

**Department of Legislative Services**  
Maryland General Assembly  
2022 Session

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

Senate Bill 396

(The President, *et al.*) (By Request - Administration)

Judicial Proceedings

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**Crimes - Firearms - Penalties and Procedures (Violent Firearms Offender Act of 2022)**

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This emergency Administration bill (1) alters provisions and penalties pertaining to several firearms-related offenses; (2) prohibits a District Court commissioner from authorizing the pretrial release of defendants meeting specified criteria; (3) expands the list of cases in which the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of seized property; and (4) specifies that the violation of a condition of probation, parole, or mandatory supervision involving the use or possession of a firearm is not a technical violation.

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**Fiscal Summary**

**State Effect:** Potential significant increase in general fund expenditures, primarily in the out-years, due to the bill's penalty provisions. Minimal decrease in general fund revenues from fines imposed in the District Court.

**Local Effect:** Minimal increase in local revenues from fines imposed in circuit court cases. Minimal decrease in local incarceration expenditures, offset in part by increased pretrial detention expenditures.

**Small Business Effect:** The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

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## **Analysis**

### **Bill Summary/Current Law:**

#### *Penalty/Criminal Offense Provisions*

For information on the bill’s changes to existing criminal offenses and penalty provisions, see **Appendix 1 – Penalties Under Current Law and Under the Bill**.

#### *Technical Violations of Probation*

Under current law, a “technical violation” of a condition of probation, parole, or mandatory supervision is a violation that does not involve (1) an arrest or a summons issued by a District Court commissioner on a statement of charges filed by a law enforcement officer; (2) a violation of a criminal prohibition other than a minor traffic offense; (3) a violation of a no-contact or stay-away order; or (4) absconding. The bill specifies that the use or possession of a firearm is not a technical violation.

#### *Right of Appeal – Firearms Crimes*

Under current law, in a case involving a crime of violence as defined in § 14-101 of the Criminal Law Article, and in cases involving specified controlled dangerous substances offenses, the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights. The appeal must be made before jeopardy attaches to the defendant. However, in all cases, the appeal must be taken no more than 15 days after the decision has been rendered and must be diligently prosecuted.

The bill adds several firearms-related offenses to the list of criminal cases in which this appeal is available and adds these offenses to the cases for which, pending the prosecution and determination of such an appeal, the court may release the defendant on any terms or conditions the court considers appropriate or may order the defendant to remain in custody.

#### *Pretrial Release of Criminal Defendants by a District Court Commissioner*

In most cases, pretrial release determinations are made at a defendant’s initial appearance before a District Court commissioner. Under current law, a commissioner may not, however, authorize the release of certain defendants, including a defendant charged with one of a list of specified crimes if the defendant has previously been convicted of a crime of violence under § 14-101 of the Criminal Law Article or any of the specified crimes. The bill expands this prohibition by (1) adding specified firearms-related offenses and a crime

in another jurisdiction that would be considered to be one of the listed crimes to the list and (2) establishing that the prohibition applies if the defendant is on pretrial release for a crime of violence or one of the specified crimes.

Pursuant to existing statute, pretrial release of such defendants may be authorized only by a judge. When such a defendant is presented to a judge under the Maryland Rules, a judge may order the pretrial release of such a defendant on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community, or on both bail and other such conditions. However, a judge must order the continued detention of such a defendant if neither bail nor any other conditions will reasonably ensure that the defendant will not be a flight risk or pose a danger to another person or the community. There is a rebuttable presumption that such a defendant will flee and pose a danger to another person or the community.

For a comprehensive list of defendants ineligible for pretrial release by a District Court commissioner, see **Appendix 2 – Defendants Ineligible for Pretrial Release by a District Court Commissioner**.

**Background:** The surge in violent crime in Baltimore City has been the subject of extensive discussion and media coverage in recent years. Since 2015, there have been more than 300 homicides each year in Baltimore City. In January 2022, there were 36 homicides in Baltimore City, making it the deadliest January in the city in approximately 50 years. This bill is part of the Governor's legislative package to address violent crime.

**Exhibit 1** contains information on the number of violations filed in the courts, the number of sentences imposed in the circuit courts, and the number of intakes in State correctional facilities during fiscal 2019 (the most recent fiscal year not affected by the COVID-19 pandemic) for offenses whose penalties are altered under the bill.

