

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 126

(Senator Zirkin)

Judicial Proceedings

Criminal Procedure - Right of Appeal - Unlawful Possession of Firearm

This bill authorizes the State, in a case involving a violation of the State's prohibitions on the unlawful possession of a regulated firearm under § 5-133 of the Public Safety Article, the unlawful possession of a rifle or shotgun by a person (general) under § 5-205 of the Public Safety Article, or the unlawful possession of a rifle or shotgun by a person with specified prior convictions under § 5-206 of the Public Safety Article, to appeal from a decision of a trial court that (1) excludes evidence offered by the State or (2) requires the return of property alleged to have been seized in violation of the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: The State may appeal from a final judgment granting a motion to dismiss or quashing or dismissing any indictment, information, presentment, or inquisition. The State may appeal from a final judgment if the State alleges that the trial judge (1) failed to

impose the sentence specifically mandated by the Maryland Code or (2) imposed or modified a sentence in violation of the Maryland Rules.

In a case involving a crime of violence as defined in § 14-101 of the Criminal Law Article, and in cases involving specified controlled dangerous substances offenses, the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights.

The appeal must be made before jeopardy attaches to the defendant. However, in all cases, the appeal must be taken no more than 15 days after the decision has been rendered and must be diligently prosecuted.

State Expenditures: The Office of the Public Defender (OPD) advises that the bill could dramatically increase OPD's appellate caseload by authorizing mid-trial appeals by the State when the judge excludes any evidence the State wishes to offer. OPD did not provide any statistics on current cases to which the bill might apply or any other persuasive justification for the assertion that OPD caseloads are likely to dramatically increase under the bill.

The Department of Legislative Services advises that while the bill may increase the number of appeals and result in some case delays, these mid-trial procedures are a typical part of the trial process and judicial-related operations. Barring evidence of an increase in caseloads that would justify the hiring of additional staff, the bill is not expected to materially affect State finances. According to OPD's *2017 Annual Report*, District Court caseloads ranged from 630 to 728 cases per attorney, circuit court caseloads ranged from 140 to 191 cases per attorney, and Appellate Division caseloads were 30 cases per attorney.

The Judiciary advises that the impact of the bill on caseloads is indeterminate because of uncertainty on the number of appeals that will be filed. However, the Judiciary also advises that it does not anticipate numbers that would have a significant fiscal or operational impact on the trial courts.

The Office of the Attorney General does not foresee an impact from the bill.

Additional Information

Prior Introductions: HB 1264 of 2016 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of State Police; Department of Legislative Services

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nb/kdm

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