

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**

House Bill 22  
Judiciary

(Delegate Manno)

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**Crimes - Possession of Firearm While in Possession of Certain Controlled  
Dangerous Substances - Penalties**

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This bill prohibits a person from knowingly and intentionally possessing, carrying, or transporting a “firearm” while simultaneously possessing Schedule I or Schedule II controlled dangerous substances in violation of provisions prohibiting possessing or administering a controlled dangerous substance. A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$10,000. A sentence imposed under these provisions must be consecutive to and not concurrent with another sentence for a crime based on the same act.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund expenditures due to the bill’s incarceration penalty provision.

**Local Effect:** Minimal increase in local revenues and expenditures due to the bill’s penalty provisions.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** Under the bill:

“Antique firearm” means (1) a firearm, including a firearm with a matchlock, flintlock, percussion cap, or similar ignition system, manufactured before 1899; or (2) a replica of a

firearm described in item (1) that is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

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

“Machine gun” means a loaded or unloaded weapon that is capable of automatically discharging more than one shot or bullet from a magazine by a single function of the firing device.

“Regulated firearm” means (1) a handgun; or (2) a firearm that is any of 45 specified assault weapons or their copies, regardless of which company produced and manufactured that assault weapon.

“Rifle” means a weapon that is (1) designed or redesigned, made or remade, and intended to be fired from the shoulder; and (2) designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

“Short-barreled rifle” means (1) a rifle that has one or more barrels less than 16 inches long; or (2) a weapon that has an overall length of less than 26 inches and that was made from a rifle, whether by alteration, modification, or otherwise.

“Short-barreled shotgun” means (1) a shotgun that has one or more barrels less than 18 inches long; or (2) a weapon that has an overall length of less than 26 inches long and was made from a shotgun, whether by alteration, modification, or otherwise.

“Shotgun” means a weapon that is (1) designed or redesigned, made or remade, and intended to be fired from the shoulder; and (2) designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore one or more projectiles for each pull of the trigger.

**Current Law:** Title 4 of the Criminal Law Article contains provisions relating to the use or possession of a firearm, including prohibitions pertaining to wearing, carrying, or transporting a handgun; the use of a handgun or antique firearm in the commission of a crime; possession of a firearm at a public demonstration; assault pistols; and machine guns.

Title 5 of the Criminal Law Article delineates prohibitions relating to controlled dangerous substances, prescriptions, and other substances. Title 5 specifically prohibits a person, during or in relation to a drug trafficking crime, from (1) possessing a firearm under sufficient circumstances to constitute a nexus to the trafficking crime; or (2) using, wearing, carrying, or transporting a firearm. In addition to the sentence provided for the trafficking crime, a violator is guilty of a felony and subject to the following penalties:

- for a first offense, imprisonment for a mandatory minimum of 5 years and a maximum of 20 years; and
- for each subsequent violation, imprisonment for a mandatory minimum of 10 years and a maximum of 20 years. The mandatory minimum portions of each sentence is nonsuspendable and nonparolable. The mandatory minimum sentence may be doubled if the firearm was an assault pistol, a regulated firearm, a machine gun, or equipped with a silencer.

Also under controlled dangerous substances provisions, a person may not possess, own, carry, or transport a firearm if that person has been convicted of:

- a felony under this title;
- a crime under the laws of another state or of the U.S. that would be a felony under this title if committed in Maryland;
- conspiracy to commit such a crime; or
- 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.

Title 5 of the Public Safety Article generally and specifically regulates firearms and handguns in the State.

Schedule I and Schedule II drugs are considered to be the more dangerous categories of controlled dangerous substances and consist of each controlled dangerous substance listed in statute, added to these schedules by the Department of Health and Mental Hygiene (DHMH), or designated as a Schedule I or Schedule II controlled dangerous substance by the federal government unless DHMH objects.

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill's incarceration penalty 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 inmate costs. The number of people convicted of this proposed crime 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 \$2,600 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 \$526 per month. Excluding medical care, the average variable costs total \$148 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. 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 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Fiscal Effect:** DLS notes that some elements of the new violation (notably those involving possession or administration of a controlled dangerous substance) are already criminal offenses. And, since some of these drug offenses are misdemeanors, this bill could give rise to more felony trials in the circuit courts. In any case, this bill would shift some unknown number of cases from the District Court to the circuit courts, and revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts. 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 and other underlying offenses arising from the same incident.

In any case, local expenditures could also increase minimally as a result of the bill's incarceration penalty. 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 \$40 to \$129 per inmate in fiscal 2009.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - January 17, 2008  
mll/jr

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