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**Exhibit 1**  
**Offenses with Penalties Altered Under the Bill**  
**Fiscal 2019**

<u>Charge</u>	District Court <u>Violations</u> <u>Filed<sup>1</sup></u>	Circuit Court <u>Violations</u> <u>Filed<sup>1</sup></u>	MSCCSP Circuit Court <u>Convictions</u> <u>(Individuals/Counts)<sup>2</sup></u>	DOC <u>Intakes<sup>3</sup></u>
Criminal Law Article, § 4-204 (Use of a Firearm in the Commission of a Crime)	1,836	2,280	290 indiv./392 counts	314
Criminal Law Article, § 4-306 (Assault Weapons and Detachable Magazines)	7	27	1 indiv./1 count	0
Criminal Law Article, § 4-404 (Using a Machine Gun to Commit Specified Crimes)	5	0	0	0
Public Safety Article, § 5-133 (Possession of Regulated Firearms by Specified Persons)	3,959	5,039	N/A	505
Public Safety Article, § 5-134 (Restrictions on Sale, Rental, or Transfer of Regulated Firearms)	6	4	N/A	0
Public Safety Article, § 5-138 (Sale, Possession, or Transfer of Stolen Firearm)	616	581	N/A	0
Public Safety Article, § 5-141 (Straw Purchase)	1	0	N/A	0
Public Safety Article, § 5-142 (Removing ID Mark or Number on Firearm)	290	141	N/A	0

DOC: Division of Correction

MSCCSP: Maryland State Commission on Criminal Sentencing Policy

<sup>1</sup> A violation is a charged 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.

<sup>3</sup> DOC intakes reflect the number of individuals who entered State correctional facilities for a particular offense during fiscal 2019.

Sources: Maryland Judiciary; Maryland State Commission on Criminal Sentencing Policy; Department of Public Safety and Correctional Services

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**State Revenues:** General fund revenues decrease minimally from fines imposed in District Court cases that are shifted to the circuit courts under the bill. The bill reclassifies several offenses from misdemeanors to felonies, some of which carry monetary penalties.

**State Expenditures:** General fund incarceration expenditures increase in the out-years, perhaps significantly, due to the bill's penalty provisions, as discussed below. General fund expenditures increase further due to the expansion of the application of existing incarceration penalties, the shifting of individuals from local detention facilities to State correctional facilities, and restrictions on pretrial release.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

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 \$4,700 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$1,233 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$289 per month.

#### *Increased Incarceration Penalties*

As noted in Exhibit 1, several of the offenses affected by the bill resulted in no intakes in State correctional facilities in fiscal 2019. Therefore, this discussion is focused on offenses with a high number of Division of Correction (DOC) intakes in fiscal 2019.

*Section 4-204 of the Criminal Law Article (Use of a Firearm in the Commission of a Crime of Violence or Felony):* The bill increases the mandatory minimum for repeat offenders from 5 years to 10 years (also nonsuspendable, nonparolable, and consecutive). According to the Department of Public Safety and Correctional Services (DPSCS), of the 118 DOC intakes for this offense in fiscal 2021, 71 (60%) were previously incarcerated for the same offense.

*For illustrative purposes,* if 188 of the 314 DOC intakes (60%) during fiscal 2019 (the most recent fiscal year not affected by the COVID-19 pandemic) were repeat offenders, adding 5 years of additional time to these 188 DOC intakes adds 940 years of additional time to each annual cohort of offenders. Assuming the variable inmate costs of \$289 per month excluding health care, State costs could increase by as much as \$3.3 million for each

annual cohort of repeat offenders sentenced for this crime. This impact is more likely to be realized in the out-years, as individuals conclude sentences imposed under existing statute and commence serving longer mandatory minimum sentences under the bill.

The bill also makes the five-year mandatory minimum sentence for a first offense under § 4-204 nonsuspendable, nonparolable, and *consecutive*. Data is not readily available for individuals who are currently serving consecutive sentences.

