

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1029
Judiciary

(Delegate Branch, *et al.*)

Judicial Proceedings

Criminal Law – Wearing, Carrying, or Transporting Loaded Handgun –
Subsequent Offender

This bill prohibits a person from violating the State’s prohibition on wearing, carrying, or transporting a handgun under § 4-203 of the Criminal Law Article with a handgun loaded with ammunition. A person who is eligible for subsequent offender status under § 4-203 who violates this prohibition is subject to the penalties currently specified in statute. However, the bill (1) clarifies that the minimum sentence applicable to such a defendant is a mandatory minimum sentence; (2) prohibits a court from suspending any portion of the applicable mandatory minimum sentence; and (3) specifies that except as specified in § 4-305 of the Correctional Services Article (parole for inmates at Patuxent Institution), a person is not eligible for parole during this mandatory minimum sentence. A mandatory minimum sentence may not be imposed unless the State’s Attorney complies with specified notice requirements.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill’s incarceration penalty. Revenues are not affected.

Local Effect: Minimal increase in local expenditures due to the bill’s incarceration penalty. Local revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: With specified exceptions, 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; (3) violate items (1) or (2) listed above while on public school property in the State; or (4) violate items (1) or (2) listed above with the deliberate purpose of injuring or killing another person. 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 handgun or antique firearm in commission of crime), § 4-101 (dangerous weapons), and § 4-102 (deadly weapons on school property) of the Criminal Law Article, as shown below.

<p>First-Time Offender – No previous convictions under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article</p>	<p>In General – Imprisonment for at least 30 days and up to 3 years and/or fine of \$250 to \$2,500</p> <p>Offense on Public School Property – Imprisonment for at least 90 days</p>
<p>Subsequent Offender – One previous conviction under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article</p>	<p>In General – Imprisonment for at least 1 year and up to 10 years</p> <p>Offense on Public School Property – Imprisonment for at least 3 years and up to 10 years</p> <p>Court may not impose less than the applicable minimum sentence</p>
<p>Subsequent Offender – More than one previous conviction under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article</p>	<p>In General – Imprisonment for at least 3 years and up to 10 years</p> <p>Offense on Public School Property – Imprisonment for at least 5 years and up to 10 years</p> <p>Offense with Deliberate Purpose of Injuring or Killing Another Person –</p>

	<p>Imprisonment for at least 5 years and up to 10 years</p> <p>Court may not impose less than the applicable minimum sentence</p>
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Section 4-305 of the Correctional Services Article contains general provisions about the availability of parole for an inmate at the Patuxent Institution.

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalties due to people being committed to State correctional facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The amount of additional incarceration time generated by the bill is expected to be minimal.

The Judiciary advises that it does not maintain statistics on subsequent offenders and, due to its system of offense codes, cannot isolate the number of individuals sentenced as subsequent offenders under § 4-203 of the Criminal Law Article.

However, according to the Judiciary, there were 5,261 violations and 63 guilty dispositions in the District Court and 4,079 violations and 538 guilty dispositions in the circuit courts under § 4-203 of the Criminal Law Article (first-time and subsequent offenders). The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that, according to the Maryland State Sentencing Guidelines Database, MSCCSP received information on 13 individuals sentenced as subsequent offenders under § 4-203 of the Criminal Law Article in the State’s circuit courts during fiscal 2017. All of these individuals were sentenced under § 4-203(c)(3)(i)(1) – one previous conviction, general violation. Information is not readily available on how many of these cases involved handguns loaded with ammunition.

The Department of Public Safety and Correctional Services (DPSCS) advises that during fiscal 2017 it conducted intake on 223 inmates sentenced to State correctional facilities under § 4-203. Of these 223 inmates, 21 had been sentenced to this offense previously. Eighteen of these 23 inmates were sentenced to two or more years and, even with diminution credits, would not be released before serving one year.

Based on the information provided by the Judiciary, the majority of cases under § 4-203 are conducted in the circuit courts. Based on the information provided by MSCCSP, a small number of individuals are sentenced as subsequent offenders under § 4-203 in the circuit courts each year. Based on the information from DPSCS, few inmates would have the length of their incarceration extended as a result of the bill.

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.

Local Expenditures: Local incarceration expenditures increase minimally if the bill increases the amount of time individuals spend in local detention facilities.

The minimum sentence under § 4-203(c)(3)(i)(1) is one year. If the bill's clarification that this is a nonsuspendable and nonparolable mandatory minimum sentence increases the amount of time an individual spends in a local facility as a result of the bill, then local incarceration expenditures increase.

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 Information

Prior Introductions: None.

Cross File: None.

Information Source(s): 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

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510