

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 174

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

Judicial Proceedings

Judiciary

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**Criminal Law - Restrictions Against Use and Possession of Firearms**

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This bill expands prohibitions and restrictions against the use and possession of firearms.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill's expanded prohibitions and restrictions.

**Local Effect:** Potential minimal increase in local revenues due to the bill's expanded prohibitions and restrictions.

**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. (The attached assessment does not reflect amendments to the bill.)

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**Analysis**

**Bill Summary:** The bill establishes a statutory maximum penalty of 15 years for possession of a regulated firearm by a person previously convicted of certain crimes of violence or drug-related crimes. The bill removes "false prescription" and certain penalty provisions as predicate crimes.

If, at the time of the commission of the offense, a period of more than five years has elapsed since the person completed serving the sentence for the most recent conviction, including all imprisonment, mandatory supervision, probation, and parole: (1) the imposition of the mandatory minimum sentence is within the discretion of the court; and (2) the mandatory minimum sentence may not be imposed unless the State's Attorney

notifies the person in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.

The bill also prohibits the possession of a rifle or a shotgun if a person was previously convicted of a crime of violence or drug-related felony. A violator is guilty of a felony and subject to a maximum sentence of 15 years. Each violation must be considered a separate offense.

The bill also 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.

**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 in 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.

The term "rifle" means a weapon that is: (1) designed or redesigned, made or remade, and intended to be fired from the shoulder; and (2) designed or redesigned, and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

The term "shotgun" means a weapon that is: (1) designed or redesigned, made or remade, and intended to be fired from the shoulder; and (2) designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore one or more projectiles for each pull of the trigger.

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:** The two separate statutory sentencing provisions applicable to Title 5 of the Public Safety Article (as cited above) have been interpreted by the courts as mandating a five-year sentence, no more and no less, for illegal possession of a firearm by a person convicted of disqualifying crimes of violence or drug crimes. A review of the Maryland Sentencing Guidelines database indicates that there were 118 convictions in Maryland circuit courts for illegal possession of a firearm after a conviction for crime of violence or drug felony in fiscal 2010.

This bill brings State law closer to federal law, under 18 U.S.C. Section 922, which prohibits the possession of any firearm or ammunition by a person convicted in any court, of a crime punishable by imprisonment for a term exceeding one year.

The sentencing guidelines database also 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.

**State Revenues:** General fund revenues may increase as a result of the bill’s expanded prohibitions 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:** 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 case, general fund expenditures may increase minimally as a result of the bill's expanded application of an existing prohibition which results in an increase of maximum incarceration penalties applicable to violations; and potential violations from the new prohibitions established by the bill. The number of people affected by the bill's provisions 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.

**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:** None.

**Cross File:** HB 161 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

**Information Source(s):** Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Department of Human Resources, 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 - February 6, 2011  
ncs/hlb Revised - Enrolled Bill - May 4, 2011

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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.