

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 344  
Judiciary

(Delegate Branch, *et al.*)

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**Criminal Law - Electronic Control Devices - Restrictions on Possession and Use**

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This bill adds “electronic control devices” to the statutory prohibition on wearing, carrying, or transporting a dangerous weapon and creates a new offense prohibiting the use of an electronic control device during the commission of certain crimes or against a law enforcement officer. Under the bill, a person is prohibited from using an electronic control device: (1) in the commission of a crime of violence or felony; and (2) on another person if the person knows or has reason to know that the other person is a law enforcement officer engaged in the performance of the officer’s official duties. Violators are guilty of a misdemeanor, punishable by up to five years imprisonment.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions. The bill is not anticipated to have a material effect on the caseloads of the Judiciary and the Office of the Public Defender. Enforcement can be handled with existing resources.

**Local Effect:** Minimal increase in revenues and expenditures due to the bill’s penalty provisions. Enforcement can be handled with existing resources.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill incorporates the definition of “electronic control device” used in other statutory provisions, which is a portable device designed as a weapon capable of

injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current.

**Current Law:** A person may not wear, carry, or transport a dangerous “weapon” either in a concealed manner or openly with the intent or purpose of injuring an individual in a dangerous manner unless the person qualifies under an express exemption or has been issued a permit to carry a handgun. Exemptions include on-duty law enforcement personnel, or an individual who carries the weapon as a reasonable precaution against apprehended danger, the reasonableness of which is subject to a determination by a court in any case arising out of the matter. “Weapon” does not include a handgun or penknife without a switchblade, but does include other specified items, like a razor, a nunchaku, and various other knives. Violators are guilty of a misdemeanor, punishable by maximum penalties of three years imprisonment and/or a \$1,000 fine. If the evidence shows that the weapon was carried with the deliberate purpose of injuring or killing another, the court must impose the highest sentence of imprisonment permitted.

A person is prohibited 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 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 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 specified under State 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 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:** General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's incarceration penalties 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 this proposed crime 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 \$2,920 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. 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.

Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced 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 increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is

confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore and Howard counties; Commission on Criminal Sentencing Policy; Department of Natural Resources; Department of General Services; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; University System of Maryland; *The Baltimore Sun*; Department of Legislative Services

**Fiscal Note History:** First Reader - February 14, 2011  
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