

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 888
Judiciary

(Delegate Moon, *et al.*)

Judicial Proceedings

Criminal Law – Firearm Crimes – Rapid Fire Trigger Activator

This bill prohibits a person from (1) transporting a “rapid fire trigger activator” into the State or (2) manufacturing, possessing, selling, offering to sell, transferring, purchasing, or receiving a rapid fire trigger activator. Violators are subject to an existing misdemeanor penalty of a maximum of three years imprisonment and/or a fine of \$5,000. In addition, the bill prohibits a person from using a rapid fire trigger activator in the commission of a felony or a crime of violence. Violators are subject to the existing more stringent penalties that apply to the use of an assault weapon or a magazine with a capacity of more than 10 rounds of ammunition in the commission of a felony or crime of violence. The bill allows a person to continue to possess a rapid fire trigger activator until October 1, 2019 if, among other things, the person applies for authorization from the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). **The requirement that a person must have received authorization from ATF in order to be able to continue to possess a rapid fire trigger activator takes effect October 1, 2019.**

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s application of existing penalty provisions. The Judiciary and other affected State agencies can implement the bill’s provisions with existing budgeted resources.

Local Effect: Minimal increase in revenues and expenditures due to the bill’s application of existing penalty provisions. Affected local agencies can implement the bill’s provisions with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill’s prohibition on possessing a rapid fire trigger activator does not apply to the possession of a rapid fire trigger activator by a person who (1) possessed the rapid fire trigger activator before October 1, 2018; (2) applied to ATF before October 1, 2018, for authorization to possess a rapid fire trigger activator; and (3) is in compliance with all federal requirements for possession of a rapid fire trigger activator. Effective October 1, 2019, a person must have received authorization to possess a rapid fire trigger activator from ATF by that date in order to be able to continue to possess the rapid fire trigger activator.

“Rapid fire trigger activator” means any device, including a removable manual or power-driven activating device, constructed so that, when installed in or attached to a firearm, (1) the rate at which the trigger is activated increases or (2) the rate of fire increases. “Rapid fire trigger activator” includes a bump stock, trigger crank, hellfire trigger, binary trigger system, burst trigger system, or a copy or a similar device, regardless of the producer or manufacturer. “Rapid fire trigger activator” does not include a semiautomatic replacement trigger that improves the performance and functionality over the stock trigger.

“Binary trigger system” means a device that, when installed in or attached to a firearm, fires both when the trigger is pulled and on release of the trigger. “Bump stock” means a device that, when installed in or attached to a firearm, increases the rate of fire of the firearm by using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger. “Burst trigger system” means a device that, when installed in or attached to a firearm, allows the firearm to discharge two or more shots with a single pull of the trigger by altering the trigger reset. “Hellfire trigger” means a device that, when installed in or attached to a firearm, disengages the trigger return spring when the trigger is pulled. “Trigger crank” means a device that, when installed in or attached to a firearm, repeatedly activates the trigger of the firearm through the use of a crank, a lever, or any other part that is turned in a circular motion.

Current Law: Title 5 of the Public Safety Article regulates firearms and handguns in the State. A regulated firearm is any handgun or any of the 45 assault weapons (or copies) identified in that article. The Firearm Safety Act of 2013 (Chapter 427) modified and expanded the regulation of firearms, firearms dealers, and ammunition in Maryland and made changes to related mental health restrictions on the possession of firearms. Among other things, the Act extended the scope of assault pistol prohibitions to all assault weapons, created a new licensing scheme for handguns under the authority of the Department of State Police (DSP), and imposed restrictions on the capacity of detachable magazines and ammunition.

Among its many provisions, the Act created a definition of “assault weapon,” encompassing assault pistols, assault long guns, and copycat weapons. The Act applied existing prohibitions relating to assault pistols to all assault weapons. With specified exceptions, transporting, possessing, selling, offering to sell, transferring, purchasing, or receiving any assault weapon is prohibited. A person who lawfully possessed an assault pistol before June 1, 1994, and who registered the pistol with DSP before August 1, 1994, may continue to possess and transport the assault pistol. A person who lawfully possessed, had a purchase order for, or completed an application to purchase an assault long gun or a copycat weapon before October 1, 2013, is allowed to continue to possess and transport the weapon. A licensed firearms dealer may continue to possess, sell, offer for sale, or transfer an assault long gun or a copycat weapon that the dealer lawfully possessed on or before October 1, 2013. Chapter 427 also clarified when the inheritance of a prohibited assault weapon is permitted.

A person who uses an assault pistol or a magazine that has a capacity of more than 10 rounds of ammunition in the commission of a felony or a crime of violence is guilty of a misdemeanor and, in addition to any other sentence imposed for the felony or crime of violence, must be sentenced as follows:

- for a first violation, a nonsuspendable, nonparolable, mandatory minimum sentence of 5 years with a maximum imprisonment of 20 years; and
- for each subsequent violation, a mandatory minimum sentence of 10 years with a maximum imprisonment of 20 years.

