

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1199
Judiciary

(Delegate Clippinger)

Possession of Loaded Handgun or Regulated Firearm - Enhanced Penalties

This bill establishes enhanced incarceration penalties for the violation of certain laws regarding carrying a handgun or possessing a regulated firearm if the weapon is loaded with ammunition at the time of the violation.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's enhanced incarceration penalty provisions. Revenues are not materially affected.

Local Effect: Minimal increase in general fund expenditures due to the bill's enhanced incarceration penalty provisions. Revenues are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill applies to (1) 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; (2) specified prohibitions against certain persons possessing a regulated firearm; and (3) the prohibition against certain persons younger than age 21 possessing a regulated firearm.

The bill specifies that a person who violates any of these prohibitions while the handgun or 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 one of these prohibitions 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 a mandatory minimum sentence ranging from 30 days to 5 years and a maximum imprisonment penalty of 3 years for a first offense or 10 years if the violator has specified prior convictions. Certain circumstances also subject the person to monetary fines of amounts between \$250 and \$2,500.

The Secretary of State Police may issue a permit to wear, carry, or transport a handgun to a person who meets certain requirements and who has a “good and substantial” reason. “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. With specified exceptions, such as for a member of the U.S. Armed Forces or the National Guard while performing official duties, a person younger than age 21 also may not possess a regulated firearm. A violator is guilty of a felony and subject to a nonsuspendable, nonpardonable, mandatory minimum sentence of five years. Each violation is a separate offense. Under a separate prohibition relating to knowing participation in a violation of certain laws regarding the possession of a regulated firearm, a violator is guilty of a misdemeanor and subject to imprisonment for up to five years and/or a fine of up to \$10,000.

Background: According to the Maryland State Commission on Criminal Sentencing Policy, there were 314 convictions in Maryland’s circuit courts in fiscal 2013 for violations of the prohibition against wearing, carrying, or transporting a handgun. Additionally, there were 229 convictions for violations of the prohibitions against possessing regulated firearms and 63 convictions for violations of the prohibition against a person younger than age 21 possessing a regulated firearm in fiscal 2013. 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.

State Expenditures: Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for these offenses.

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 is unable to quantify such operational effects.

In any case, general fund expenditures increase minimally as a result of the bill's enhanced incarceration penalties due to people being committed to State correctional facilities for longer periods of time. While the number of people convicted under these criminal penalty enhancements is unknown, the number of violations for the covered firearm-related offenses is not expected to change.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 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 State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had 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 the State 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 State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures may increase as a result of the bill's enhanced 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 the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: HB 252 of 2011 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 239, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Dorchester, Garrett, Howard, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Governor's Office of Crime Control and Prevention; 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

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