

SENATE BILL 197

E1

EMERGENCY BILL

8lr0129
CF HB 101

By: **The President (By Request – Administration) and Senators Bates, Cassilly, Eckardt, Hershey, Hough, Jennings, Norman, Ready, Reilly, Salling, Serafini, and Waugh**

Introduced and read first time: January 17, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Firearms – Penalties**

3 FOR the purpose of altering penalties for certain crimes relating to firearms; adding certain
4 crimes relating to firearms to a certain definition of “crime of violence”; adding
5 certain crimes relating to firearms as predicate crimes under a certain prohibition
6 against possessing a regulated firearm by a person previously convicted of certain
7 crimes; making stylistic changes; making this Act an emergency measure; and
8 generally relating to crimes relating to firearms.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Law
11 Section 4–204, 5–621, and 14–101(a)
12 Annotated Code of Maryland
13 (2012 Replacement Volume and 2017 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Law
16 Section 5–622
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2017 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Public Safety
21 Section 5–133(c), (d), and (e)
22 Annotated Code of Maryland
23 (2011 Replacement Volume and 2017 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
25 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Criminal Law

4–204.

(a) (1) In this section, “firearm” means:

(i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or

(ii) the frame or receiver of such a weapon.

(2) “Firearm” includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

(b) A person may not use a firearm in the commission of a crime of violence, as defined in § 5–101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime.

(c) (1) (i) A person who violates this section is guilty of a [misdemeanor] **FELONY** and, in addition to any other penalty imposed for the crime of violence or felony, shall be sentenced:

1. FOR A FIRST OFFENSE, to imprisonment for not less than 5 years and not exceeding 20 years; OR

2. FOR A SECOND OR SUBSEQUENT OFFENSE, TO IMPRISONMENT FOR NOT LESS THAN 10 YEARS AND NOT EXCEEDING 40 YEARS.

(ii) **1. The court may not impose less than the minimum sentence of 5 years [and, except] FOR A SENTENCE IMPOSED UNDER ITEM (I)1 OF THIS PARAGRAPH.**

2. THE COURT MAY NOT IMPOSE LESS THAN THE MINIMUM SENTENCE OF 10 YEARS FOR A SENTENCE IMPOSED UNDER ITEM (I)2 OF THIS PARAGRAPH.

(III) EXCEPT as otherwise provided in § 4–305 of the Correctional Services Article, the person is not eligible for parole in less than [5 years] **THE MANDATORY MINIMUM SENTENCE.**

(2) [For each subsequent violation, the] **THE** sentence shall be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

1 5–621.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) “Drug trafficking crime” means a felony or a conspiracy to commit a
4 felony involving the possession, distribution, manufacture, or importation of a controlled
5 dangerous substance under §§ 5–602 through 5–609 and 5–614 of this subtitle.

6 (3) “Forfeiting authority” means the office or person designated by
7 agreement between the State’s Attorney for a county and the chief executive officer of the
8 governing body that has jurisdiction over the assets subject to forfeiture.

9 (b) During and in relation to a drug trafficking crime, a person may not:

10 (1) possess a firearm under sufficient circumstances to constitute a nexus
11 to the drug trafficking crime; or

12 (2) use, wear, carry, or transport a firearm.

13 (c) (1) In addition to the sentence provided for the drug trafficking crime, a
14 person who violates subsection (b) of this section is guilty of a felony and on conviction is
15 subject to:

16 (i) for a first violation, imprisonment for not less than 5 years and
17 not exceeding 20 years; or

18 (ii) for each subsequent violation, imprisonment for not less than 10
19 years and not exceeding [20] 40 years.

20 (2) (i) The court shall impose a minimum sentence of 5 years under
21 paragraph (1)(i) of this subsection.

22 (ii) The court shall impose a minimum sentence of 10 years under
23 paragraph (1)(ii) of this subsection.

24 (3) (i) A court may not suspend any part of a mandatory minimum
25 sentence.

26 (ii) Except as provided in § 4–305 of the Correctional Services
27 Article, a person sentenced under this subsection is not eligible for parole.

28 (iii) A sentence imposed under paragraph [(1)(ii)] (1) of this
29 subsection shall be consecutive to and not concurrent with any other sentence imposed by
30 virtue of the commission of the drug trafficking crime.

31 (d) (1) (i) In this subsection, “firearm silencer” means a device that is
32 designed for silencing, muffling, or diminishing the report of a firearm.

1 (ii) "Firearm silencer" includes a combination of parts designed,
2 redesigned, or intended for use in assembling or fabricating a firearm silencer or muffler.

3 (2) A court shall double the minimum mandatory sentence provided in
4 subsection (c)(1)(ii) of this section if the firearm used during and in relation to a drug
5 trafficking crime is:

6 (i) listed in § 4-301 of this article or § 5-101 of the Public Safety
7 Article;

8 (ii) a machine gun; or

9 (iii) equipped with a firearm silencer.

10 (e) (1) A firearm or ammunition seized under this section is contraband and
11 shall be forfeited summarily to a forfeiting authority.

12 (2) Unless otherwise prohibited by law or if forfeiture proceedings have
13 begun, the forfeiting authority shall return the seized property to the owner or possessor
14 within 90 days after the date of seizure if:

15 (i) the owner or possessor of the property seized is acquitted; or

16 (ii) the charges against the person are dismissed.

