

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 239

(Senator Jones-Rodwell)(By Request - Baltimore City
Administration)

Judicial Proceedings

Crimes - Possession of Loaded Handgun or Regulated Firearm - Enhanced Penalties

This bill establishes enhanced penalties for certain handgun and regulated firearms prohibitions if the weapon is loaded with ammunition at the time of the violation.

Fiscal Summary

State Effect: Potential minimal increase in general fund correctional expenditures due to the bill's penalty provisions. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that:

- A person who violates the prohibition against wearing, carrying, or transporting a handgun without a permit, whether concealed or open, on or about the person or in a vehicle on a road, highway, waterway, or airway, if the handgun is loaded with ammunition, is guilty of a felony and subject to a nonsuspendable, nonparolable, mandatory minimum sentence of 18 months. The sentence may not exceed 10 years and the court may not order probation before judgment. Each violation of this prohibition is a separate crime.

- A person who violates specified prohibitions against certain persons possessing a regulated firearm or the prohibition against a person under the age of 21 possessing a regulated firearm, if the firearm is loaded with ammunition, is guilty of a felony and subject to a nonsuspendable, nonparolable, mandatory minimum sentence of 18 months. The sentence may not exceed 10 years and the court may not order probation before judgment. Each violation of this prohibition is a separate crime.

Current Law: With specified exceptions, a person may not (1) wear, carry, or transport a handgun, whether concealed or open, on or about the person; or (2) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State. For the vehicular prohibition, there is a rebuttable presumption that a person who transports the handgun does so knowingly. A violator is guilty of a misdemeanor and, depending on the circumstances of the violation, subject to some mandatory minimum sentence ranging from 30 days to 5 years, and maximum imprisonment penalties of 10 years. For a first offense, the maximum imprisonment penalty is 3 years. Certain circumstances also subject the person to monetary fines of amounts between \$250 and \$2,500.

To be issued a permit to wear, carry, or transport a handgun by the Secretary of State Police, an applicant (1) must be 18 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, 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 the applicant 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 regulated firearm is any handgun or any of the 45 assault weapons (or copies) identified under Title 5 of the Public Safety 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.

A person under the age of 21 may not possess a regulated firearm or ammunition solely designed for a regulated firearm. There are some circumstances under which this prohibition does not apply, including specified temporary possessions or transfers and when the person is a member of the U.S. armed forces or the National Guard while performing official duties. There is no penalty specified for a violation.

Background: A review of the Maryland Sentencing Guidelines database indicates there was a total of 429 convictions in Maryland's circuit courts in fiscal 2010 for a first violation of the prohibitions against wearing, carrying, or transporting a handgun. Additionally, the data indicate a total of 152 convictions for violations of prohibitions against possessing regulated firearms and 63 convictions for a violation of the prohibitions against a person under age 21 possessing a regulated firearm or ammunition in fiscal 2010. There is no data as to how many of these convictions involved firearms loaded with ammunition.

According to Baltimore City's GunStat process, the data on repeat gun offenders shows that many of the persons charged with crimes of violence or firearms offenses in Baltimore City have a history of arrests and convictions for crimes involving firearms. Many of these offenders when arrested for firearms offenses are in possession of loaded firearms.

Baltimore City's data also show that 82% of misdemeanor gun offenders received a suspended sentence in fiscal 2010 and that the average period of incarceration imposed in District Court is four months. This same data show that there were 161 convictions in Baltimore City for violations of the prohibitions against wearing, carrying, or transporting a handgun. These data also show that approximately 67% of Baltimore City's handgun violation cases were submitted with live ammunition. Additionally, prosecutors will also be able to offer plea bargains which will reduce the number of sentences subjected to the mandatory/minimum provisions.

State Expenditures: According to the Office of the Public Defender (OPD), by increasing the penalties and prohibiting a suspended sentence for certain firearm offenses, this bill is likely to cause an increase in litigation in cases of this type, as defendants will be less likely to resolve their case via a plea agreement. The resulting increase in courtroom time for trials, as well as the additional preparation necessary for litigation will be based on a multitude of factors (such as prosecutorial practices, staffing levels in the various OPD offices and the individual facts specific to each case). OPD was unable to quantify such operational effects.

In any case, general fund expenditures may increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities. The number of people convicted under these criminal penalty enhancements 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.

Additional Information

Prior Introductions: Similar bills were introduced in 2009. SB 919 and HB 1200 received a hearing in the Senate Judicial Proceedings Committee and House Judiciary Committee, respectively. No further action was taken on either bill.

Cross File: HB 252 (Delegate Anderson, *et al.*) (By Request - Baltimore City Administration) - Judiciary.

Information Source(s): Montgomery, Washington, and Worcester counties; Baltimore City; 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

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Analysis by: Guy G. Cherry

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