

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 744

(Senator Folden, *et al.*)

Judicial Proceedings

Crimes and Corrections - Penalties and Procedures (Violent Firearms Offender
Act of 2023)

This emergency bill (1) alters provisions and penalties pertaining to several firearms-related offenses; (2) expands the definition of a “crime of violence” under § 14-101 of the Criminal Law Article; (3) requires the Commissioner of Correction to provide to each inmate a reentry kit containing specified items and information prior to release from a State correctional facility; and (4) specifies that a violation of a condition of probation, parole, or mandatory supervision involving the use or possession of a firearm is not a technical violation.

Fiscal Summary

State Effect: General fund expenditures increase by \$400,000 in FY 2023 and by \$1.6 million annually thereafter for reentry kits; potential significant *additional* increase in *cumulative* general fund expenditures due to the bill’s penalty provisions, as discussed below. The bill is not expected to materially affect State revenues.

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

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Offense-related Provisions

Section 4-204 of the Criminal Law Article prohibits the use of a firearm in the commission of a crime of violence (as defined under § 5-101 of the Public Safety Article) or a felony. The bill (1) specifies that the term “use a firearm” does not include the mere possession of a firearm and (2) reclassifies the offense from a misdemeanor to a felony.

Section 4-306 of the Criminal Law Article prohibits the use of an assault weapon, rapid fire trigger activator, or a magazine that has a capacity of more than 10 rounds of ammunition in the commission of a felony or crime of violence (as defined under § 5-101 of the Public Safety Article). The bill (1) specifies that “uses” related to a firearm does not include the mere possession of a firearm and (2) reclassifies the offense from a misdemeanor to a felony.

Section 4-404 of the Criminal Law Article prohibits a person from using or possessing a machine gun in the commission or attempted commission of a crime of violence (as defined under § 14-101 of the Criminal Law Article). The bill expands the application of this prohibition to the commission or attempted commission of a felony.

Section 5-133(b) of the Public Safety Article prohibits the possession of a regulated firearm by specified individuals. The bill increases the maximum incarceration penalty for a second or subsequent violation of this prohibition from 5 to 10 years. A person convicted under this provision is not prohibited from participating in specified drug treatment due to length of sentence. A court may not impose the subsequent offender penalty unless the State’s Attorney serves notice on the defendant or the defendant’s counsel before the acceptance of a plea of guilty or *nolo contendere* or at least 15 days before trial that (1) the State will seek the subsequent offender penalty and (2) lists the alleged prior convictions.

Section 5-134(b) of the Public Safety Article prohibits a dealer or other person from selling, renting, loaning, or transferring a regulated firearm under specified circumstances. Each violation is a separate crime. The bill establishes a separate (but similar) prohibition related to the sale, rental, or transfer of a regulated firearm, punishable by a newly established penalty. Under the bill, a dealer or other person may not sell, rent, loan, or transfer a regulated firearm to a purchaser, lessee, borrower or transferee if the dealer or other person has actual knowledge that the purchaser, lessee, borrower, or transferee intends to use the regulated firearm to commit a crime or cause harm to the purchaser, lessee, transferee, or recipient, or another person. Violators are guilty of a felony, punishable by imprisonment for up to 10 years. Each violation is a separate crime. A

defendant charged with this offense must also be charged under the existing prohibition (a misdemeanor punishable by imprisonment for up to 5 years and/or a \$10,000 maximum fine). A person convicted of this offense is not prohibited from participating in specified drug treatment due to length of sentence.

Technical Violations of Probation, Parole, or Mandatory Supervision

Under current law, a “technical violation” of a condition of probation, parole, or mandatory supervision is a violation that does not involve (1) an arrest or a summons issued by a District Court commissioner on a statement of charges filed by a law enforcement officer; (2) a violation of a criminal prohibition other than a minor traffic offense; (3) a violation of a no-contact or stay-away order; or (4) absconding. The bill specifies that a violation involving the use or possession of a firearm is not a technical violation.

Reentry Kits

The bill requires the Commissioner of Correction to provide an inmate, before release from a State correctional facility, with a reentry kit including:

- at least one-week of supplies for basic human needs, including toiletries and clothing;
- the identification card required to be issued under § 9-609.1 of the Correctional Services Article;
- contact information for entities that specialize in providing reentry services, housing assistance, substance use disorder treatment, and mental health services;
- contact information for MHBE, if the inmate is not eligible for Medicaid benefits; and
- public transportation information.

If the inmate is eligible for Medicaid benefits, the Commissioner of Correction must provide assistance in obtaining Medicaid benefits.

Crimes of Violence under § 14-101 of the Criminal Law Article

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

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 firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Prior to October 1, 2018, using a handgun in the commission of a crime of violence or felony was a crime a violence. Chapter 143 of 2018 altered the definition of a “crime of violence” by (1) replacing use of a “handgun” in the commission of a crime of violence or felony with use of a “firearm” in the commission of a crime of violence or felony and (2) creating an exception for using a firearm in the commission of possession with intent to distribute a controlled dangerous substance under § 5-602(2) of the Criminal Law Article. By removing this exception, the bill adds use of a firearm in the commission of possession with the intent to distribute a controlled dangerous substance to the definition of a crime of violence. Chapter 26 of 2022 reclassified possession with intent to distribute cannabis as a misdemeanor.

