

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1114
Judiciary

(Delegate Arora, *et al.*)

Dangerous Convicted Offenders Firearm Ban

This bill extends current law prohibitions applicable to regulated firearms to all firearms with regard to possession, sale, rental, or transfer by or to a person convicted of a disqualifying crime or convicted of a violation classified as a common law crime and who received a term of imprisonment of more than two years. The bill similarly applies current law prohibitions against possession of a regulated firearm by a person previously convicted of a crime of violence or drug felony to all firearms.

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 the 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: None.

Analysis

Current Law: The term “firearm” means (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. It includes a starter gun.

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 two years. A disqualifying crime means a crime of violence, a felony, or a misdemeanor that carries a statutory penalty of more than two years. A violator is guilty of a felony and subject to a nonsuspendable, nonparolable, mandatory minimum sentence of five 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 five 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.

Among other restrictions, the sale, lease or transfer of a regulated firearm may not be knowingly made to a person 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 two years. An illegal sale, lease, or transfer is a misdemeanor and subjects the violator to maximum penalties of incarceration for five years and/or a fine of \$10,000.

The provisions applicable to the sale, lease, or transfer of a regulated firearm do not apply to:

- the transfer or possession of a regulated firearm or detachable magazine for testing or experimentation authorized by the Secretary and by a federally licensed gun manufacturer, dealer, or importer;
- the sale, transfer, or possession of an antique firearm;
- an unserviceable firearm sold, transferred, or possessed as a curio or museum piece;
- law enforcement personnel of any unit of the federal government, members of the armed forces of the United States or the National Guard, or law enforcement

personnel of the State or any local agency in the State, while those personnel or members are acting within the scope of their official duties;

- a regulated firearm modified to render it permanently inoperative;
- purchases, sales, and transportation to or by a federally licensed gun manufacturer, dealer, or importer;
- an organization that is required or authorized by federal law governing its specific business or activity to maintain firearms;
- the receipt of a regulated firearm by inheritance, if the heir forwards to the Secretary a completed application to purchase or transfer that regulated firearm; or
- a signal pistol or other visual distress signal that the U.S. Coast Guard approves as a marine safety device.

The subtitle also does not affect: (1) a sale or transfer for bona fide resale in the ordinary course of business of a licensee; or (2) a sale, rental, transfer, or the use of a regulated firearm by a person authorized or required to do so as part of the person's duties as a member of an official police force or other law enforcement agency, the U.S. armed forces, including all official reserve organizations, or the Maryland National Guard.

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 5-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, 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 to 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.

According to the State Police, retailers that sell rifles and shotguns are already required under federal law to conduct an in-store criminal background check with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) before making the sale. ATF provides a hotline for this purpose and the check is usually completed during the call or shortly thereafter.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of State Police, Department of Public Safety and Correctional Services, Administrative Office of the Courts, Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2012
ncs/hlb

Analysis by: Guy G. Cherry

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