

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 599

(Senator Smith)

Judicial Proceedings

**Public Safety – Surplus Military Equipment – Prohibition on Purchase by Law
Enforcement Agencies**

This bill prohibits a law enforcement agency from receiving the following equipment from a surplus program operated by the federal government: (1) an armored or weaponized aircraft, drone, or vehicle; (2) a “destructive device”; (3) a “firearm silencer”; or (4) a grenade launcher.

Fiscal Summary

State Effect: Potential minimal increase in State expenditures, as discussed below. Revenues are not affected.

Local Effect: Potential minimal increase in local expenditures, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Relevant Definitions

The Criminal Law Article defines “destructive device” as explosive material, incendiary material, or toxic material that is (1) combined with a delivery or detonating apparatus so as to be capable of inflicting injury to persons or damage to property or (2) deliberately modified, containerized, or otherwise equipped with a special delivery, activation, or

detonation component that gives the material destructive characteristics of a military ordinance. “Destructive device” includes a bomb, grenade, mine, shell, missile, flamethrower, poison gas, Molotov cocktail, pipe bomb, and petroleum-soaked ammonium nitrate.

The Criminal Law Article defines “firearm silencer” as a device that is designed for silencing, muffling, or diminishing the report of a firearm. “Firearm silencer” includes a combination of parts designed, redesigned, or intended for use in assembling or fabricating a firearm silencer or muffler.

Report on the Acquisition of Equipment by Law Enforcement Agencies

The Department of State Police (DSP), by February 1 each year, must report to the Governor and the General Assembly on the acquisition of equipment by law enforcement agencies through surplus programs within the preceding calendar year. DSP must include in a prominent location on its public website a link to the Defense Logistics Agency’s report listing excess Department of Defense (DOD) property transfers to law enforcement agencies through the Law Enforcement Support Office.

Prohibition on the Procurement of Specified Military Equipment – Johns Hopkins University Police Department

Chapter 25 of 2019, among other things, authorizes Johns Hopkins University to create a police department and to set forth related requirements. If the university establishes a police department, the police department may not acquire any military grade vehicles or military grade hardware, including (1) *an armored or weaponized aircraft, drone, or vehicle* or (2) a weapon designated as a Title II weapon under the National Firearms Act. Generally, Title II weapons include machine guns, silencers, short barreled-rifles, short barreled-shotguns, and destructive devices. In addition, the police department may not accept any of the specified items from a program operated by the federal government for the transfer of surplus military equipment to a law enforcement agency. However, if the specified armored or weaponized vehicles are available for commercial sale in the State, Johns Hopkins University, at its own expense, may purchase the items for the police department.

The 1033 Program

The National Defense Authorization Act (NDAA) specifies the budget and expenditures of DOD. The authorization bill determines the agencies responsible for defense, establishes funding levels, and sets the policies under which money will be spent. In the NDAA for federal fiscal 1990 and 1991, the U.S. Congress authorized the transfer, without charge, of excess DOD personal property to federal and state agencies for use in counter-drug

activities. The U.S. Congress later passed the NDAA for federal fiscal 1997, in which Section 1033 granted permanent authorization for all law enforcement agencies to acquire property for bona fide law enforcement purposes, especially counter-drug and counter-terrorism activities. The program is commonly referred to as the 1033 Program. The program has allowed law enforcement agencies to acquire vehicles (land, air, and sea), weapons, computer equipment, fingerprint equipment, night-vision equipment, radios and televisions, first-aid equipment, tents and sleeping bags, and photographic equipment, among other items.

The 1122 Program

The NDAA for federal fiscal 1994 contained Section 1122, which allows state and local governments to purchase new law enforcement equipment for counter-drug activities through the federal government. The Duncan Hunter NDAA for federal fiscal 2009 expanded the program to include equipment for homeland security and emergency response activities. The law allows transfer of excess DOD property that might otherwise be destroyed to law enforcement agencies across the United States and its territories.

State/Local Expenditures: State and local expenditures increase as a result of the bill's prohibition to the extent that law enforcement agencies must purchase equipment that would otherwise be available to them through a federal surplus program. Any expenditure increase is likely minimal in any given year. First, equipment available through a federal surplus program is not always consistent with the needs of law enforcement agencies. Second, it is unclear if law enforcement agencies would otherwise independently purchase that equipment if it were not available through a federal surplus program.

DSP advises that it received approximately \$598,000 in equipment and supplies through federal surplus programs during federal fiscal 2020; the acquisition of at least some of that equipment would have been prohibited under the bill. DSP likely would not have independently purchased all of the equipment and supplies that it received if it had not been able to do so through a surplus program, however.

For fiscal 2020, DSP advises that local law enforcement agencies received the following through a federal surplus program that would have been prohibited under the bill:

- Dorchester County Sheriff's Office (a mine disposal vehicle, \$460,000);
- Fruitland Police Department (an armored truck, \$65,070);
- Garrett County Sheriff's Department (an armored truck, \$65,070);
- Greenbelt Police Department (an armored truck, \$65,070);
- Laurel Police Department (two complete combat/assault/tactical wheeled vehicles, \$276,000);

- Ocean City Police Department (an armored truck, \$65,070);
- Pocomoke City Police Department (an armored truck, \$65,070)
- Queen Anne's County Sheriff's Office (a mine resistant vehicle, \$412,000);
- Salisbury Police Department (an armored truck, \$65,070); and
- Wicomico County Sheriff's Office (a mine resistant vehicle, \$733,000).

Additional Information

Prior Introductions: SB 661 of 2018, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 240, passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Prince George's County; cities of Annapolis and Bowie; Maryland Municipal League; St. Mary's College of Maryland; Department of General Services; Department of Natural Resources; Department of State Police; Military Department; Department of Legislative Services

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rh/lgc

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