

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1474
Judiciary

(Delegate Sophocleus, *et al.*)

Criminal Law - Use of Firearm in the Commission of a Crime of Violence or a Felony

This bill expands the current misdemeanor prohibition against the use of a handgun or concealable antique firearm in the commission of a crime of violence or felony to apply to any “firearm,” without regard to its capability of being concealed.

Firearm is defined as (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, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s expanded prohibition.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s expanded prohibition.

Small Business Effect: None.

Analysis

Current Law: A person may not use an “antique firearm” capable of being concealed on the person or any handgun in the commission of a crime of violence or any felony,

whether the antique firearm or handgun is operable or inoperable at the time of the crime. A violator is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, subject to a minimum nonparolable sentence of 5 years and a maximum sentence of 20 years. For each subsequent violation, the sentence must be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

Antique firearm means: (1) a firearm, including a firearm with a matchlock, flintlock, percussion cap, or similar ignition system, manufactured before 1899; or (2) a replica of such a firearm that is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition, or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Handgun means a pistol, revolver, or other firearm capable of being concealed on the person. Handgun includes a short-barreled shotgun and a short-barreled rifle. Handgun does not include a shotgun, rifle, or antique firearm.

State Revenues: General fund revenues could increase as a result of the bill's expanded prohibition from additional cases heard in the District Court.

State Expenditures: In fiscal 2007, the Division of Correction (DOC) had an intake of 472 people for all deadly weapons violations. While the data does not reveal how many of these violations involve the use of a firearm in the commission of a felony or a crime of violence, 16 are identified as involving the use of a handgun. The average sentence for these 16 people was 73 months. The extent to which this bill's changes may increase firearm prosecutions and DOC's annual intake is unknown for two reasons: (1) prosecutors have wide discretion to actually bring charges for specific statutory offenses; and (2) actual prosecutions by the U.S. Attorney in federal court for gun cases, sending convicted persons to federal prisons, may significantly reduce State and local costs associated with such offenses.

In any event, persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 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 sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's expanded prohibition from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase as a result of the bill's expanded prohibition. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$42 to \$120 per inmate in fiscal 2008.

Additional Information

Prior Introductions: Similar bills were introduced in 2003, 2004, 2005, and 2007. SB 323 of 2003, SB 318 of 2004, SB 553 of 2005, and SB 563 of 2007 each received a hearing before the Senate Judicial Proceedings Committee and had no further action taken on them.

Cross File: SB 244 (Senator Haines) – Judicial Proceedings.

Information Source(s): State's Attorneys' Association, Judiciary (Maryland District Court), Department of Public Safety and Correctional Services, Department of Legislative Services

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mll/jr

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