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FISCAL AND POLICY NOTE
Revised

House Bill 539
Judiciary

(Delegate Branch, *et al.*)

Judicial Proceedings

Public Safety - Electronic Control Devices - Requirements

This bill limits the possession, use, and sale of an “electronic control device” in Maryland, specifies criminal penalties for violations, and requires entrance level and annual training in the use of such devices by all police and correctional officers in the State who are issued an electronic control device by their agency.

Fiscal Summary

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

Local Effect: Increased annual in-service training costs for any jurisdiction issuing electronic control devices to certified police or correctional officers. The magnitude of these increased costs will vary by jurisdiction but is not expected to be significant in any individual jurisdiction. Potential minimal increase in local revenues and expenditures due to the bill’s penalty provisions. **This bill may impose a mandate on a unit of local government**

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person from possessing or using an “electronic control device” unless the person is at least 18 years old and has never been convicted of a crime of violence or a specified drug crime.

An electronic control device is prohibited from being sold and activated unless: (1) an instructional manual or audio or audio visual instructions are provided to the purchaser; (2) the manufacturer maintains a record of the original owner of the device; and (3) the manufacturer or seller has obtained a State and federal criminal history records check of the original owner.

The illegal possession or use of an electronic control device is a misdemeanor and a violator is subject to maximum penalties of two months imprisonment and/or a \$500 fine. If the violation occurs while the person is committing a separate felony, the violator is guilty of a felony and subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

A local government is not prohibited from adopting a restriction or requirement concerning the possession of an electronic control device that is more stringent than what is provided in this Act.

The bill requires the Police and Correctional Training Commissions (PCTC) to add entrance-level and annual in-service training in the proper use of electronic control devices to curricula, for police and correctional officers who are issued an electronic control device by a law enforcement agency, consistent with established law enforcement standards and federal and State constitutional provisions.

The Governor's Office of Crime Control and Prevention must report to the Senate Judicial Proceedings and the House Judiciary committees by December 31, 2011 on the compliance by electronic control device manufacturers with the relevant provisions of this bill. The bill must be construed prospectively only and may not be applied or interpreted to have any effect on or application to any electronic control device sold or purchased before the bill's effective date.

Current Law/Background: Stun guns and other electronic control devices, such as those made by TASER International, Inc., are employed to disrupt the body's electrical system, and to temporarily incapacitate the person. Various news accounts have questioned the relative safety of any electronic weapon in light of deaths occurring after a police or correctional officer's use of such a weapon, in the U.S. and abroad. In November 2007, a 20-year-old Frederick, Maryland man died after police used a TASER on him.

TASER International, Inc. offers certification and training for law enforcement personnel. According to the company, it "offers a variety of courses for instructors, armorers, investigators, law enforcement executives, risk managers, and legal counsels." Instructor re-certification courses from TASER International are necessary every two years, and user recertifications are required annually. In addition to ongoing marketing

and sales to law enforcement agencies, TASERs are currently being marketed to individuals not involved in law enforcement as self-defense mechanisms.

Police and correctional officer entrance-level training and in-service training are conducted by the commissions at the Public Safety Education and Training Center in Sykesville, with entrance-level activities for police officers conducted mainly at the Firearms Training Facility. In-service training is required annually for all certified police and correctional officers. Training may be conducted at the commission's facilities or at 1 of 20 police training academies in the State certified by the commission. Electronic control device training for annual in-service training is only provided to those officers who will be equipped with a TASER device after training.

There are approximately 16,000 certified police officers in Maryland. There are approximately 14,000 correctional personnel who are mandated to receive correctional officer training for certification. It is assumed that the number who are issued electronic control devices is relatively few.

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: This bill requires the instructional supervisory staff of PCTC, including at the Public Safety Education and Training Center and the Firearms Training Facility, to modify the existing entrance-level and in-service training curricula for affected police officers and correctional officers to include training related to the proper use of electronic control devices. Because, the bill's definition of "electronic control device" includes more than one type of device, however, it is difficult to know how many current or future devices or types of devices have to be included in the commissions' curricula. The following cost estimates address only those related to training in the use of TASER devices. Any changes to the Code of Maryland Regulations or instructional materials can be handled with existing budgeted resources.

The changes to the curricula are minimal and can be accommodated with existing budgeted resources of the commissions. The Firearms Training Facility currently has demonstration TASER devices for use by instructors. However, each entrance-level and annual in-service trainee is required to provide his or her own TASER device for the required training. Each trainee has to obtain the device from the agency sponsoring the training. The additional cost to the Public Safety Education and Training Center and the Firearms Training Facility is estimated at about \$100 each, per year, to cover the costs of additional cartridges for instructors. Entrance-level training at the Firearms Training Facility increases by one day.

General fund expenditures may also 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 these proposed crimes 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.

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 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 costs to local agencies, for additional cartridges for entrance level and annual in-service training, are assumed to be minimal since a limited number of local police and correctional officers are issued such devices. Local police or correctional officer candidates would have to obtain the device from the agency that is sponsoring the officer candidate's training.

In any jurisdiction where training for all police and correctional officers meets or exceeds the bill's requirements, there are no additional costs.

Additional Information: It is not known how many of the State's other certified training academies have a sufficient number of cartridges for instructors to provide TASER or other electronic device training.

Additional Information

Prior Introductions: None.

Cross File: SB 850 (Senator Muse) - Judicial Proceedings.

Information Source(s): Caroline County, Calvert County, Prince George's County, Town of Bel Air, Town of Leonardtown, Town of Riverdale Park, City of Salisbury, City of Westminster, Baltimore City, Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Howard County, Judiciary (Administrative Office of the Courts), Montgomery County, Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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