

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 161
Judiciary

(The Speaker, *et al.*) (By Request - Administration)

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

This Administration 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.

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: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

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.

Background: SB 44/HB 157 of 2010, similar bills, were requested by the Baltimore City Administration.

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: A review of the Maryland Sentencing Guidelines database indicates there were 278 convictions for use of a handgun in a crime of violence or felony in fiscal 2010. The Commission on Criminal Sentencing Policy does not have access to additional data to estimate the impact of expanding the definition to include the use of “any firearm” in the commission of a crime of violence. Most of the intake for the Division of Correction (DOC) in any given year is for felony convictions, including crimes of violence.

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 \$2,920 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 about \$390 per month. Excluding all medical care, the average variable costs total \$170 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.

Additional Information

Prior Introductions: SB 44 of 2010 passed the Senate and received a favorable with amendments report by the House Judiciary Committee, but no further action was taken on the bill. Its cross file, HB 157, received a hearing in the House Judiciary Committee, but no further action was taken. SB 53 of 2009 passed the Senate and received a hearing in the House Judiciary Committee. HB 210 of 2009 had a hearing before the House Judiciary Committee, but no further action was taken. Similar bills were introduced in the 2003 through 2008 sessions.

Cross File: SB 174 (The President, *et al.*) (By Request - Administration) - Judicial Proceedings.

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

Fiscal Note History: First Reader - February 7, 2011
ncs/hlb

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Law - Use of Firearm in the Commission of a Crime of Violence or a Felony

BILL NUMBER: SB174/HB161

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.