

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 166

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

Judicial Proceedings

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Crimes - Use of a Firearm in the Commission of a Crime of Violence or Felony -  
Penalties (The Repeat Firearms Offender Act of 2019)

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This Administration bill makes the following changes to the offense of use of a firearm in the commission of a crime of violence or felony under § 4-204 of the Criminal Law Article: (1) reclassifies the offense from a misdemeanor to a felony; (2) applies the existing statutory penalty to a first offense; (3) establishes that a subsequent offense is punishable by imprisonment for at least 10 years and not exceeding 20 years; (4) prohibits a court from imposing a sentence of less than 10 years for a second or subsequent offense; (5) clarifies that a person sentenced under § 4-204 is not eligible for parole in less than the mandatory minimum sentence; and (6) expands the requirement, from only subsequent violations to first violations of § 4-204, that a sentence imposed under § 4-204 be consecutive to and not concurrent with any other sentence imposed for the underlying crime of violence or felony.

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Fiscal Summary

**State Effect:** Potential significant cumulative increase in general fund expenditures, beginning in the out-years, for incarcerations in State correctional facilities. Revenues are not affected.

**Local Effect:** The bill does not materially affect local finances.

**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.

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## Analysis

**Bill Summary/Current Law:** Section 4-204 of the Criminal Law Article prohibits a person from using a “firearm” in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime. “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. “Firearm” includes an antique firearm, a handgun, a rifle, a shotgun, a short-barreled rifle, a short-barreled shotgun, a starter gun, or any other firearm, whether loaded or unloaded.

**Exhibit 1** contains a summary of the classifications of the offense and penalties under current law and under the bill.

**Background:** In January 2018, Governor Lawrence J. Hogan, Jr., announced several initiatives aimed at addressing violent crime in Baltimore City, including (1) the creation of a new violent crime joint operations center in Baltimore City, which will serve as a coordinated center of operations for anti-violent crime efforts, serve as the location of a new special operations unit, and house a joint strike force tasked with dismantling violent criminal organizations; (2) an expansion of Project Exile, which will allow repeat violent offenders to be charged with federal crimes; and (3) the introduction of legislation to increase penalties for repeat offenders who use firearms to commit violent crimes.

The Division of Correction (DOC) advises that during fiscal 2018, it conducted intake on 312 inmates for use of a firearm in the commission of a crime of violence or felony. Twenty-six of these inmates had at least one prior incarceration in DOC for the same offense.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) reports that based on a review of the Maryland Sentencing Guidelines Database, MSCCSP received information for 349 individuals sentenced under § 4-204(c) of the Criminal Law Article in the State’s circuit courts during fiscal 2018.

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**Exhibit 1**  
**Classifications and Penalties for Violations of § 4-204 of the Criminal Law Article**  
**Under Current Law and Under the Bill**

<u><b>Current Law</b></u>	<u><b>The Bill</b></u>
<u><b>First Offense</b></u>	<u><b>First Offense</b></u>
Misdemeanor	Felony
Mandatory minimum: 5 years (nonsuspendable and nonparolable)*	Mandatory minimum: 5 years (nonsuspendable and nonparolable)
Maximum penalty: 20 years	Maximum penalty: 20 years
Court may not impose a sentence of less than the 5-year minimum	Court may not impose a sentence of less than the 5-year minimum
	Sentence must be consecutive to any sentence imposed for the underlying crime of violence or felony
<u><b>Subsequent Offense</b></u>	<u><b>Subsequent Offense</b></u>
Misdemeanor	Felony
Mandatory minimum: 5 years (nonsuspendable and nonparolable)	Mandatory minimum: 10 years (nonsuspendable and nonparolable)
Maximum penalty: 20 years	Maximum penalty: 20 years
Court may not impose a sentence of less than the 5-year minimum	Court may not impose a sentence of less than the 10-year minimum
Sentence must be consecutive to any sentence imposed for the underlying crime of violence or felony	Sentence must be consecutive to any sentence imposed for the underlying crime of violence or felony

\*The prohibition on parole under current law and under the bill does not apply to parole under § 4-305 of the Correctional Services Article (Patuxent Institution).

Source: Department of Legislative Services

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**State Expenditures:** Cumulative general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase, perhaps significantly, beginning in the out-years, due to extended incarcerations in State correctional facilities.

There are three components to the penalty provisions under the bill: (1) the reclassification of a violation of § 4-204 of the Criminal Law Article from a misdemeanor to a felony; (2) the increase of the mandatory minimum sentence for a subsequent violation of § 4-204 from 5 to 10 years; and (3) the requirement that a sentence imposed for a first violation of § 4-204 be served consecutively to any sentence imposed for the underlying crime of violence or felony.

