

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 745

(Senator Folden)

Judicial Proceedings

Criminal Law - Wearing, Carrying, or Transporting Handgun - Penalties (Gun Violence Accountability Act)

This bill alters penalties that may be imposed for violations of the prohibition against wearing, carrying, or transporting a handgun under § 4-203 of the Criminal Law Article. The bill also repeals exceptions to additional limitations on sentencing for violations of § 4-203 of the Criminal Law Article.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from fines imposed in the District Court. Minimal increase in general fund expenditures due to the bill's incarceration penalty provisions.

Local Effect: Local revenues increase minimally from fines imposed in circuit court cases. Local expenditures increase minimally due to the bill's incarceration penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under current law, with specified exceptions, including possession of a handgun permit, 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; or (3) commit these violations while on public school property, with the deliberate purpose of injuring or

killing another person, or with a handgun loaded with ammunition. There is a rebuttable presumption that a person who transports a handgun does so knowingly.

A violator is guilty of a misdemeanor and subject to the penalties listed below. The subsequent offender provisions apply to previous convictions under § 4-203 (wearing, carrying, or transporting a handgun), § 4-204 (use of a handgun or antique firearm in the commission of a crime), § 4-101 (dangerous weapons), and § 4-102 (deadly weapons on school property) of the Criminal Law Article. Current law also specifies additional limitations on sentencing for violations of §§ 4-203 and 4-204. **Exhibit 1** contains information on the applicable penalties under current law and the bill.

Exhibit 1
§ 4-203 of the Criminal Law Article
Penalties for Specified Handgun Violations – Current Law and the Bill

First-time Offender – No prior convictions under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article

Current Law

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Imprisonment for at least 30 days and up to 3 years and/or fine of \$250 to \$2,500¹

Imprisonment for at least 30 days and up to 5 years *and* a fine of at least \$250 and up to \$10,000

Subsequent Offender – One prior conviction under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article

Current Law

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In General: Imprisonment for at least 1 year and up to 10 years. Court may not impose less than the applicable minimum sentence.

In General: Same incarceration penalty *and* a fine of at least \$250 and up to \$10,000. Court may not impose less than the applicable minimum sentence.

Offense on Public School Property: Imprisonment for at least 3 years and up to 10 years. Court may not impose less than the applicable minimum sentence.

Offense on Public School Property: Same incarceration penalty *and* a fine of at least \$250 and up to \$10,000. Court may not impose less than the applicable minimum sentence.

Offense with Handgun Loaded with Ammunition: With required notice, court may not suspend any part of or impose less than the applicable mandatory minimum sentence. Person is not eligible for parole during mandatory minimum sentence.*

Same

Subsequent Offender – More than one prior conviction under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article

Current Law

In General: Imprisonment for at least 3 years and up to 10 years. Court may not impose less than the applicable minimum sentence.

Offense on Public School Property: Imprisonment for at least 5 years and up to 10 years. Court may not impose less than the applicable minimum sentence.

Offense with Deliberate Purpose of Injuring or Killing Another Person: Imprisonment for at least 5 years and up to 10 years. Court may not impose less than the applicable minimum sentence.

Offense with Handgun Loaded with Ammunition: With required notice, court may not suspend any part of or impose less than the applicable mandatory minimum sentence. Person is not eligible for parole during mandatory minimum sentence.*

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In General: Same incarceration penalty *and* a fine of at least \$250 and up to \$10,000. Court may not impose less than the applicable minimum sentence.

Offense on Public School Property: Same incarceration penalty *and* a fine of at least \$250 and up to \$10,000. Court may not impose less than the applicable minimum sentence.

Offense with Deliberate Purpose of Injuring or Killing Another Person: Same incarceration penalty *and* a fine of at least \$250 and up to \$10,000. Court may not impose less than the applicable minimum sentence.

Same

¹ A first-time offender who committed the offense on public school property must be sentenced to imprisonment for at least 90 days. The bill does not alter this penalty.

* Contains exception for § 4-305 of the Correctional Services Article (parole for an inmate at the Patuxent Institution).

Source: Department of Legislative Services

§ 4-205 of the Criminal Law Article – Additional Limitations on Sentencing

The bill alters additional limitations on sentencing for violations of § 4-203 of the Criminal Law Article and related provisions.

Mandatory Minimum Sentences: Under current law, except for a sentence imposed for a violation of § 4-203 on a person with no prior convictions under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article, a court may not (1) enter a judgment for less than the mandatory minimum sentence prescribed in § 4-203 or § 4-204 of the Criminal Law Article in a case in which a mandatory minimum sentence is specified under those sections or (2) suspend a mandatory minimum sentence prescribed in § 4-203 or § 4-204 of the

Criminal Law Article. The bill removes the exception for a sentence under § 4-203 for a person with no applicable prior convictions.

