

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 642

(Senators Gladden and McFadden)

(By Request – Baltimore City Administration)

Judicial Proceedings

Criminal Procedure - Restrictions on Pretrial Release - Offenses Involving Firearms - Repeat Offenders

This bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with 1 of 14 specified firearms offenses if the defendant has been previously convicted of one of those crimes. The bill authorizes a judge to authorize the release of such a defendant on suitable bail, any other conditions reasonably assuring that the defendant will not flee or pose a danger to others, or both bail and such other conditions.

Fiscal Summary

State Effect: Minimal. For FY 2009, the bill's requirements could be handled with the existing budgeted resources of the Division of Pretrial Detention and Services (DPDS). However, the bill's provisions could eventually cause some operational and fiscal challenges for DPDS.

Local Effect: Depending on current operating capacities of local detention facilities, and average daily populations, this bill could result in some significant expenditure increases, including additional correctional officers, in some jurisdictions.

Small Business Effect: None.

Analysis

Bill Summary: The bill also provides that, under the Maryland Rule governing the review of a commissioner's pretrial release order, when such a defendant is presented to

the court under that rule the judge must order a continued detention if the judge determines that bail or other conditions of release would not protect against flight or a danger to others. There is a rebuttable presumption that such a defendant will flee or pose such a danger.

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. Among other restrictions, under Title 5, a person may not possess a regulated firearm in the State if the person was convicted of a crime of violence or a violation of specified controlled dangerous substances offenses under Title 5 of the Criminal Law Article. A violator is guilty of a felony and subject to a nonsuspendable,

nonparolable mandatory *minimum* sentence of five years. Each violation of this prohibition is a separate offense. Under a separate prohibition relating to knowing participation of a violation of this title, a violator is subject to *maximum* penalties of imprisonment for five years and/or a fine of \$10,000. Each violation of this prohibition is also a separate offense.

Under Maryland Rule 4-216(f), relating to the review of a commissioner's pretrial release order, a defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release pursuant to this Rule must be presented immediately to the District Court. The District Court must review the commissioner's pretrial release determination and take appropriate action. If the defendant will remain in custody after the review, the District Court must set forth in writing or on the record the reasons for the continued detention.

Background: DPDS is responsible for processing and managing the care, custody, and control of Baltimore City arrestees and inmates, primarily at the Baltimore City Detention Center. DPDS also provides bail recommendations to the courts in Baltimore City and supervises defendants who have been released to the community to await trial.

In January 2007, U.S. Department of Justice entered into a MOA with the Department of Public Safety and Correctional Services allowing it four years to achieve all of several requirements identified by DOJ after an investigation of conditions at the Baltimore City Detention Center. The agreement may be terminated earlier than that if the department achieves "substantial compliance" and sustains it for one year. The requirements of the MOA include:

- prompt response to maintenance needs related to health, safety, and sanitation, including toilets, showers, sinks, ventilators, and fans;
- increased efforts to improve medical and mental health care, including protocols, staffing, and training;
- increased efforts to ensure sight and sound separation for juveniles from the adult inmate population;
- additional support for the special education program;
- new fire safety equipment for the Jail Industries Building;
- increased efforts to minimize violence; and
- increased personnel resources to effectively monitor compliance efforts and results.

State Expenditures: DPDS advises that there is insufficient data to predict the affect of this bill on average daily populations (ADP) or costs for the division. However, arrests in Baltimore City are currently down from last year and BCDC is not currently operating at

full capacity. Accordingly, even though this bill could significantly add to ADP in fiscal 2009 by as much as 100 persons, DPDS believes that such an increase could be handled with existing budgeted resources – for now. In future years, depending on overall arrest activity in Baltimore City and its effect on ADP at BCDC, this bill could drive the need for additional space (including contingency housing) and additional correctional officers. The bill allows some pretrial releases on bail or other suitable conditions as determined by a judge, rather than a commissioner.

Local Expenditures: This bill would likely increase the number and length of pretrial incarcerations at some local detention facilities in a similar fashion. Per diem operating costs of local detention facilities are expected to range from \$40 to \$129 per inmate in fiscal 2009.

Additional Comments: For a somewhat similar bill introduced in 2007, DPDS advised that ADP committed to the division would increase by 100 people due to the bill's prohibition against any pretrial releases for subsequent gun offenses. The division advised in 2007 that housing was already operating at full capacity and that a daily increase of even 25 persons would create "severe crowding" conditions at its facilities. For the 2007 bill, DPDS saw the need to hire an additional 12 correctional officers and provide some contractual contingency housing with annual costs exceeding \$700,000 per year within three years.

Additional Information

Prior Introductions: HB 583 of 2007, a similar bill, was withdrawn after a hearing before the House Judiciary Committee.

Cross File: HB 900 (Delegate Anderson, *et al.*) (By Request – Baltimore City Administration) – Judiciary.

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

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