meaning that the 19 specific semiautomatic assault weapons previously prohibited under the federal ban may now be lawfully manufactured and possessed. Most of the weapons previously prohibited under federal law are listed as "regulated firearms" under Maryland law. Although under Maryland's statute those weapons can be transferred and possessed subject to certain conditions, the effect of the 1994 federal ban was to prohibit their sale and possession in Maryland. With the federal ban lifted, these specific weapons may once again be lawfully transferred and possessed as regulated firearms in Maryland.

State Expenditures: Because an "assault pistol" is already considered a "handgun" for prosecutorial purposes, this bill would be unlikely to have a significant effect on prosecutions by State's Attorneys or sentencing. In any event, general fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of people sentenced to longer incarceration terms as a result of this bill is expected to be minimal.

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 \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association (Baltimore City State's Attorney), Judiciary (Administrative Office of the Courts), District Court of Maryland,

Department of State Police, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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mp/jr

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