

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 364
Judiciary

(Delegate Grammer)

Public Safety - Handgun Permit Requirement - Repeal (Maryland's
Constitutional Carry Act of 2023)

This bill repeals (1) the requirement for a person to have a permit to wear, carry, or transport a handgun in order for the person to wear, carry, or transport a handgun; (2) corresponding requirements and procedures related to the issuance of a handgun permit; and (3) criminal penalties for violations relating to the failure to follow requirements and procedures relating to a handgun permit. The bill also repeals the application of specified handgun-related criminal prohibitions and establishes additional prohibitions.

Fiscal Summary

State Effect: General fund revenues decrease significantly due to the termination of handgun permit applications, permit renewals, and associated fees. General fund expenditures for the Department of State Police (DSP) decrease for licensing-related functions. General fund revenues and expenditures decrease minimally due to the bill's changes to penalty provisions.

Local Effect: Minimal decrease in local revenues and expenditures due to the bill's changes to penalty provisions.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A person younger than age 21 is prohibited from:

- wearing, carrying, or transporting a handgun, whether concealed or open, on or about the person;

- wearing, carrying, or knowingly transporting 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; and
- wearing, carrying, or transporting a handgun whether concealed or open, on or about the person with the handgun loaded with ammunition.

The bill repeals the application of specified existing criminal prohibitions and penalties relating to wearing, carrying, or transporting a handgun against a person who is at least age 21. The bill prohibits a person (of any age) from wearing, carrying, or transporting a handgun, whether concealed or open, on or about the person (1) while on public school property in the State or (2) with deliberate purpose of injuring or killing another person.

Current Law:

Handgun Permit

A person must have a handgun permit before the person carries, wears, or transports a handgun in the State. Existing statutory requirements and background relating to the issuance of handgun permits are summarized in the **Appendix – Handgun Permit Requirements – Current Law/Background**.

Prohibitions

With specified exceptions, including possession of a handgun permit, 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; (4) violate items (1) or (2) listed above with the deliberate purpose of injuring or killing another person; or (5) violate items (1) or (2) listed above with a handgun loaded with ammunition. 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 in **Exhibit 1**.

Exhibit 1
Penalties for Specified Handgun Violations

First-time Offender – No prior convictions under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article

In General – Imprisonment for at least 30 days and up to 3 years and/or fine of \$250 to \$2,500

Offense on Public School Property – Imprisonment for at least 90 days

Subsequent Offender – One prior conviction under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article

In General – Imprisonment for at least 1 year and up to 10 years

Offense on Public School Property – Imprisonment for at least 3 years and up to 10 years

Court may not impose less than the applicable minimum sentence.

Offense with Handgun Loaded with Ammunition – With required notice, court may not suspend any part of or impose less than the applicable mandatory minimum sentence. Person is not eligible for parole during mandatory minimum sentence.*

Subsequent Offender – More than one prior conviction under §§ 4-203, 4-204, 4-101, or 4-102 of the Criminal Law Article

In General – Imprisonment for at least 3 years and up to 10 years

Offense on Public School Property – Imprisonment for at least 5 years and up to 10 years

Offense with Deliberate Purpose of Injuring or Killing Another Person – Imprisonment for at least 5 years and up to 10 years

Court may not impose less than the applicable minimum sentence

Offense with Handgun Loaded with Ammunition – With required notice, court may not suspend any part of or impose less than the applicable mandatory minimum sentence. Person is not eligible for parole during mandatory minimum sentence.*

*Contains exception for § 4-305 of the Correctional Services Article (parole for an inmate at the Patuxent Institution).

Source: Department of Legislative Services

A person who holds a handgun permit may not wear, carry, or transport a handgun while the person is under the influence of alcohol or drugs. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000. (The bill retains this crime and the associated penalty but removes reference to a handgun permit.)

State Revenues: General fund revenues decrease beginning in fiscal 2024 from foregone handgun permit application fees, as discussed below. General fund revenues decrease minimally as a result of the bill’s alteration of the application of existing monetary penalties from cases heard in the District Court.

In 2020, DSP received 11,512 initial handgun permit applications and 4,886 renewal applications; in 2021, 12,189 initial applications and 6,242 renewals; and in 2022, 85,266 initial applications and 8,891 renewals.

Since being directed on July 5, 2022, by then Governor Lawrence J. Hogan, Jr., to immediately stop using the “good and substantial reason” requirement when reviewing handgun permits in the State, DSP has received a record number of initial handgun permit applications. DSP advises that it is unable to estimate future demand for permits and renewals of permits. Permits are renewed every two years.

For illustrative purposes only, assuming demand decreases going forward, if DSP receives approximately (1) 70,000 initial applications and 10,000 renewals in fiscal 2024 (which reflects renewals of permits obtained before the surge in demand) and (2) 70,000 initial applications and 60,000 renewals in fiscal 2025 and beyond. Applying the current fees of \$75 for an initial application and \$50 for a renewal application to these figures, general fund revenues decrease by \$4.3 million in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date and by \$8.25 million each fiscal year thereafter. This illustration does not account for any possible reduction in fees (for a permit that is granted for one day only and at one place only) or exemptions from the fee requirements.

As handgun permit applications are currently at record numbers, it is not expected that this bill will generate an increase in handgun purchases. Thus, this analysis does not address any potential increase in revenues from firearm application fees or handgun qualification licenses.