Probation Before Judgment: Under current law, except for a violation of § 4-203 committed by a person with no prior convictions under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article who did not commit the offense on public school property, a court may not order probation before judgment in a case arising under Title 4, Subtitle 2 of the Criminal Law Article. The bill removes the exception for a sentence under § 4-203 for a person with no applicable prior convictions who did not commit the offense on public school property.

Probation: Under current law, except for a sentence imposed under § 4-203 on a person with no prior convictions under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article, a court may not order probation with respect to a case arising under § 4-203 or § 4-204 of the Criminal Law Article that would have the effect of reducing the actual period of imprisonment prescribed those sections as a mandatory minimum sentence. The bill removes the exception for sentence under § 4-203 for a person with no applicable prior convictions.

State Revenues: General fund revenues increase minimally from fines imposed in the District Court. While the bill requires a fine between \$250 and \$10,000 for various offenses, this estimate assumes that the fines imposed are on the lower end of this range.

State Expenditures: General fund expenditures increase minimally due to more people being committed to State correctional facilities, people spending longer amounts of time in State correctional facilities, and increased payments to counties for reimbursement of inmate costs. As discussed below, judicial interpretation and sentencing practices may result in additional fiscal impact.

The Division of Correction (DOC) conducted intake on 93 individuals for the applicable violations of § 4-203 of the Criminal Law Article during fiscal 2022; the average length of sentence for this group was 2.34 years. However, DOC did not indicate how many of these individuals were first-time offenders who would be subject to lengthier sentences under the bill. The Division of Parole and Probation advises that it received more than 1,427 intakes for offenses cited in the bill.

The Maryland State Commission on Criminal Sentencing Policy advises that, for fiscal 2022, it received information for 889 individuals sentenced in the circuit courts to 908 total counts of unlawful wearing, carrying, or transporting a handgun as a first offense under § 4-203 of the Criminal Law Article; 18 individuals sentenced for 18 counts of unlawful wearing, carrying, or transporting a handgun as a second offense under § 4-203 of the Criminal Law Article; and 1 individual sentenced for 1 count of unlawful wearing,

carrying, or transporting a handgun as a third or subsequent offense under § 4-203 of the Criminal Law Article. Information is not readily available on how many of these individuals were also sentenced for more serious offenses. See **Exhibit 2** for information provided by the Judiciary regarding violations and dispositions under § 4-203 of the Criminal Law Article during fiscal 2021 and 2022.

Information is not readily available on probations before judgment issued under § 4-203.

Exhibit 2
Violations and Dispositions – § 4-203 of the Criminal Law Article
Fiscal 2021 and 2022

<u>District Court</u>	FY 2021		FY 2022	
	<u>Alleged Violations</u>	<u>Guilty Dispositions</u>	<u>Alleged Violations</u>	<u>Guilty Dispositions</u>
CR § 4-203				
Handgun on Person	3,646	40	4,162	61
CR § 4-203(a)(1)(v) –				
Loaded Handgun on Person	2,925	45	3,374	62
CR § 4-203				
Handgun in Vehicle	3,191	55	3,675	99
CR§ 4-203(a)(1)(v) –				
Loaded Handgun in Vehicle	2,791	60	3,206	82
Circuit Court				
CR § 4-203				
Handgun on Person	2,773	189	2,758	358
CR § 4-203(a)(1)(v) –				
Loaded Handgun on Person	1,845	104	2,300	256
CR § 4-203				
Handgun in Vehicle	2,215	122	2,286	313
CR§ 4-203(a)(1)(v) –				
Loaded Handgun in Vehicle	1,228	90	1,523	217

Source: Maryland Judiciary; Department of Legislative Services

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. 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

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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: Local revenues increase minimally from fines imposed in circuit court cases. While the bill requires a fine between \$250 and \$10,000 for various offenses, this estimate assumes that the fines imposed are on the lower end of this range.

Local Expenditures: Depending on overall sentencing practices under the bill as noted below, local expenditures increase minimally due to the bill's penalty provisions.

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 \$90 to \$300 per inmate in recent years.

Additional Comments: Section 4-203 of the Criminal Law Article, when read in conjunction with the sentencing limitations under § 4-205 and the bill's changes to § 4-205, appear to create a contradiction regarding the nature of the minimum sentence under § 4-203(c)(2). Therefore, the overall fiscal impact of the bill depends on judicial interpretation of these provisions and sentencing practices under the bill.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, and Worcester counties; 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 - March 13, 2023
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