

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 197

(The President, *et al.*) (By Request - Administration)

Judicial Proceedings

Crimes - Firearms - Penalties

This emergency Administration bill (1) establishes a repeat offender penalty and alters and increases other incarceration penalties for specified firearm crimes; (2) expands the definition of “crime of violence” under § 14-101 of the Criminal Law Article to include specified firearm crimes; and (3) 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 expenditures in the near term due to more offenders serving longer sentences under the bill. Over time, general fund incarceration expenditures may increase significantly, partially offset by a decrease in parole hearing expenditures. Revenues are not affected.

Local Effect: Potential minimal decrease in local expenditures if the bill shifts individuals from local detention facilities to State correctional facilities. Revenues are not affected.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: The crime of using a firearm in the commission of a crime of violence (as defined in § 5-101 of the Public Safety Article) or any felony is reclassified from a misdemeanor to a felony. The sentence must be consecutive to any other sentence imposed

for the crime of violence or felony, and subsequent violators are subject to a nonparolable, mandatory 10-year minimum sentence and a 40-year maximum sentence.

The maximum sentence for a second or subsequent violation of using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime is increased from 20 years to 40 years. The bill requires that a sentence imposed for a first or subsequent violation must be consecutive to any other sentence imposed for the drug trafficking crime.

The definition of a “crime of violence” under § 14-101 of the Criminal Law Article is expanded to include (1) using *any firearm* (instead of a handgun) in the commission of a felony or other crime of violence and (2) possessing, using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime.

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) using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime and (2) possessing, owning, carrying, or transporting a firearm after having been convicted of specified felony drug crimes.

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.

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 – During and in Relation to a Drug Trafficking Crime

During and in relation to a drug trafficking crime, a person may not (1) possess a firearm under sufficient circumstances to constitute a nexus to the drug trafficking crime or (2) use, wear, carry, or transport a firearm. Violators are guilty of a felony and, in addition to the sentence provided for the drug trafficking crime, are subject to:

- for a first violation: imprisonment for up to 20 years with a mandatory minimum sentence of 5 years, which is nonsuspendable and generally nonparolable; and
- for each subsequent violation: imprisonment up to 20 years with a mandatory minimum sentence of 10 years, which is consecutive to any other sentence imposed by virtue of the commission of the drug trafficking crime, nonsuspendable, and generally nonparolable.

“Drug trafficking crime” is defined as a felony or a conspiracy to commit a felony involving the possession, distribution, manufacture, or importation of a controlled dangerous substance, as specified.

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.

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.

Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Sentencing of Violent Repeat Offenders

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 1994, a person must be sentenced to a mandatory minimum, nonsuspendable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994, and served a term for that conviction confined in a correctional facility.

For a third conviction, a person must be sentenced to a mandatory minimum term of 25 years, if the person has been convicted on two separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

Offenders who are at least age 60 and have served at least 15 years of the sentence are eligible to petition for and to be granted parole. This provision does not apply to offenders who are registered or eligible for registration on the sex offender registry.

If the State intends to proceed against a person under any of these provisions, it must comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

Background: Exhibit 1 contains information on the number of convictions in the State’s circuit courts for (1) using a firearm in the commission of a crime of violence or a felony; (2) using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime; and (3) possessing, owning, carrying, or transporting a firearm after having been convicted of specified felony drug crimes. There were no convictions for the same crimes in the District Court.

Exhibit 1
Convictions for Use of Firearm Relating to Felony and Drug Crimes
Circuit Courts – Fiscal 2017

<u>Offense/Statute</u>	<u>Number of Convictions</u>
Using a firearm in the commission of a crime of violence or a felony (Criminal Law Article § 4-204)	263
Using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime (Criminal Law Article § 5-621)	38
Possessing, owning, carrying, or transporting a firearm after having been convicted of specified felony drug crimes (Criminal Law Article § 5-622)	55

Source: Maryland Judiciary

State Expenditures:

Firearms Disqualification Offenses

General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase minimally within the next five years to the extent that those convicted of predicate crimes are subject to mandatory minimum penalties as a result of the bill. Such offenders are subject to a five-year minimum penalty, instead of the five-year maximum penalty that exists under current law. The Judiciary advises that in fiscal 2017, a combined total of 93 persons were convicted of the two predicate crimes addressed in the bill. Based on historical sentencing practices for this group of offenders, the Department of Legislative Services estimates initially that incarceration expenditures for DPSCS increase minimally under the bill.

