

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 53

(Senator Haines)

Judicial Proceedings

Judiciary

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**Criminal Law - Use of Firearm in the Commission of a Crime of Violence or a Felony**

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This bill expands the current misdemeanor prohibition against the use of a handgun or concealable antique firearm in the commission of a crime of violence or felony to apply to any “firearm,” without regard to its capability of being concealed.

Firearm is defined as (1) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or (2) the frame or receiver of such a weapon. Firearm includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill’s expanded prohibition.

**Local Effect:** Potential minimal increase in revenues due to the bill’s expanded prohibition.

**Small Business Effect:** None.

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**Analysis**

**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 antique firearm or handgun 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, subject to a minimum nonparolable sentence of 5 years and a maximum sentence of 20 years. For each subsequent violation, the sentence must be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

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 such a firearm 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. Handgun includes a short-barreled shotgun and a short-barreled rifle. Handgun does not include a shotgun, rifle, or antique firearm.

**State Revenues:** General fund revenues may increase as a result of the bill's expanded prohibition from additional cases heard in the District Court. It is assumed that any increased caseload for the District Court resulting from this bill can be handled with existing budgeted resources.

**State Expenditures:** In fiscal 2008, the Division of Correction (DOC) had an intake of 539 people for all deadly weapons violations. While the data does not reveal how many of these violations involve the use of a firearm in the commission of a felony or a crime of violence, 22 are identified as involving the use of a handgun. The average sentence for these 22 people was 71 months. In addition, another 440 persons were committed to DOC for robbery with a deadly weapon. Their average sentence was 105 months.

The extent to which this bill's changes may increase firearm prosecutions and DOC's annual intake is unknown for two reasons: (1) prosecutors have wide discretion to actually bring charges for specific statutory offenses; and (2) actual prosecutions by the U.S. Attorney in federal court for gun cases, sending convicted persons to federal prisons, may significantly reduce State and local costs associated with such offenses.

In any event, 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 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 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 DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues may increase minimally as a result of the bill's expanded prohibition from cases heard in the circuit courts. It is assumed that any increased caseload for the circuit courts resulting from this bill can be handled with existing budgeted resources.

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### **Additional Information**

**Prior Introductions:** SB 323 of 2003, SB 318 of 2004, SB 553 of 2005, SB 563 of 2007, SB 244 of 2008 each received a hearing before the Senate Judicial Proceedings Committee and had no further action taken on them. HB 1474 of 2008 had a hearing before the House Judiciary Committee and had no further action taken on it.

**Cross File:** HB 210 (Delegate Sophocleus, *et al.*) - Judiciary.

**Information Source(s):** Department of Public Safety and Correctional Services, Commission on Criminal Sentencing Policy, Judiciary (Maryland District Court), Department of State Police, State's Attorneys' Association, Department of Legislative Services

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