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase by approximately \$400,000 in fiscal 2023 and by \$1.6 million each year thereafter for reentry kits. General fund incarceration expenditures increase in the out-years, perhaps significantly *when considered cumulatively*, due to the bill’s penalty provisions, as discussed below. The Maryland Health Benefit Exchange (MHBE) can handle additional call volume and correspondence generated by the bill with existing budgeted resources.

Reentry Kits

DPSCS advises that the department released 3,248 individuals (3,051 male and 197 females) back into the community during fiscal 2020. Based on these release statistics and estimated costs for kits for male and female inmates (which differ in contents), the annual cost associated with reentry kits is approximately \$400,000 in fiscal 2023 (reflecting three months of costs due to the bill’s emergency status) and \$1.6 million each fiscal year thereafter, assuming that DPSCS’ annual release statistics remain constant. DPSCS advises that estimated costs associated with reentry kits do not include the standing inventory of release clothing and toiletries that must be established at each facility.

Offense-related Provisions

General fund incarceration expenditures increase in the out-years, perhaps significantly, *when considered cumulatively*, due to the bill's penalty provisions.

Exhibit 1 contains information on the number of violations filed in the courts, the number of sentences imposed in the circuit courts, and the number of intakes in State correctional facilities during fiscal 2022 for offenses whose penalties are altered under the bill.

Exhibit 1 Offenses Altered under the Bill Fiscal 2022

<u>Charge</u>	<u>District Court Violations Filed/Guilty Dispositions¹</u>	<u>Circuit Court Violations Filed/Guilty Dispositions¹</u>	<u>MSCCSP Circuit Court Convictions (Individuals/Counts)²</u>	<u>DOC Intakes³</u>
Criminal Law Article, § 4-204 (Use of a Firearm in the Commission of a Crime)	2,688/1	3,031/458	321 indiv./379 counts	95
Criminal Law Article, § 4-306 (Assault Weapons and Detachable Magazines)	158/0	92/2	2 indiv./2 counts	0
Criminal Law Article, § 4-404 (Using a Machine Gun to Commit Specified Crimes)	3/0	3/0	0	0
Public Safety Article, § 5-133(b) (Possession of Regulated Firearms by Specified Persons)	5,183/67 ³	6,110/1,504	609 indiv./627 counts	176 ³
Public Safety Article, § 5-134 (Restrictions on Sale, Rental, or Transfer of Regulated Firearms)	2/1	3/0	N/A	0

DOC: Division of Correction

MSCCSP: Maryland State Commission on Criminal Sentencing Policy

N/A: not applicable

¹ A violation is a charge filed with the court. It is not a conviction, and one person may be associated with multiple violations.

² Reflects data from the Maryland State Sentencing Guidelines Database for sentencing information received by MSCCSP for individuals sentenced in the State's circuit courts.

³ Violation and DOC intake data appear to apply to violations filed under all provisions of § 5-133, not just § 5-133(b).

Sources: Maryland Judiciary; Maryland State Commission on Criminal Sentencing Policy; Department of Public Safety and Correctional Services

The bill reclassifies specified offenses and activities from misdemeanors to felonies. 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 more stringent 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.

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 \$4,970 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$1,219 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$282 per month.

Increased Incarceration Penalties

Section 5-133(b) of the Public Safety Article (Prohibited Possession of a Firearm): The bill increases the maximum incarceration penalty for a subsequent offender from 5 to 10 years. Information is not readily available on how many of the 176 individuals who entered Division of Correction (DOC) facilities under § 5-133 during fiscal 2022 were subsequent offenders under § 5-133(b). The impact of this provision depends on the sentences imposed and actual time served by offenders sentenced under this provision of the bill.

However, *for illustrative purposes*, assuming that 50 of these individuals were repeat offenders for this offense, the bill may add as much as 250 years of additional time to this group of offenders. Assuming the variable inmate costs of \$282 per month excluding health care, State costs could increase by as much as \$846,000 for each annual cohort of defendants sentenced for this crime. Any impact from these extended incarcerations will likely be realized in the out-years, as individuals conclude sentences that may have been imposed under existing statute and commence serving sentences imposed under the bill.

Crimes of Violence – Use of a Firearm in the Commission of Possession with Intent to Distribute a Controlled Dangerous Substance

The bill's addition of a use of a firearm in the commission of possession with intent to distribute a controlled dangerous substance may result in a minimal increase in general fund expenditures in the out-years. DPSCS was not able to provide recent information on how many individuals entered DOC facilities for convictions under § 4-204 of the Criminal Law Article (use of a firearm in the commission of a felony or a crime of violence (as defined under § 5-101 of the Public Safety Article)) and possession

with the intent to distribute a controlled dangerous substance under § 5-602 of the Criminal Law Article. It is also unknown how many inmates recently benefitted from the exception repealed by the bill. However, DPSCS previously advised that during fiscal 2019, only one inmate who entered a DOC facility benefitted from this exception.

Office of the Public Defender

The Office of the Public Defender (OPD) advises that the bill increases litigation, resulting in the need for five additional attorneys and two additional clerks at an estimated cost of \$226,861 in fiscal 2023 and increasing to \$806,012 by fiscal 2027; however, the Department of Legislative Services advises that the increase in workload for OPD directly resulting from the bill and the corresponding need for additional staff cannot be reliably estimated at this time and can only be determined with actual experience under the bill.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 852 of 2021 and SB 35 of 2020.

Designated Cross File: None.

Information Source(s): Baltimore, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Housing and Community Development; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Health Benefit Exchange; Department of Legislative Services

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