However, *for illustrative purposes*, if 126 DOC intakes (40% of the 314 DOC intakes for this offense in fiscal 2019) were first-time offenders and did not receive consecutive sentences, adding 5 years of additional time to these 126 DOC intakes adds 630 years of additional time to each annual cohort of first-time offenders. Assuming the variable inmate costs of \$289 per month excluding health care, State costs could increase by as much as \$2.2 million for each annual cohort of these first-time offenders. This impact is more likely to be realized in the out-years, as individuals conclude sentences imposed for other crimes and commence serving consecutive sentences under the bill. The effect compounds over time as more annual cohorts of offenders are subject to lengthier incarcerations. Under this illustration, the compounding effect stabilizes when five cohorts (630 defendants) remain in State facilities as a result of the bill's provisions and continues at this level into the future.

*Section 5-133 of the Public Safety Article (Prohibited Possession of a Firearm):* The bill increases the maximum incarceration penalty for a repeat offender from 5 to 10 years. Information is not readily available on how many of the 505 individuals who entered DOC facilities for this offense during fiscal 2019 were repeat offenders. The impact of this provision depends on the sentences imposed and actual time served by offenders sentenced under this provision of the bill.

However, *for illustrative purposes*, assuming that 100 of these individuals were repeat offenders for this offense, the bill may add as much as 500 years of additional time to this group of offenders. Assuming the variable inmate costs of \$289 per month excluding health care, State costs could increase by as much as \$1.7 million for each annual cohort of defendants sentenced for this crime. Any impact from these extended incarcerations will likely be realized in the out-years, as individuals conclude sentences that may have been imposed under existing statute and commence serving sentences imposed under the bill.

The bill shifts some individuals from local detention facilities to State correctional facilities. For example, the bill alters the penalties applicable to theft of a firearm. While the penalties for theft vary based on the value of the stolen property, statute does not distinguish based on the type of property stolen. Assuming that stolen firearms typically have a value of less than \$1,500, the offense is currently a misdemeanor, punishable by imprisonment for up to 90 days or six months and/or a \$500 maximum fine. The offense

created by the bill is a felony, punishable by imprisonment for at least 2 years and up to 10 years for a first offense. Furthermore, the 2-year minimum is nonsuspendable and must be consecutive to any other offense, and penalties increase for repeat offenders.

#### *Pretrial Detentions*

Because the bill restricts the ability of a District Court commissioner to authorize the pretrial release of specified individuals, the bill may increase general fund expenditures for pretrial detentions in Baltimore City. However, these individuals may still be released by a judge. 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.

According to DPSCS, 1,647 individuals were arrested for the applicable offenses in Baltimore City during fiscal 2019; 243 of these individuals were released pretrial (20.25 monthly average). However, DPSCS cannot determine whether these individuals were released after an initial appearance before a District Court commissioner or after a bail review hearing before a judge. If these individuals were released by a District Court commissioner, then, under the bill, they will spend additional time in custody pending a judicial bail review hearing on the next business day of the court. If these individuals were released after a bail review hearing before a judge, then the bill has no effect on this population, assuming that judges are still inclined to release these defendants before trial.

#### *Appeals by the State*

While the bill expands the opportunity for the State to appeal decisions by the court to exclude evidence, given the number of factors involved in a successful prosecution, these provisions are not likely to have a direct effect on State finances.

**Local Revenues:** Local revenues increase minimally from fines imposed in circuit court cases. The magnitude of the increase in local revenues depends on the number of convictions and fines actually collected from defendants.

The bill shifts theft cases from the District Court to the circuit courts and requires that fines be imposed for specified offenses, including § 5-138 of the Public Safety Article. While conviction data is not available for this offense, approximately 1,200 violations were filed in the courts under this provision during fiscal 2019. However, there were no DOC intakes for this offense during fiscal 2019. Data is not available on individuals serving sentences in local facilities for this offense.

**Local Expenditures:** Local expenditures decrease minimally due to individuals shifting from local detention facilities to State correctional facilities, offset in part by increased pretrial detention expenditures.

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.