State Expenditures:

Department of State Police

The fiscal 2024 State budget, as introduced, includes \$22.2 million in general funds for DSP’s licensing division. Since former Governor Hogan’s directive in July 2022, overtime

costs for the division have significantly increased. This analysis assumes that DSP retains personnel currently assigned to processing handgun permits and reassigns these employees to assist with other duties within the department. General fund expenditures decrease to the extent the bill eliminates the need for overtime and contractual personnel currently affiliated with permitting functions. DSP did not provide information on overtime costs and contractual personnel currently affiliated with the licensing division.

Other State Agencies

The Administrative Office of the Courts (AOC) reports that it does not have age-based defendant data for violations affected by the bill. As a result, the exact impact that the bill has on court caseloads is unknown. However, AOC does not anticipate a significant fiscal or operational impact on the trial courts under the bill.

The bill likely results in a decrease in caseloads for the Office of the Public Defender (OPD); however, any such decrease cannot be reliably determined at this time. This analysis assumes that any resources dedicated to cases eliminated under the bill will be retained and redirected to other OPD cases.

Department of Public Safety and Correctional Services

General fund expenditures decrease minimally as a result of the bill's alteration of the application of existing incarceration penalties due to fewer people being committed to State correctional facilities.

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 \$4,970 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 Revenues: Revenues decrease minimally from monetary penalties imposed in cases heard in the circuit courts.

Local Expenditures: Local incarceration expenditures decrease minimally due to the bill's effect on the application of existing 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 \$90 to \$300 per inmate in recent years.

Small Business Effect: The repeal of handgun permit requirements likely leads to a decrease in the demand for any small businesses that provide firearms training or electronic fingerprint services.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1206 of 2022.

Designated Cross File: None.

Information Source(s): Frederick, Montgomery, and Somerset 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 8, 2023
rh/aad

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Appendix

Handgun Permit Requirements – Current Law/Background

Generally, with certain exceptions, to be issued a handgun permit by the Secretary of State Police, an applicant (1) must be 18 or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (4) must not exhibit a propensity for violence or instability, which may reasonably render possession of a handgun a danger to the applicant or another; (5) must have successfully completed, prior to application and each renewal, a specified firearms training course approved by the Secretary; (6) if younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; and (7) must have a good and substantial reason to wear, carry, or transport a handgun. “Good and substantial reason” includes a finding that the permit is necessary as a reasonable precaution against apprehended danger. The Secretary may limit the geographic area, circumstances, or times of day, week, month, or year in which a permit is effective.

A handgun permit applicant must successfully complete, prior to the application and each renewal, a firearms training course approved by the Secretary that includes (1) for an initial application, a minimum of 16 hours of instruction by a qualified handgun instructor, or 8 hours of instruction for a renewal application; (2) classroom instruction on State firearm law, home firearm safety, and handgun mechanisms and operation; and (3) a firearms qualification component that demonstrates the applicant’s proficiency and use of the firearm.

An applicant for a permit is not required to complete a certified firearms training course if the applicant:

- is a law enforcement officer or a person who is retired in good standing from service with a law enforcement agency of the United States, the State, or any local law enforcement agency in the State;
- is a member, retired member, or honorably discharged member of the U.S. Armed Forces or the National Guard;
- is a qualified handgun instructor; or
- has completed a firearms training course approved by the Secretary.

A handgun permit application costs \$75; two years after the initial permit and every three years thereafter, a \$50 renewal fee is due. In addition, the applicant must pay for fingerprint-based federal and State criminal history background checks for an initial application. A person who applies for a renewal of a handgun permit is not required to be fingerprinted unless the Secretary requires a set of the person's fingerprints to resolve a question of the person's identity.

Generally, a handgun permit expires on the last day of the holder's birth month following two years after the date the permit is issued; however, the Secretary may establish an alternative expiration date for a permit to coincide with the expiration of a private detective license, a security guard certification, or a special police officer commission. A permit may be renewed for successive periods of three years each if, at the time of an application for renewal, the applicant possesses the qualifications for the issuance of a permit and pays the renewal fee.

On June 23, 2022, the U.S. Supreme Court, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. (2022), held unconstitutional a New York law that required applicants for a concealed carry handgun permit to demonstrate a "proper cause" (or a special need for self-defense) before issuance of a license to carry a handgun in public. In a 6-3 ruling, the Supreme Court held for the first time that the Second Amendment provides a constitutionally protected right for a law-abiding citizen to carry a handgun outside the home for self-defense.

Following the U.S. Supreme Court's decision, Maryland's Court of Special Appeals (now the Appellate Court of Maryland) applied *Bruen* directly to *In the Matter of William Rounds*, 255 Md. App. 205 (2022), ruling that Maryland's wear and carry handgun permit law requiring an applicant to have a "good and substantial reason" to be issued a license to carry was analogous to New York's "proper cause" requirement and was unconstitutional. On July 5, 2022, then Governor Lawrence J. Hogan, Jr., responded to the ruling by directing the Department of State Police (DSP) to immediately stop using the "good and substantial reason" requirement when reviewing handgun permits in the State. On July 6, 2022, the Office of the Attorney General issued a similar letter advising on the constitutionality and severability of the "good and substantial reason" from the State's handgun permit statute while affirming all other requirements for a handgun permit remain in effect.

According to DSP, there has been a substantial increase in handgun permit applications in Maryland since the *Bruen* ruling. In 2022, DSP received 85,266 new applications for handgun permits (up from a total of 12,189 in 2021) and 8,891 handgun permit renewal applications. DSP denied 1,787 applications in the same year. As of January 20, 2023, there are approximately 113,964 active handgun permits in the State (up from 26,119 active handgun permits in the State at the end of 2021). It generally takes less than 2 days to

receive the results of a national criminal history records check from the FBI and approximately 90 days to process, investigate, and issue a permit.