

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1100
Judiciary

(Delegate Wilson, *et al.*)

Public Safety - Restrictions on Possession of Firearms - Convicted Felons and People With Mental Disorders

This bill establishes a statutory maximum incarceration penalty of 15 years for each separate felony conviction of possessing a firearm if the person (1) has been convicted of a felony; (2) suffers a “mental disorder” and who has a history of violent behavior against the person or another, unless the person has a physician’s certificate that the person is capable of possessing a firearm without undue danger to the person or to another; or (3) has been confined for more than 30 days to a mental health “facility,” unless the person has a physician’s certificate that the person is capable of possessing a firearm without undue danger to the person or to another. The bill sets a nonsuspendable, nonparolable mandatory minimum sentence of five years. Each violation of this prohibition is a separate offense.

Fiscal Summary

State Effect: Potential increase in State incarceration costs. Although additional mandatory minimum sentencing provisions generally result in additional contested hearings in the courts, any such increase resulting from this bill can be handled with existing resources of the Office of the Public Defender. It is unknown how this bill might affect plea bargain processes or actual sentencing practices.

Local Effect: Although additional mandatory minimum sentencing provisions generally result in an additional number of contested hearings in the courts, it is assumed that any such increase resulting from this bill could be handled with the existing budgeted resources of the circuit courts.

Small Business Effect: Minimal.

Analysis

Current Law: The Maryland State Police regulates firearms and firearms dealer licensees under provisions of the Public Safety Article. The term “firearm” means a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive or the frame or receiver of such a weapon. It includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

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 “disqualifying crime,” or convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 years. A disqualifying crime means a crime of violence, a felony, or a misdemeanor that carries a statutory penalty of more than 2 years. A violator is guilty of a felony and subject to a nonsuspendable, nonparolable, mandatory minimum sentence of 5 years and a maximum sentence of 15 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 5 years imprisonment and/or a fine of \$10,000. Each violation of this prohibition is also a separate offense.

Chapter 164 of 2011 similarly 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.

Other disqualifying criteria for possession of a regulated firearm, or a rifle or shotgun, include (1) suffering from a mental disorder as defined in § 10-101(f)(2) of the Health-General Article and having a history of violent behavior against the person or another, unless the person has a physician’s certificate that the person is capable of possessing a regulated firearm without undue danger to the person or to another; or (2) confinement for more than 30 days to a mental health “facility,” as defined in the Health-General Article, unless the person has a physician’s certificate that the person is capable of possessing such a weapon without undue danger to the person or to another.

State Expenditures: According to the Maryland State Commission on Criminal Sentencing Policy, a review of the Maryland Sentencing Guidelines database for fiscal 2011 indicates there were 116 persons sentenced for 120 violations related to illegal possession of a regulated firearm by a person convicted of a crime of violence or applicable drug offenses, which include a five-year nonsuspendable mandatory minimum penalty. A review of the sentencing guidelines database also indicates there were an

additional 210 persons sentenced for 216 violations of other disqualifying prohibitions in fiscal 2011.

According to the Administrative Office of the Courts (AOC), it is unknown whether the bill will have a net increase or decrease in cases that end up going to court. It is also unknown whether the bill will affect plea bargaining activity related to firearm possession cases. In any event, because the bill expands the scope of certain firearms prohibitions so as apply to all firearms rather than regulated firearms (as defined above), general fund expenditures may increase as a result of more people being committed to Division of Correction (DOC) facilities. The number of people convicted under the expanded prohibition 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 \$2,900 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 \$385 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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Analysis by: Guy G. Cherry

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