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### **Additional Information**

**Prior Introductions:** HB 356 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 273, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

**Designated Cross File:** HB 423 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

**Information Source(s):** Harford, Montgomery, and Talbot counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; *Baltimore Sun*; Department of Legislative Services

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## Appendix 1 – Penalties Under Current Law and Under the Bill

<i>§ 4-204 of Criminal Law Article – Use of Firearm in Commission of a Felony or Crime of Violence<sup>1</sup></i>		
	<u>Penalty Under Current Law</u>	<u>Penalty Under the Bill</u>
First Offense	<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Imprisonment for at least 5 years and up to 20 years</li> <li>• Court may not impose less than the 5-year minimum sentence</li> <li>• 5-year minimum sentence is nonparolable<sup>2</sup></li> <li>• Sentence is in addition to sentence for the crime of violence or felony</li> </ul>	<ul style="list-style-type: none"> <li>• Felony</li> <li>• No change to penalty</li> <li>• Court may not impose less than the 5-year minimum sentence</li> <li>• 5-year minimum sentence is nonsuspendable and nonparolable<sup>2</sup></li> <li>• Sentence must be consecutive to any sentence imposed for the crime of violence or felony</li> <li>• Section 14-102 does not apply<sup>3</sup></li> </ul>
Second or Subsequent Offense	<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Same penalty as first offense (see above)</li> <li>• Sentence must be consecutive to any sentence imposed for the crime of violence or felony</li> </ul>	<ul style="list-style-type: none"> <li>• Felony</li> <li>• Imprisonment for at least 10 years and up to 20 years</li> <li>• Court may not impose less than the 10-year minimum sentence</li> <li>• 10-year minimum sentence is nonsuspendable and nonparolable<sup>2</sup></li> <li>• Sentence must be consecutive to any sentence imposed for the crime of violence or felony</li> <li>• Section 14-102 does not apply<sup>3</sup></li> </ul>

<b><i>§ 4-306 of the Criminal Law Article – Offenses Involving Assault Pistols and Detachable Magazines</i></b>		
	<b><u>Penalty Under Current Law</u></b>	<b><u>Penalty Under the Bill</u></b>
First Offense – Use in a Felony or Crime of Violence <sup>1</sup>	<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Imprisonment for at least 5 years and up to 20 years</li> <li>• Court may not impose less than 5-year minimum sentence</li> <li>• 5-year minimum is nonsuspendable</li> <li>• 5-year minimum sentence is nonparolable<sup>2</sup></li> <li>• Sentence is in addition to any other sentence imposed for the crime of violence or felony</li> </ul>	<ul style="list-style-type: none"> <li>• Felony</li> <li>• Same penalty</li> <li>• Sentence must be consecutive to sentence imposed for crime of violence or felony</li> <li>• Section 14-102 does not apply<sup>3</sup></li> </ul>
Subsequent Violation – Use in a Felony or Crime of Violence <sup>1</sup>	<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Imprisonment for at least 10 years and up to 20 years</li> <li>• Court may not impose less than the 10-year minimum sentence</li> <li>• Sentence is consecutive to sentence imposed for crime of violence or felony</li> </ul>	<ul style="list-style-type: none"> <li>• Felony</li> <li>• Same penalty</li> <li>• 10-year minimum sentence is nonsuspendable and nonparolable<sup>2</sup></li> <li>• Section 14-102 does not apply<sup>3</sup></li> <li>• Sentence is consecutive to sentence imposed for crime of violence or felony</li> </ul>

<b><i>§ 4-404 of the Criminal Law Article – Use of a Machine Gun in Crime of Violence<sup>4</sup></i></b>		
	<b><u>Penalty Under Current Law</u></b>	<b><u>Penalty Under the Bill</u></b>
First Offense	<ul style="list-style-type: none"> <li>• Applies to use or possession of a machine gun to commit or attempt to commit a crime of violence</li> <li>• Felony</li> <li>• Imprisonment for up to 20 years</li> </ul>	<ul style="list-style-type: none"> <li>• Expands to include commission/attempt to commit a felony</li> <li>• Felony</li> <li>• Imprisonment for at least 5 years and up to 20 years</li> <li>• Court may not impose less than the minimum sentence</li> <li>• 5-year minimum sentence is nonsuspendable and nonparolable<sup>2</sup></li> <li>• Sentence is in addition to sentence imposed for the crime of violence or felony and must be consecutive to any other sentence imposed for the crime of violence or felony</li> <li>• Section 14-102 does not apply<sup>3</sup></li> </ul>
Subsequent Offense	<ul style="list-style-type: none"> <li>• Same as first offense</li> </ul>	<ul style="list-style-type: none"> <li>• Expands to include commission/attempt to commit a felony</li> <li>• Felony</li> <li>• Imprisonment for at least 10 years and up to 20 years</li> <li>• Court may not impose less than the minimum sentence</li> <li>• 10-year minimum sentence is nonsuspendable and nonparolable<sup>2</sup></li> <li>• Sentence is in addition to sentence imposed for the crime of violence or felony and must be consecutive to any other sentence imposed for the crime of violence or felony</li> <li>• Section 14-102 does not apply<sup>3</sup></li> </ul>