Long-term Incarceration Expenditures

Beyond the five-year estimate addressed in this fiscal and policy note, however, incarceration expenditures could increase significantly due to the impact of nonparolable, mandatory minimum sentences for repeat offenders who commit firearm crimes. The increase may be partially offset by reduced expenditures for the Maryland Parole Commission (MPC) due to fewer parole hearings.

General fund expenditures for DPSCS could increase significantly beginning in fiscal 2025, at the earliest, as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities for longer periods of time. The bill may increase the average daily population in State correctional facilities and, to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility are necessary, may increase costs. Based on a cost of approximately \$155,000 per bed, the cost of building a new medium security 1,300-bed prison facility is currently estimated at \$202 million. Actual costs would depend on the design of the facility, the location of the facility, and existing infrastructure.

Under current law, subsequent offenders convicted of using a firearm in the commission of a crime of violence or felony (§ 4-204 of the Criminal Law Article) must be sentenced to a minimum of 5 years. The sentence may be concurrent with the sentence imposed for the crime of violence or felony. Based on the latest intake information available from the Division of Correction (DOC), it appears that the majority of such offenders are sentenced to concurrent sentences with convictions for other crimes, resulting in the offender actually serving little or no time for the firearm offense. For subsequent offenders sentenced for firearm offenses, the court must impose a consecutive sentence. DOC advises that not all offenders are sentenced to consecutive sentences, and the majority appear to serve average sentences of 6 years. Under the bill, a court is required to impose a minimum sentence of

10 years consecutive to the sentence imposed for the crime of violence or felony. Accordingly, any increase in expenditures due to longer sentences under the bill does not affect State finances until fiscal 2025, at the earliest, when offenders remain incarcerated beyond the current average time served. During the same period, offenders would not be eligible for parole hearings, thereby decreasing general fund expenditures for MPC.

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. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$870 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$210 per month. *For illustrative purposes*, under the bill's increased minimum incarceration penalty for a subsequent violation of using a firearm in the commission of a crime of violence or felony (§ 4-204 of the Criminal Law Article) the average time served increases by 48 months. Assuming the variable inmate costs of \$210 per month excluding health care, State costs could increase by \$10,080 for each person imprisoned under this provision of the bill. Because it is not known to what extent the bill increases the average length of stay for intakes for *all* of the offenses covered by the bill, the aggregate increase in general fund expenditures cannot be reliably estimated, but is anticipated to be significant beyond fiscal 2025.

Judiciary

Altering the application of a crime from a misdemeanor to a felony may mean 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 this offense.

The Judiciary advises that there may be an increase in jury trials and appeals due to the increased incarceration penalties. While the number of additional cases filed as a result of the bill is unknown, the bill is not expected to have a significant impact on the Judiciary's caseload.

Office of the Public Defender

The Office of the Public Defender (OPD) advises that the bill results in additional time needed to prepare for sentencing proceedings. According to OPD, this increase is dependent on the individual case; thus, the overall effect cannot be estimated.

Maryland State Commission on Criminal Sentencing Policy

Because the bill alters and expands criminal penalties, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) will need to update the Guidelines Offense Table in the Maryland Sentencing Guidelines Manual to include the new penalties. This is within the routine activities completed by MSCCSP on an annual basis and can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 101 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

Information Source(s): Caroline, Howard, and Montgomery counties; City of Bowie; Governor's Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - January 29, 2018
md/kdm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Crimes – Firearms – Penalties**

BILL NUMBER: SB0197/HB0101

PREPARED BY: Melissa Ross

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS