

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 919

(Senator McFadden)(By Request - Baltimore City  
Administration)

Judicial Proceedings

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**Crimes - Possession of Loaded Firearm - Enhanced Penalties**

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This bill enhances the criminal penalty, if the weapon is loaded, for violators of certain provisions relating to wearing, carrying, or transporting a handgun; possessing, owning, carrying, or transporting a regulated firearm when the person has a prior disqualifying conviction; and specified restrictions on the possession of regulated firearms, including restrictions applicable to persons under the age of 21.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund correctional expenditures due to the bill's penalty provisions. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** Specifically, the bill requires that:

- For the misdemeanor violation of the prohibition against wearing, carrying, or transporting a handgun on or about the person or in a vehicle, if the handgun is loaded, the offense is a felony subjecting the violator to a mandatory minimum sentence of at least 18 months and a maximum term of 10 years.
- For the felony of possessing, owning, carrying, or transporting a regulated firearm when the person has a prior felony conviction in Maryland or another

state (including a conspiracy or an attempt to commit such an offense), if the firearm is loaded, a violator is subject to a nonsuspendable mandatory minimum sentence of 18 months and a maximum term of 10 years. A court may not order probation before judgment.

- For illegally possessing a regulated firearm, or possessing a regulated firearm or ammunition by a person under the age of 21 without an exemption, if the firearm is loaded, a violator is guilty of a felony and subject to a nonsuspendable mandatory minimum sentence of 18 months and a maximum term of 10 years. A court may not order probation before judgment. Each violation is a separate crime.

**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 Maryland Sentencing Guidelines database does not contain any information as to whether prior handgun or firearm convictions involved weapons loaded with ammunition.

**State Expenditures:** According to the Office of the Public Defender (OPD), by increasing the penalties and prohibiting a suspended sentence for certain firearm offenses, this bill is likely to cause an increase in litigation in cases of this type, as defendants will be less likely to resolve their case via a plea agreement. The resulting increase in courtroom time for trials, as well as the additional preparation necessary for litigation will be based on a multitude of factors (such as prosecutorial practices, staffing levels in the various OPD offices and the individual facts specific to each case). OPD was unable to quantify such operational effects.

In any case, general fund expenditures may increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities. The number of people convicted under these criminal penalty enhancements 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.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 1200 (Delegate Anderson)(By Request - Baltimore City Administration) and Delegate Ramirez - Judiciary.

**Information Source(s):** Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

**Fiscal Note History:** First Reader - March 13, 2009  
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