***§ 7-104 of the Criminal Law Article – Theft of a Firearm***

**Penalty Under Current Law**

Statute does not distinguish between theft of a firearm and theft of other types of property. Under the general theft statute, penalties vary based on the value of the stolen goods or services, as discussed below.

Less than \$100: Misdemeanor, 90 days imprisonment and/or \$500 fine

At least \$100 but less than \$1,500: Misdemeanor, 6 months imprisonment and/or \$500 fine (first conviction) or 1 year imprisonment and/or \$500 (second or subsequent conviction)

Less than \$1,500 (four or more prior theft convictions): Misdemeanor, 5 years imprisonment and/or \$5,000 fine

At least \$1,500 but less than \$25,000: Felony, 5 years imprisonment and/or \$10,000 fine

At least \$25,000 but less than \$100,000: Felony, 10 years imprisonment and/or \$15,000 fine

\$100,000 or more: Felony, 20 years imprisonment and/or \$25,000 fine

Violators must restore the property taken or pay the owner for the value of the stolen property.

**Penalty Under the Bill**

The bill creates a separate offense for theft of a firearm, including an antique firearm, or a replica of an antique firearm.

First Offense	<ul style="list-style-type: none"><li>• Felony</li><li>• Imprisonment for at least 2 years and up to 10 years AND a \$2,500 maximum fine</li><li>• 2-year minimum sentence is nonsuspendable</li><li>• Section 14-102 does not apply<sup>3</sup></li><li>• Sentence must be separate from and consecutive to a sentence for any other offense</li><li>• Defendant must restore the firearm to the owner or pay the owner the value of the firearm</li></ul>
Second or Subsequent Offense	<ul style="list-style-type: none"><li>• Felony</li><li>• Imprisonment for at least 5 years and up to 15 years AND a \$10,000 maximum fine</li><li>• 5-year minimum sentence is nonsuspendable</li><li>• Section 14-102 does not apply<sup>3</sup></li><li>• Sentence must be separate from and consecutive to a sentence for any other offense</li><li>• Defendant must restore the firearm to the owner or pay the owner the value of the firearm</li></ul>

<b><i>§ 5-133 of the Public Safety Article (General) – Prohibited Possession of a Firearm</i></b>		
	<b><u>Penalty Under Current Law</u></b>	<b><u>Penalty Under the Bill</u></b>
First Offense	<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Imprisonment for up to 5 years and/or a \$10,000 maximum fine</li> <li>• Each violation is a separate crime</li> </ul>	<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Same penalty</li> <li>• Each violation is a separate crime</li> <li>• No prohibition on participation in drug treatment under § 8-507 of the Health-General Article due to length of sentence</li> </ul>
Second or Subsequent Offense	<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Same penalty as first offense (see above)</li> <li>• Each violation is a separate crime</li> </ul>	<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Imprisonment for up to 10 years and/or a \$10,000 maximum fine</li> <li>• Each violation is a separate crime</li> <li>• No prohibition on participation in drug treatment under § 8-507 of the Health-General Article due to length of sentence</li> </ul>
<b><i>Violation of § 5-133 by Person with a Prior Conviction of a Crime of Violence or Other Specified Crimes<sup>1</sup></i></b>		
<ul style="list-style-type: none"> <li>• Current Penalty: Felony, Imprisonment for 5 to 15 years, 5-year minimum sentence is nonsuspendable and nonparolable.<sup>2</sup> Each violation is a separate crime.</li> <li>• The bill does not alter the penalties and related provisions for this offense. However, the bill does add convictions for specified gang-related offenses to the list of prior convictions for which a person is eligible for the penalty.</li> </ul>		