17 (3) Unless otherwise prohibited by law, the forfeiting authority shall
18 return the seized property to the owner or possessor promptly if the State:

19 (i) enters a nolle prosequi against the owner or possessor of property
20 seized; and

21 (ii) does not charge the person within 90 days after the nolle prosequi
22 is entered.

23 5-622.

24 (a) In this section, "firearm" includes:

25 (1) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, and
26 short-barreled rifle, as those words are defined in § 4-201 of this article;

27 (2) a machine gun, as defined in § 4-401 of this article; and

28 (3) a regulated firearm, as defined in § 5-101 of the Public Safety Article.

29 (b) A person may not possess, own, carry, or transport a firearm if that person

1 has been convicted of:

2 (1) a felony under this title;

3 (2) a crime under the laws of another state or of the United States that
4 would be a felony under this title if committed in this State;

5 (3) conspiracy to commit a crime referred to in paragraphs (1) and (2) of
6 this subsection; or

7 (4) an attempt to commit a crime referred to in paragraphs (1) and (2) of
8 this subsection.

9 (c) A person who violates this section is guilty of a felony and on conviction is
10 subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

11 14–101.

12 (a) In this section, “crime of violence” means:

13 (1) abduction;

14 (2) arson in the first degree;

15 (3) kidnapping;

16 (4) manslaughter, except involuntary manslaughter;

17 (5) mayhem;

18 (6) maiming, as previously proscribed under former Article 27, §§ 385 and
19 386 of the Code;

20 (7) murder;

21 (8) rape;

22 (9) robbery under § 3–402 or § 3–403 of this article;

23 (10) carjacking;

24 (11) armed carjacking;

25 (12) sexual offense in the first degree;

26 (13) sexual offense in the second degree;

1 (14) use of a [handgun] FIREARM in the commission of a felony or other
2 crime of violence;

3 (15) POSSESSING, USING, WEARING, CARRYING, OR TRANSPORTING A
4 FIREARM DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME UNDER § 5-621
5 OF THIS ARTICLE;

6 [(15)] (16) child abuse in the first degree under § 3-601 of this article;

7 [(16)] (17) sexual abuse of a minor under § 3-602 of this article if:

8 (i) the victim is under the age of 13 years and the offender is an
9 adult at the time of the offense; and

10 (ii) the offense involved:

11 1. vaginal intercourse, as defined in § 3-301 of this article;

12 2. a sexual act, as defined in § 3-301 of this article;

13 3. an act in which a part of the offender's body penetrates,
14 however slightly, into the victim's genital opening or anus; or

15 4. the intentional touching, not through the clothing, of the
16 victim's or the offender's genital, anal, or other intimate area for sexual arousal,
17 gratification, or abuse;

18 [(17)] (18) home invasion under § 6-202(b) of this article;

19 [(18)] (19) an attempt to commit any of the crimes described in items (1)
20 through [(17)] (18) of this subsection;

21 [(19)] (20) continuing course of conduct with a child under § 3-315 of this
22 article;

23 [(20)] (21) assault in the first degree;

24 [(21)] (22) assault with intent to murder;

25 [(22)] (23) assault with intent to rape;

26 [(23)] (24) assault with intent to rob;

27 [(24)] (25) assault with intent to commit a sexual offense in the first degree;

28 and

1 [(4) Each violation of this subsection is a separate crime.]

2 [(d)] (E) (1) Except as provided in paragraph (2) of this subsection, a person
3 who is under the age of 21 years may not possess a regulated firearm.

4 (2) Unless a person is otherwise prohibited from possessing a regulated
5 firearm, this subsection does not apply to:

6 (i) the temporary transfer or possession of a regulated firearm if the
7 person is:

8 1. under the supervision of another who is at least 21 years
9 old and who is not prohibited by State or federal law from possessing a firearm; and

10 2. acting with the permission of the parent or legal guardian
11 of the transferee or person in possession;

12 (ii) the transfer by inheritance of title, and not of possession, of a
13 regulated firearm;

14 (iii) a member of the armed forces of the United States or the
15 National Guard while performing official duties;

16 (iv) the temporary transfer or possession of a regulated firearm if the
17 person is:

18 1. participating in marksmanship training of a recognized
19 organization; and

20 2. under the supervision of a qualified instructor;

21 (v) a person who is required to possess a regulated firearm for
22 employment and who holds a permit under Subtitle 3 of this title; or

23 (vi) the possession of a firearm for self-defense or the defense of
24 others against a trespasser into the residence of the person in possession or into a residence
25 in which the person in possession is an invited guest.

26 [(e)] (F) This section does not apply to a respondent transporting a regulated
27 firearm if the respondent is carrying a civil protective order requiring the surrender of the
28 regulated firearm and:

29 (1) the regulated firearm is unloaded;

30 (2) the respondent has notified the law enforcement unit, barracks, or
31 station that the regulated firearm is being transported in accordance with the civil
32 protective order; and

1 (3) the respondent transports the regulated firearm directly to the law
2 enforcement unit, barracks, or station.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
4 measure, is necessary for the immediate preservation of the public health or safety, has
5 been passed by a ye and nay vote supported by three-fifths of all the members elected to
6 each of the two Houses of the General Assembly, and shall take effect from the date it is
7 enacted.