

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 309  
Judiciary

(Delegate Sophocleus, *et al.*)

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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 local revenues due to the bill’s expanded prohibition. Local expenditures are not affected.

**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 2009, the Division of Correction (DOC) had an intake of 455 people for all deadly weapons violations. The average sentence was 45 months. In addition, another 465 persons were committed to DOC for robbery with a deadly weapon. The average sentence was 124 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 \$2,750 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 \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

**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 53 of 2009 passed the Senate and received a hearing in the House Judiciary Committee. SB 323 of 2003, SB 318 of 2004, SB 553 of 2005, SB 563 of 2007, and 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 and HB 210 of 2009 had a hearing before the House Judiciary Committee and had no further action taken on them.

**Cross File:** None. However, SB 44 and HB 157 are identical to this bill.

**Information Source(s):** Department of Public Safety and Correctional Services, Department of State Police, Commission on Criminal Sentencing Policy, Office of the Public Defender, Department of Legislative Services.

**Fiscal Note History:** First Reader - February 4, 2010  
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