***§ 5-134 of the Public Safety Article – Restrictions on Sale, Rental, or Transfer of Regulated Firearms***

- The bill does not alter the existing prohibition or penalties. However, the bill establishes a separate (but similar) prohibition, punishable by a newly established penalty.
- The bill prohibits a dealer or other person from selling, renting, loaning, or transferring a regulated firearm to a purchaser, lessee, borrower, or transferee if the dealer or other person has actual knowledge that the purchaser, lessee, borrower, or transferee (1) was previously convicted of a crime of violence under § 5-101 of the Public Safety Article, specified drug and gang-related offenses, or an equivalent offense under federal law or the laws of another state or (2) intends to use the regulated firearm to commit a crime or cause harm to themselves or another person. Violators are guilty of a felony, punishable by imprisonment for up to 15 years. Each violation is a separate crime. A charge of violating this prohibition also charges a defendant with violating the existing prohibition (a misdemeanor punishable by imprisonment for up to 5 years and/or a \$10,000 maximum fine). A person convicted of this offense is not prohibited from participating in drug treatment under § 8-507 of the Health-General Article due to length of sentence.

***§ 5-138 of the Public Safety Article – Sale, Transfer, or Disposal of Stolen Regulated Firearms***

	<b><u>Penalty Under Current Law</u></b>	<b><u>Penalty Under the Bill</u></b>
First Offense	<ul style="list-style-type: none"><li>• Misdemeanor</li><li>• Imprisonment for up to 5 years and/or \$10,000 maximum fine</li><li>• Each violation is a separate crime</li></ul>	<ul style="list-style-type: none"><li>• Felony</li><li>• Imprisonment for at least 2 years and up to 10 years AND a \$2,500 maximum fine</li><li>• Court may not impose less than the minimum sentence</li><li>• Minimum sentence is nonsuspendable</li><li>• Section 14-102 does not apply<sup>3</sup></li><li>• Sentence must be separate from and consecutive to sentence for any other offense</li><li>• Must restore firearm to owner or pay value of firearm to owner</li><li>• Each violation is a separate crime</li></ul>
Second or Subsequent Offense	Same penalty as first offense (see above)	<ul style="list-style-type: none"><li>• Felony</li><li>• Imprisonment for at least 5 years and up to 15 years AND a \$10,000 maximum fine</li><li>• Court may not impose less than the minimum sentence</li><li>• Minimum sentence is nonsuspendable</li><li>• Section 14-102 does not apply</li></ul>

<b><i>§ 5-138 of the Public Safety Article – Sale, Transfer, or Disposal of Stolen Regulated Firearms</i></b>		
	<b><u>Penalty Under Current Law</u></b>	<b><u>Penalty Under the Bill</u></b>
		<ul style="list-style-type: none"> <li>• Sentence must be separate from and consecutive to sentence for any other offense</li> <li>• Must restore firearm to owner or pay value of firearm to owner</li> <li>• Each violation is a separate crime</li> </ul>
<b><i>§ 5-141 of the Public Safety Article – Straw Purchases</i></b>		
	<b><u>Penalty Under Current Law</u></b>	<b><u>Penalty Under the Bill</u></b>
<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Imprisonment for up to 10 years and/or \$25,000 maximum fine</li> <li>• Each violation is a separate crime</li> </ul>		<ul style="list-style-type: none"> <li>• Felony</li> <li>• Imprisonment for at least 5 years and up to 15 years AND a \$25,000 maximum fine</li> <li>• Court may not impose less than the minimum sentence</li> <li>• Minimum sentence is nonsuspendable and nonparolable<sup>2</sup></li> <li>• Section 14-102 does not apply<sup>3</sup></li> <li>• Each violation is a separate crime</li> </ul>
<b><i>§ 5-142 of the Public Safety Article – Removal or Alteration of Identification Mark or Identification Number on Firearm</i></b>		
	<b><u>Penalty Under Current Law</u></b>	<b><u>Penalty Under the Bill</u></b>
<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Imprisonment for up to 5 years and/or \$10,000 maximum fine</li> <li>• Each violation is a separate crime</li> </ul>		<ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• Imprisonment for up to 10 years and/or a \$10,000 maximum fine</li> <li>• Each violation is a separate crime</li> </ul>

<sup>1</sup>Uses definition of a “crime of violence” under § 5-101 of the Public Safety Article.

