

**Department of Legislative Services**  
Maryland General Assembly  
2024 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 422  
Judiciary

(Delegate Attar)

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**Criminal Law – Crime of Violence – Definition**

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This bill expands the definition of a “crime of violence” under § 14-101 of the Criminal Law Article to include (1) possession of a regulated firearm in violation of § 5-133(b) of the Public Safety Article and (2) possession of a rifle or shotgun in violation of § 5-206 of the Public Safety Article.

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**Fiscal Summary**

**State Effect:** General fund expenditures for the Office of the Public Defender (OPD) increase by \$96,200 in FY 2025; future years reflect annualization and ongoing costs. Potential significant increase in *cumulative* general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) (not shown in table) due to expanded application of existing sentencing and incarceration provisions, as discussed below. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	96,200	116,200	121,300	126,600	132,200
Net Effect	(-)	(-)	(-)	(-)	(-)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

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

**Small Business Effect:** None.

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## Analysis

### Current Law:

#### *Unlawful Possession of a Regulated Firearm (§ 5-133(b) of the Public Safety Article)*

Section 5-133(b) of the Public Safety Article prohibits the possession of a regulated firearm by specified persons, including a person who (1) has been convicted of a “disqualifying crime”; (2) has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than two years; (3) is on supervised probation for specified convictions; (4) is addicted to a controlled dangerous substance (CDS) or is a habitual user; (5) suffers from a mental disorder and has a history of violent behavior, as specified; (6) has been found incompetent to stand trial or not criminally responsible; (7) has been voluntarily admitted for more than 30 consecutive days or has been involuntarily committed to a mental health facility, as specified; or (8) is a respondent against whom a current non *ex parte* civil protective order or an order for protection has been entered.

Certain persons, who would otherwise be disqualified from possessing a regulated firearm under § 5-133(b), may be authorized to possess a firearm if (1) they are not subject to another firearms restriction under State or federal law and (2) the Maryland Department of Health (MDH) determines that they may possess a firearm. Persons seeking relief from a firearms disqualification must file an application with MDH, which must include specified information and comply with the procedures and requirements set forth by MDH.

A disqualified person who knowingly possesses a regulated firearm in violation of § 5-133(b) of the Public Safety Article is guilty of a misdemeanor and on conviction is subject to imprisonment for up to five years and/or a maximum fine of \$10,000. Each violation of § 5-133(b) constitutes a separate crime.

#### *Unlawful Possession of a Rifle or Shotgun (§ 5-206 of the Public Safety Article)*

Section 5-206 of the Public Safety Article prohibits the possession of a rifle or shotgun by a person previously convicted of:

- a crime of violence, as defined in § 5-101 of the Public Safety Article;
- distributing, possessing with intent to distribute, or dispensing a CDS – § 5-602 of the Criminal Law Article;
- manufacturing a CDS (other than cannabis) or manufacturing, distributing, or possessing equipment adapted to produce a CDS (other than cannabis) or specified activities related to cannabis – § 5-603 of the Criminal Law Article;

- creating or distributing a counterfeit substance or possessing a counterfeit substance with intent to distribute it – § 5-604 of the Criminal Law Article;
- keeping a common nuisance – § 5-605 of the Criminal Law Article;
- manufacturing, distributing, dispensing, or possessing specified CDS amounts – § 5-612 of the Criminal Law Article;
- being a drug kingpin – § 5-613 of the Criminal Law Article;
- unlawfully importing certain quantities of a CDS – § 5-614 of the Criminal Law Article; or
- an offense under the laws of another state or federal law that would constitute one of the crimes specified above if committed in Maryland.

A person who unlawfully possesses a rifle or shotgun is guilty of a felony and on conviction is subject to imprisonment of up to 15 years. Each violation constitutes a separate crime.

### *Crimes of Violence – § 14-101 of the Criminal Law Article*

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 CDS; (13) child abuse in the first degree; (14) sexual abuse of a minor 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.

### *Mandatory Sentences for Crimes of Violence*

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, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable 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, 2018) and served a term of confinement in a correctional facility for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior 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.

### *Diminution Credits*

Generally, incarcerated individuals sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Individuals sentenced for a “crime of violence” earn diminution credits at a lower rate than other incarcerated individuals. The following types of incarcerated individuals may not earn diminution credits:

- an incarcerated individual who is serving a sentence for first- or second-degree rape against a victim younger than 16;
- an incarcerated individual who is serving a sentence for first- or second-degree sexual offense, as the offenses existed before October 1, 2017, against a victim younger than 16;
- an incarcerated individual who is serving a sentence for a subsequent conviction of third-degree sexual offense against a victim younger than 16; and
- an incarcerated individual imprisoned for a lifetime sexual offender supervision violation.

Diminution credits are deducted from an incarcerated individual’s “term of confinement,” which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects or programs. For additional information on diminution credits, see the [Maryland Diminution Credit System](#) report published by the Department of Legislative Services in December 2020.

