

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1062

(Baltimore City Senators)(By Request - Baltimore City
Administration)

Judicial Proceedings

Weapon Crimes - Detachable Magazines and Regulated Firearms - Possession

This bill prohibits the possession of a detachable magazine that has a capacity of more than 10 rounds of ammunition for a firearm. Violators are subject to existing criminal penalty provisions. In addition, the bill expands the predicate crimes for which a person who is disqualified from possessing a regulated firearm is subject to a mandatory minimum penalty.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the expanded application of existing penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the application of existing penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: The bill expands the predicate crimes that subject a person who is already disqualified from possession of a regulated firearm to a nonparolable, mandatory minimum 5-year imprisonment penalty and a maximum penalty of 15 years. The predicate crimes include convictions for (1) conspiracy to commit a crime of violence; (2) wearing, carrying, or transporting a handgun (without otherwise being authorized to do so); (3) possessing, owning, carrying, or transporting a firearm after having been convicted of specified felony

drug crimes; or (4) a subsequent violation of prohibitions relating to possession of a regulated firearm.

A person who violates the bill's prohibition is guilty of a misdemeanor and subject to imprisonment of up to three years and/or a fine of up to \$5,000.

Current Law:

Firearms Regulation – Generally

Generally, the State regulates firearms and crimes related to firearms under Title 5 of the Public Safety Article and Title 4 of the Criminal Law Article, respectively.

A regulated firearm is defined as any handgun or 45 specified assault weapons.

Wearing, Carrying, or Transporting a Handgun – Prohibited

With specified exceptions, a person may not (1) wear, carry, or transport a handgun, whether concealed or open, on or about the person; (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; (3) violate items (1) or (2) listed above while on public school property in the State; or (4) violate items (1) or (2) listed above with the deliberate purpose of injuring or killing another person. There is a rebuttable presumption that a person who transports a handgun does so knowingly. A violator is guilty of a misdemeanor and on conviction is subject to penalties ranging from a minimum of 30 days up to a maximum of 10 years.

Use of Firearm in Commission of Crime of Violence

A person may not use a firearm in the commission of a crime of violence or any felony, whether the firearm is operable or inoperable at the time of the crime. Violators are guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, are subject to imprisonment for up to 20 years with a mandatory minimum sentence of 5 years, which is generally nonparolable. Sentences for subsequent violations must be served consecutively with any other sentence imposed for the crime of violence or felony.

Firearm – After Felony Drug Crime Conviction

A person may not possess, own, carry, or transport a firearm if that person has been convicted of (1) a felony drug crime; (2) a crime under the laws of another state or of the United States that would be a felony drug crime if committed in this State; (3) conspiracy

to commit such a crime; or (4) an attempt to commit such a crime. A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$10,000.

Firearm – Disqualification

A person may not possess a regulated firearm, a rifle, or a shotgun if the person:

- has been convicted of a disqualifying crime;
- has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than two years;
- is a fugitive from justice;
- is a habitual drunkard;
- is addicted to a controlled dangerous substance or is a habitual user;
- suffers from a mental disorder and has a history of violent behavior against the person or another;
- has been found incompetent to stand trial;
- has been found not criminally responsible;
- has been voluntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders;
- has been involuntarily committed to a facility that provides treatment or other services for mental disorders;
- is under the protection of a guardian of the person or property of a disabled person appointed by a court, except for cases in which the appointment of a guardian is solely a result of a physical disability;
- is a respondent against whom a current non ex parte civil protective order has been entered in this State or an order for protection has been issued by a court of another state or a Native American tribe and is in effect; or,
- if younger than age 30 at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

In addition, a person is prohibited from possessing a regulated firearm, a rifle, or a shotgun if the person was previously convicted of (1) a crime of violence; (2) a violation of specified controlled dangerous substances laws; or (3) an offense under the laws of another state or the United States that would constitute one of these crimes if committed in this State.

With certain exceptions, a person who is younger than age 21 may not possess a regulated firearm.

Generally, a violator is guilty of a misdemeanor and subject to maximum penalties of 5 years imprisonment and/or \$10,000 fine. A violator previously convicted of a crime of violence or specified felony drug crimes, in the State or outside the State, is guilty of a felony and subject to a nonparolable, nonsuspendable, mandatory minimum sentence of 5 years and a maximum sentence of 15 years. Imposition of the mandatory minimum sentence is within the discretion of the court if at the time of the offense it has been more than 5 years since the person completed serving the sentence for the most recent conviction for the predicate crime. The State's Attorney must notify the person in writing at least 30 days before trial if the State intends to seek the mandatory minimum sentence. Each violation is a separate crime.

State law establishes an exception to the prohibition against wearing, carrying, or transporting a handgun by a person who is carrying a court order to surrender the weapon if (1) the handgun is unloaded; (2) the person has notified law enforcement that the handgun is being transported in accordance with the court order; and (3) the person transports the handgun directly to the law enforcement unit. A similar exception is provided for the transportation of a rifle or shotgun for surrender to a law enforcement unit.

Detachable Magazine

A person may not manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than 10 rounds of ammunition for a firearm. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of imprisonment for three years and/or a \$5,000 fine.

Crime of Violence Defined

Section 5-101 of the Public Safety Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) or a crime punishable by imprisonment for more than one year.

State Revenues: General fund revenues increase minimally as a result of the application of existing monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the expanded application of existing incarceration penalties due to more people being

committed to State correctional facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of the proposed crimes is expected to be minimal.

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 \$3,800 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the application of existing monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the application of existing incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: HB 991 (Baltimore City Delegation)(By Request - Baltimore City Administration) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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