

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 524
Judiciary

(Delegate Riley, *et al.*)

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: No impact on general fund expenditures for Division of Correction (DOC) facilities in the near-term. Any potential increases in imprisonment terms at DOC facilities resulting from the bill are not expected to significantly affect State incarceration costs and does not begin to be felt until FY 2015.

Local Effect: None.

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.

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. A review of the Maryland Sentencing Guidelines database indicates that there were 140 convictions in Maryland circuit courts for illegal possession of a firearm after a conviction for crime of violence or drug felony in fiscal 2008.

State Expenditures: General fund expenditures may 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 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Additional Information

Prior Introductions: HB 275 of 2008 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, 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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