

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1042
Judiciary

(Delegate Ivey, *et al.*)

Judicial Proceedings

Public Safety - Possession of Ammunition for Firearms - Penalties

This bill prohibits a person from possessing ammunition for a firearm if the person was previously convicted of a crime of violence or specified controlled dangerous substances (CDS) violations. A violator is guilty of a misdemeanor subject to maximum penalties of a one year imprisonment and/or a fine of \$5,000.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: Title 5 of the Public Safety Article regulates firearms and handguns in the State. A regulated firearm is any handgun or any of the 45 assault weapons (or copies) identified in that article. Among other restrictions, 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. 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 five years imprisonment 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 Title 5 the Criminal Law Article;
- a crime under the laws of another state or of the United States that is 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 five years imprisonment and/or a fine of \$10,000.

Under the CDS offenses covered under the bill, a person may not:

- manufacture, distribute, dispense, or possess with intent to distribute a controlled dangerous substance, including narcotics and Schedule I or II hallucinogenic substances;
- manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with intent to use it to produce, sell, or dispense a controlled dangerous substance;

- create, distribute, or possess with intent to distribute a counterfeit substance;
- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance (any place resorted to for the purpose of illegally administering controlled dangerous substances or where such substances or controlled paraphernalia are illegally manufactured, distributed, dispensed, stored, or concealed);
- pass, issue, make, or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with intent to distribute the controlled dangerous substance; or
- be a volume dealer, drug kingpin, or importer of specified large quantities of drugs.

A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$15,000. A subsequent offender under these prohibitions must be sentenced to a minimum nonsuspendable and nonparolable term of two years.

When the controlled dangerous substance is a Schedule I or Schedule II narcotic drug, a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$25,000. A repeat offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum nonsuspendable and nonparolable sentence of 10 years and is subject to a maximum fine of \$100,000.

Crimes of violence include murder, manslaughter, some sexual offenses, robbery, carjacking, kidnapping, assault, and other offenses, as specified in the Criminal Law Article. Maximum imprisonment penalties for some offenses include the possibility of a life sentence.

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

State Expenditures: General fund expenditures may increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. 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 2010 are estimated to range from \$23 to

\$71 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 \$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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

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

Local Expenditures: Expenditures may 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 \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Garrett County, Montgomery County, Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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