*Reclassification of a Violation of § 4-204 from a Misdemeanor to a Felony*

Given that individuals charged with violating § 4-204 are also likely being charged with another serious offense (the underlying crime of violence or felony), this provision is not expected to materially affect State finances.

*Increasing the Mandatory Minimum Sentence for a Subsequent Violation of § 4-204 from 5 to 10 Years*

According to DPSCS, the department conducted intake on 312 inmates for violations of § 4-204 during fiscal 2018. Of these 312 inmates, 26 had at least one prior incarceration in DOC for the same offense. Two of the 26 inmates received life sentences; 13 of the inmates received sentences of less than 10 years. The average sentence for these 13 inmates was 5.62 years. Thus, general fund expenditures for DPSCS increase minimally as this group of inmates begins to serve longer mandatory minimum sentences.

*Requiring that a Sentence Imposed for a First Violation of § 4-204 be Served Consecutively to any Sentence Imposed for the Underlying Crime of Violence or Felony*

Cumulative general fund expenditures for DPSCS increase, perhaps significantly, beginning in the out-years as a result of this provision.

Of the 312 inmates received in DOC facilities for violations of § 4-204 during fiscal 2018, 286 were first-time offenders under the statute. Of these 286 inmates, 178 received a *concurrent* sentence. Requiring a *consecutive* sentence for this group increases the amount of incarceration time for these inmates. Use of a firearm in the commission of a crime of violence or felony (except possession with intent to distribute a controlled dangerous substance) is a crime of violence under § 14-101 of the Criminal Law Article. Thus, an inmate convicted of this offense is not eligible for release on mandatory supervision through the application of diminution credits until the inmate is eligible for parole. Since the five-year mandatory minimum sentence for a first violation is nonsuspendable and

nonparolable, it appears that inmates in this population will spend a minimum of five additional years incarcerated in DOC facilities as a result of this provision.

*For illustrative purposes only*, using the DPSCS data cited above, the 178 inmates who entered DOC facilities in fiscal 2018 and are currently serving concurrent sentences for first-time violations of § 4-204 would serve a total of an additional 890 years in DOC facilities due to the bill. The fiscal impact of this provision begins in the out-years, as this population completes their sentences for underlying crimes and begins to serve their sentences under § 4-204. **Exhibit 2** contains information on the underlying crimes associated with this population. This effect accumulates over time with the addition of each annual cohort of first-time offenders under § 4-204. The cumulative impact of consecutive sentences imposed under the bill in the out-years may increase the need for additional beds in State facilities. However, the overall impact may also be mitigated to the extent that the availability of beds increases due to initiatives to reduce and eliminate incarceration of nonviolent offenders.

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 \$895 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$199 per month. *As an illustration*, applying the \$199 per month figure to the 890 additional years mentioned above results in \$2.1 million in additional general fund expenditures for each annual cohort of inmates.

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**Exhibit 2**  
**Underlying Crimes – New DOC Inmates – Fiscal 2018**  
**First-time Offenders Under § 4-204 Serving Concurrent Sentences**

<u>Offense (CJIS Description)</u>	<u>Number of Counts*</u>
Armed Robbery	97
Assault – First Degree	69
Murder – First Degree	17
Attempted Murder – First Degree	13
Firearm Possession with Felony Conviction	12
Attempted Murder – Second Degree	12
Murder – Second Degree	11
Assault – Second Degree	11
Conspiracy – Armed Robbery	8
CDS: Possession with Intent to Distribute Narcotics	8
Reckless Endangerment	8
Handgun on Person	7
Attempt – Armed Robbery	7
Conspiracy – First Degree Murder	5
Robbery	5
Armed Carjacking	5
Illegal Possession of a Regulated Firearm	4
Conspiracy – First Degree Murder	4
Burglary – First Degree	4
Murder – First Degree**	3

CDS: controlled dangerous substance  
 CJIS: Criminal Justice Information System  
 DOC: Department of Correction

\*The number of counts do not total 178 (the number of first-time offenders serving concurrent sentences). A count is a conviction, and one inmate may have multiple convictions for underlying crimes.

\*\*It is unclear at this time if this separate first-degree murder designation is repetitive or separate for CJIS coding purposes.

Source: Department of Public Safety and Correctional Services

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## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 236 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

**Information Source(s):** Maryland State Commission on Criminal Sentencing Policy; 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; Office of the Governor; Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2019  
mag/kdm

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## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Crimes - Use of a Firearm in the Commission of a Crime of Violence or Felony - Penalties (The Repeat Firearms Offender Act of 2019)

BILL NUMBER: SB 166/HB 236

PREPARED BY: Governor's Legislative Office

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X 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