

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 275

(Delegate Riley, *et al.*)

Judiciary

Crimes - Violation of Restriction Against Possession of Regulated Firearm -
Penalties

This bill provides for a maximum sentence of 10 years for a person sentenced to a mandatory minimum nonsuspendable, nonparolable five-year sentence applicable to a person convicted for the illegal possession of a regulated firearm when that person had a previous felony conviction for a crime of violence or for a violation of one of specified controlled dangerous substance offences.

Fiscal Summary

State Effect: Any potential increases in imprisonment terms at Division of Correction facilities resulting from the bill is expected to be minimal, is not expected to significantly affect State incarceration costs, and would not begin to be felt until FY 2014.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: 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.

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.

Background: The two separate statutory sentencing provisions applicable to Title 5 of the Public Safety Article (as cited above) have caused the courts to interpret the sentencing provision for the offense affected by the bill as mandating a five-year sentence, no more and no less.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's clarification of incarceration penalties applicable to violations of restrictions against possession of a regulated firearm due to people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of people affected by the bill's provisions 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Department of Public Safety and Correctional Services, Department of Legislative Services

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mcp/jr

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510