<sup>2</sup>Contains exception for parole under § 4-305 of the Correctional Service Article (parole eligibility for inmates at Patuxent Institution).

<sup>3</sup>Under § 14-102 of the Criminal Law Article, if a law sets a maximum and a minimum penalty for a crime, the court may impose instead of the minimum penalty a lesser penalty of the same character. This authority does not affect a maximum penalty fixed by law or the punishment for any crime for which the statute provides one and only one penalty. If § 14-102 does not apply to a minimum penalty, then the court must impose the specified minimum penalty.

<sup>4</sup>Uses definition of a “crime of violence” under § 14-101 of the Criminal Law Article.

## **Appendix 2 – Defendants Ineligible for Pretrial Release by a District Court Commissioner**

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Please refer to § 5-202 of the Criminal Procedure Article for complete information on defendants who are not eligible for pretrial release by a District Court commissioner.

### *In General*

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants who are registered sex offenders in the State, defendants who commissioners know are required to register as sex offenders, or defendants required to register as sex offenders by another jurisdiction/court/government and defendants charged:

- with a crime punishable by life imprisonment;
- with escaping from a correctional facility or any other place of confinement in the State;
- as a drug kingpin;
- with a crime of violence (as defined under § 14-101 of the Criminal Law Article), if the defendant has been previously convicted of a crime of violence under the laws of this State, has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland or has been convicted of specified weapons-related offenses; and
- with violating the provisions of a domestic violence protective order (temporary or otherwise) ordering the defendant to refrain from abusing or threatening to abuse a person eligible for relief (applies to orders issued by a court in Maryland, by another state, or by a Native American tribe).

### *Repeat Offender – Defendant Charged with a Specified Crime Who Has a Prior Conviction for a Specified Crime*

A District Court commissioner may not authorize the pretrial release of a defendant charged with one of the following crimes ***if the defendant has previously been convicted of a crime of violence or one of the following crimes:***

- wearing, carrying, or transporting a handgun under § 4-203 of the Criminal Law Article;

- use of a handgun or an antique firearm in commission of a crime under § 4-204 of the Criminal Law Article;
- violating prohibitions relating to assault weapons under § 4-303 of the Criminal Law Article;
- use of a machine gun in a crime of violence under § 4-404 of the Criminal Law Article;
- use of a machine gun for an aggressive purpose under § 4-405 of the Criminal Law Article;
- use of a weapon as a separate crime under § 5-621 of the Criminal Law Article;
- possession of a regulated firearm under § 5-133 of the Public Safety Article;
- transporting a regulated firearm for unlawful sale or trafficking under § 5-140 of the Public Safety Article; or
- possession of a rifle or shotgun by a person with a mental disorder under § 5-205 of the Public Safety Article.

*Repeat Offender – Defendant Charged with Committing a Specified Crime While Released on Bail or Personal Recognizance on a Prior Charge of Committing a Specified Crime*

A District Court commissioner also may not authorize the pretrial release of a defendant charged with committing one of the following crimes ***while the defendant was released on bail or personal recognizance for a pending prior charge of committing one of the following crimes:***

- aiding, counseling, or procuring arson in the first degree;
- arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree;
- burglary in the first, second, or third degree;
- child abuse or sexual abuse of a minor;
- manufacture or possession of a destructive device;
- various offenses related to controlled dangerous substances (CDS), except for possessing or administering CDS;
- manslaughter by vehicle or vessel; and
- a crime of violence.

## **ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

**TITLE OF BILL:** **Crimes – Firearms – Penalties and Procedures  
(Violent Firearms Offender Act of 2022)**

**BILL NUMBER:** **SB 396**

**PREPARED BY:** **Governor's Legislative Office**

### **PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

**X** **WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS**

**OR**

**—** **WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES**

### **PART B. ECONOMIC IMPACT ANALYSIS**