### *Parole and Mandatory Supervision*

In general, a State incarcerated individual who is serving a sentence of six months or more is not eligible for parole until the incarcerated individual has served one-quarter of their

sentence. A sentence for a violent crime does not become parole-eligible until the incarcerated individual has served one-half of the sentence. An incarcerated individual serving a term of incarceration that includes a mandatory minimum sentence that is not subject to parole by statute is not eligible for parole until the incarcerated individual has served that mandatory minimum sentence.

As previously noted, a person convicted for the fourth time of a crime of violence must be sentenced to life imprisonment without the possibility of parole. In general, a sentence for a third crime of violence or a second crime of violence committed on or after October 1, 2018, is not eligible for parole. With the exception of a person registered as or eligible to register as a sexual offender, offenders who are age 60 or older who have served at least 15 years of a sentence for a subsequent crime of violence may apply for and be granted geriatric parole.

Generally, a person convicted of a violent crime committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole.

#### *Substance Abuse Evaluation and Commitment*

A court may not order a person serving a sentence for a crime of violence under § 14-101 of the Criminal Law Article to be evaluated for or committed to alcohol or drug abuse treatment with MDH under §§ 8-505 and 8-507 of the Health-General Article, respectively, until the person is eligible for parole. However, these eligibility restrictions do not prohibit such a defendant from participating in any other treatment program or receiving treatment under MDH supervision under any other statutory provision.

**State Expenditures:** *Cumulative* general fund expenditures for DPSCS may increase significantly as the overall effect on sentencing and incarceration of designating an offense as a crime of violence accumulates. General fund expenditures for OPD increase, beginning in fiscal 2025, to hire an assistant public defender to address increased workload resulting from the bill (discussed below). The bill is not expected to materially affect the operations of the Judiciary or the State's Attorneys' offices.

#### *Relevant Offense Data*

**Exhibit 1** contains information from the Judiciary and the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) on the number of violations, convictions, and individuals sentenced in fiscal 2023 for the two offenses designated as crimes of violence under the bill.

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**Exhibit 1**  
**Violations and Convictions**  
**Offenses Classified as Crimes of Violence Under the Bill**  
**Fiscal 2023**

<b><u>Charge</u></b>	<b><u>District Court Violations Filed/Guilty Dispositions<sup>1</sup></u></b>	<b><u>Circuit Court Violations Filed/Guilty Dispositions</u></b>	<b><u>MSCCSP Circuit Court Convictions (Individuals/Counts)<sup>2</sup></u></b>
Public Safety Article, § 5-133(b) (Unlawful Possession of a Regulated Firearm)	2,670/24	3,052/828	680/703
Public Safety Article, § 5-206 (Unlawful Possession of a Rifle or Shotgun)	171/0	290/71	59/64

MSCCSP: Maryland State Commission on Criminal Sentencing Policy

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

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

Sources: Maryland Judiciary; Maryland State Commission on Criminal Sentencing Policy

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DPSCS advises that, for fiscal 2023, the Division of Correction (DOC) received 330 individuals convicted of 344 total counts of unlawfully possessing a regulated firearm under § 5-133(b) of the Public Safety Article; the average sentence length for this group was 3.4 years. Also in fiscal 2023, DOC received 23 individuals convicted of 25 total counts of unlawfully possessing a rifle or shotgun in violation of § 5-206 of the Public Safety Article; the average sentence length for those individuals was 4.6 years. DPSCS advises that data is not available to identify how many of the incarcerated individuals that DOC received in fiscal 2023 for these two offenses were subsequent offenders.

*Department of Public Safety and Correctional Services*

*Cumulative* general fund expenditures may increase significantly in the out-years as a result of the bill's expanded application of existing sentencing and incarceration provisions. Given the number of individuals received in DOC facilities in fiscal 2023 who were

convicted of the offenses affected by the bill, particularly unlawful possession of a regulated firearm in violation of § 5-133(b) of the Public Safety Article, the bill has the potential to significantly increase out-year incarceration expenditures. The magnitude of this impact mainly depends on the number of individuals sentenced for unlawful possession of a regulated firearm given the consequences of a crime of violence designation and recidivism among this population (and application of the corresponding penalties for subsequent offenders for a crime of violence and related incarceration provisions).

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,110 per month. Excluding overhead, the average cost of housing a new State incarcerated individual (including health care costs) is about \$1,244 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$336 per month.

#### *Office of the Public Defender*

OPD advises that it represented nearly 3,800 individuals charged with unlawful possession of a regulated firearm under § 5-133(b) of the Public Safety Article in fiscal 2023. Given the bill's designation of this offense as a crime of violence, OPD will have to devote additional resources to representing clients who are charged with this offense. Existing OPD staff cannot handle the increased workload; additional support for its legal team is required.

Accordingly, general fund expenditures increase by \$96,187 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects the cost of hiring one full-time assistant public defender to manage the workload described above. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$88,931
Operating Expenses	<u>7,256</u>
<b>Total FY 2023 OPD Expenditures</b>	<b>\$96,187</b>

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

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### **Additional Information**

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

**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 State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

**Fiscal Note History:** First Reader - February 4, 2024  
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