A sentence imposed under this penalty provision must be consecutive to and not concurrent with any other sentence imposed for the underlying felony or crime of violence.

A person may not manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than 10 rounds of ammunition for a firearm. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of imprisonment for three years and/or a \$5,000 fine.

Section 5-101 of the Public Safety Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) or a crime punishable by imprisonment for more than one year.

Title 4 of the Criminal Law Article contains provisions relating to the use or possession of a firearm, including prohibitions pertaining to machine guns. Among other restrictions, the Uniform Machine Gun Act requires a person who acquires a machine gun to register the machine gun with the Secretary of State Police within 24 hours after acquiring the machine gun and in each succeeding year during the month of May. In addition, the Act prohibits a person from using or possessing a machine gun in the commission or attempted commission of a crime of violence. Violators are guilty of a felony, punishable by imprisonment for up to 20 years. The Act also prohibits a person from possessing or using a machine gun for an offensive or aggressive purpose. Possession or use of a machine gun is presumed to be for an offensive or aggressive purpose if, among other things, the machine gun is in the possession of, or used by an unnaturalized foreign-born person or a person who has been convicted of a crime of violence in any state or federal court of the United States. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 years. “Machine gun” means a loaded or unloaded weapon that is capable of automatically discharging more than one shot or bullet from a magazine by a single function of the firing device.

Section 4-401 of the Criminal Law Article defines a “crime of violence” as (1) murder in any degree; (2) manslaughter; (3) kidnapping; (4) rape in any degree; (5) assault in the first degree; (6) robbery; (7) burglary in any degree; (8) home invasion; (9) escape in the first degree; (10) theft; or (11) an attempt to commit any of these offenses.

Background: Bump stocks made national news in October 2017 when a gunman fired into a Law Vegas concert crowd killing almost 60 people and injuring more than 600 in less than 10 minutes with the use of such a device. Shortly after the incident, ATF advised that while simulating automatic fire, bump stocks do not actually alter a firearm to fire automatically; therefore, they are legal under federal law. Bump fire stocks allow semi-automatic firearms to mimic the firing speed of fully automatic firearms and can achieve rates of fire between 400 to 800 rounds per minute.

According to the National Conference of State Legislatures, at least 15 states and a number of local jurisdictions have taken up proposals to ban bump stocks.

In December 2017, the U.S. Department of Justice (DOJ) issued an advance notice of proposed rulemaking indicating that the department anticipates issuing a Notice of Proposed Rulemaking that would interpret the statutory definition of “machine gun” in the National Firearms Act of 1934 and Gun Control Act of 1968 to clarify whether certain devices, commonly known as “bump fire” stocks, fall within that definition. On February 20, 2018, President Trump proposed a regulatory ban on devices, including bump stocks, that “turn weapons into machine guns.” On March 23, 2018, Attorney General Jeff Sessions announced that DOJ is proposing a regulation to define bump stocks as machine guns under federal law.

Federal law strictly regulates machine guns, and, among other things:

- prohibits private individuals from transferring or acquiring machine guns, except those lawfully possessed and registered before May 19, 1986;
- requires ATF approval and registration before transferring or manufacturing machine guns;
- with specified exceptions, imposes a \$200 excise tax whenever a machine gun is transferred;
- prohibits interstate transport of machine guns without ATF approval; and
- imposes penalties for machine gun violations, including up to 10 years imprisonment and/or up to a \$250,000 fine for possessing an unregistered machine gun.

State Revenues: General fund revenues increase minimally as a result of the bill's application of existing monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's application of existing incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

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. 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 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.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that it needs to update the Sentencing Guideline Offense Table in the *Maryland Sentencing*

Guidelines Manual to reflect the new and altered offenses. As these are routine activities for MSCCSP, this can be handled with existing budgeted resources.

The Office of the Public Defender (OPD) advises that the bill results in additional cases handled by the agency. However, according to OPD, because the increase in cases is unknown, the overall effect of the bill on OPD cannot be determined at this time.

Local Revenues: Revenues increase minimally as a result of the bill's application of existing monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. 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 \$40 to \$170 per inmate in recent years.

Additional Comments: To date, the Department of Legislative Services has not been able to confirm that either DOJ or ATF intend to propose any rule establishing a process for a person to apply to ATF by October 1, 2018, for authorization to possess a rapid fire trigger activator. Accordingly, it is unclear that the bill's provision allowing a person to continue to possess a rapid fire trigger activator under specified conditions can be implemented.

Additional Information

Prior Introductions: None.

Cross File: SB 707 (Senator Ramirez, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore, Charles, Frederick, Montgomery, and Prince George's counties; cities of Frederick and Havre de Grace; 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; National Conference of State Legislatures; *Baltimore Sun*; Department of Legislative Services

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