

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 563 (Delegate Braveboy)
 Judiciary

Electronic Control Devices - Permit Process and Requirements

This bill alters current prohibitions against the possession and use of an electronic control device (ECD) and creates a permit process for carrying, wearing, or transporting such a device similar to the permit process applicable to handguns.

Fiscal Summary

State Effect: General fund revenues increase by \$250,000 and expenditures increase by \$632,100 in FY 2012. Out-year revenues reflect a three-year permit fee cycle. Out-year expenditures reflect annualization, inflation, and permit database hardware replacement in FY 2015. The criminal penalty provisions of this bill do not have a discernible impact on State finances or operations.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	\$250,000	\$100,000	\$100,000	\$350,000	\$200,000
GF Expenditure	\$632,100	\$394,700	\$410,000	\$586,100	\$446,700
Net Effect	(\$382,100)	(\$294,700)	(\$310,000)	(\$236,100)	(\$246,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None. The criminal penalty provisions of this bill do not have a discernible impact on local finances or operations.

Small Business Effect: Potential meaningful. A new ECD permit scheme with fees may significantly affect the volume of sales for such devices in the State.

Analysis

Bill Summary: This bill prohibits a person from purchasing, wearing, carrying, or transporting an electronic control device unless the person has been issued a permit. Exceptions are provided for six categories of persons who are on active assignment engaged in law enforcement.

The bill specifies that a person must have a permit issued by the Maryland State Police (MSP) before the person purchases, carries, wears, or transports an electronic control device. The permit application must be made under oath and the Secretary of State Police may charge a nonrefundable fee payable when the application is filed. The fee may not exceed \$75 and is in addition to required fees for State and national criminal history background checks.

To be issued an ECD permit, an applicant: (1) must be 21 years of age or older; (2) must not have ever been convicted of a crime of violence or certain drug offenses; (3) is not a fugitive from justice; (4) is not addicted to, or an habitual user of, alcohol or a controlled dangerous substance; (5) has not been confined for more than 30 consecutive days to a mental health care facility, unless the person has a physician's certificate that the person is capable of possessing an ECD without undue danger to the person or to another; and (6) has completed a training program approved by the Police Training Commission. The Secretary of State Police must issue the permit within a reasonable time. The permit is valid for each ECD legally in the possession of the permit holder.

The bill specifies procedures for the revocation of a permit or contesting the denial of a permit.

In addition to current statutory controls over the sale and activation of an ECD in the State, the bill prohibits the sale or activation of an ECD unless the seller maintains a record of the serial number from the anti-felon identification tags, if available, and the seller confirms that the purchaser may lawfully purchase the ECD. A person who violates prohibitions relating to sale and activation is guilty of a misdemeanor and subject to maximum penalties of imprisonment for two months and/or a fine of \$500.

Current Law: A person is prohibited from possessing or using an ECD 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 ECD is prohibited from being sold and activated unless: (1) an instructional manual or audio or audiovisual 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 ECD 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 ECD that is more stringent than what is specified under State law.

The Police and Correctional Training Commissions was required 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.

A person may not wear, carry, or transport a handgun unless the person qualifies under an express exemption or has been issued a permit to carry a handgun. Current exemptions include on-duty law enforcement personnel of the United States, Maryland, or any county or municipality in Maryland.

To be issued a permit to carry a handgun by the Secretary of State Police, an applicant: (1) must be 18 years of age or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) if the person is younger than 30 years of age, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; (4) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (5) must not exhibit a propensity for violence or instability which may reasonably render possession of a handgun a danger to himself/herself or another; and (6) must have a good and substantial reason to wear, carry, or transport a handgun. "Good and substantial reason" includes a finding that the permit is necessary as a reasonable precaution against apprehended danger.

A handgun permit application costs \$75; two years after the initial permit, and every three years thereafter, a \$50 renewal fee is due.

Background: Stun guns and other ECDs, 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 United States and abroad. In November 2007, a 20-year-old Frederick, Maryland man died after police used a TASER on him. On February 8, 2011, a teenager in Baltimore City fell off of a roof after he was tasered during an altercation with officers from the Warrant Apprehension Task Force.

State Revenues: The MSP is unsure how many ECD permits may be sought annually under the bill. For purposes of this analysis, it is assumed that 5,000 new permit applications would occur in fiscal 2012, and 2,000 annually thereafter. MSP advises that new and renewal fees would be set at \$50 and each permit would have a duration of three years. All new and renewal fee income is deposited to the general fund.

Accordingly, if these levels of permit applications are realized:

- In fiscal 2012, new application fee income will total \$250,000 (5,000 x \$50).
- In fiscal 2013 and 2014, due to lower expectations for new applications, fee income will total \$100,000 (2,000 x \$50).
- In fiscal 2015, assuming that all initial permits from fiscal 2012 are renewed, fee income will total \$350,000 (\$250,000 from renewal fees + \$100,000 from new applications).
- Beginning in fiscal 2016, annual fee revenue will total \$200,000 (\$100,000 from renewals + \$100,000 from new applications).

State Expenditures: General fund expenditures increase by \$632,100 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate reflects the cost of hiring one trooper supervisor, two trooper investigators, two civilian background investigators, and three civilian administrative aids to operate an ECD permit program at MSP. It includes salaries, fringe benefits, and one-time start-up costs (including an ECD ID card printer). Other operating expenses can be absorbed by the existing budgeted resources of the MSP Licensing Division.

Position(s)	8
Salaries and Fringe Benefits (Sworn)	\$310,765
Salaries and Fringe Benefits (Civilian)	110,988
ECD Database and Programming	200,000
Equipment	<u>10,313</u>
Total FY 2012 State Expenditures	\$632,066

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as annual maintenance costs for ECD ID equipment.

Because the current handgun permit database is maintained by the Department of Public Safety and Correctional Services (DPSCS), MSP believes that the responsibility for a new ECD database (including hardware, design, programming, and maintenance) would belong to DPSCS. DPSCS does not share this view. Legislative Services has assigned those responsibilities to MSP, and are reflected above.

The Criminal Justice Information System and the Police and Correctional Training Commissions advise that the bill's requirements relating to criminal history background checks and approvals of ECD training programs, respectively, can be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, and Queen Anne's counties; Commission on Criminal Sentencing Policy; Department of Natural Resources; Department of General Services; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Guy G. Cherry

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