

HOUSE BILL 1199

E1
HB 252/11 – JUD

4lr2865

By: **Delegate Clippinger**

Introduced and read first time: February 7, 2014

Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Possession of Loaded Handgun or Regulated Firearm – Enhanced Penalties

FOR the purpose of prohibiting a person from wearing, carrying, or transporting a handgun loaded with ammunition on or about the person or in a vehicle under certain circumstances; prohibiting a person from possessing a regulated firearm loaded with ammunition under certain circumstances or if the person is under a certain age; establishing certain penalties, including mandatory minimum terms of imprisonment, for violations of this Act; prohibiting a court from suspending any part of a sentence or ordering probation before judgment for certain crimes; providing that certain persons are not eligible for parole during certain mandatory minimum sentences, with a certain exception; providing that each violation of certain prohibitions is a separate crime; and generally relating to enhanced penalties for possession of a loaded handgun or regulated firearm.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 4–203(a)(1) and (c)
Annotated Code of Maryland
(2012 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 5–133
Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,
Article – Public Safety
Section 5–144
Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – Criminal Law

4–203.

(a) (1) Except as provided in subsection (b) of this section, a person may not:

(i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;

(ii) 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;

(iii) violate item (i) or (ii) of this paragraph while on public school property in the State; [or]

(iv) violate item (i) or (ii) of this paragraph with the deliberate purpose of injuring or killing another person; **OR**

(V) VIOLATE ITEM (I) OR (II) OF THIS PARAGRAPH WITH A HANDGUN LOADED WITH AMMUNITION.

(c) (1) **(I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH,** A person who violates this section is guilty of a misdemeanor and on conviction is subject to the penalties provided in this subsection.

(II) 1. A PERSON WHO VIOLATES SUBSECTION (A)(1)(V) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 18 MONTHS AND NOT EXCEEDING 10 YEARS.

2. A COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY MINIMUM SENTENCE OF 18 MONTHS.

3. EXCEPT AS OTHERWISE PROVIDED IN § 4–305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

4. A COURT MAY NOT ORDER PROBATION BEFORE JUDGMENT IN A CASE ARISING UNDER THIS SUBPARAGRAPH.

5. EACH VIOLATION OF SUBSECTION (A)(1)(V) OF THIS SECTION IS A SEPARATE CRIME.

(2) If the person has not previously been convicted under this section, § 4–204 of this subtitle, or § 4–101 or § 4–102 of this title:

(i) except as provided in item (ii) of this paragraph, the person is subject to imprisonment for not less than 30 days and not exceeding 3 years or a fine of not less than \$250 and not exceeding \$2,500 or both; or

(ii) if the person violates subsection (a)(1)(iii) of this section, the person shall be sentenced to imprisonment for not less than 90 days.

(3) (i) If the person has previously been convicted once under this section, § 4–204 of this subtitle, or § 4–101 or § 4–102 of this title:

1. except as provided in item 2 of this subparagraph, the person is subject to imprisonment for not less than 1 year and not exceeding 10 years; or

2. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 3 years and not exceeding 10 years.

(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i) of this paragraph.

(4) (i) If the person has previously been convicted more than once under this section, § 4–204 of this subtitle, or § 4–101 or § 4–102 of this title, or of any combination of these crimes:

1. except as provided in item 2 of this subparagraph, the person is subject to imprisonment for not less than 3 years and not exceeding 10 years; or

2. A. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years; or

B. if the person violates subsection (a)(1)(iv) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years.

(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i) of this paragraph.

Article – Public Safety

5–133.

(a) This section supersedes any restriction that a local jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm.

(b) Subject to § 5–133.3 of this subtitle, a person may not possess a regulated firearm if the person:

- (1) has been convicted of a disqualifying crime;
- (2) has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 years;
- (3) is a fugitive from justice;
- (4) is a habitual drunkard;
- (5) is addicted to a controlled dangerous substance or is a habitual user;
- (6) suffers from a mental disorder as defined in § 10–101(f)(2) of the Health – General Article and has a history of violent behavior against the person or another;
- (7) has been found incompetent to stand trial under § 3–106 of the Criminal Procedure Article;
- (8) has been found not criminally responsible under § 3–110 of the Criminal Procedure Article;
- (9) has been voluntarily admitted for more than 30 consecutive days to a facility as defined in § 10–101 of the Health – General Article;
- (10) has been involuntarily committed to a facility as defined in § 10–101 of the Health – General Article;
- (11) is under the protection of a guardian appointed by a court under § 13–201(c) or § 13–705 of the Estates and Trusts Article, except for cases in which the appointment of a guardian is solely a result of a physical disability;
- (12) except as provided in subsection (e) of this section, is a respondent against whom:

(i) a current non ex parte civil protective order has been entered under § 4–506 of the Family Law Article; or

(ii) an order for protection, as defined in § 4–508.1 of the Family Law Article, has been issued by a court of another state or a Native American tribe and is in effect; or

(13) if under the age of 30 years at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

(c) (1) A person may not possess a regulated firearm if the person was previously convicted of:

(i) a crime of violence;

(ii) a violation of § 5–602, § 5–603, § 5–604, § 5–605, § 5–612, § 5–613, or § 5–614 of the Criminal Law Article; or

(iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

(2) (i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years.

(ii) The court may not suspend any part of the mandatory minimum sentence of 5 years.

(iii) Except as otherwise provided in § 4–305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

(3) At the time of the commission of the offense, if a period of more than 5 years has elapsed since the person completed serving the sentence for the most recent conviction under paragraph (1)(i) or (ii) of this subsection, including all imprisonment, mandatory supervision, probation, and parole:

(i) the imposition of the mandatory minimum sentence is within the discretion of the court; and

(ii) the mandatory minimum sentence may not be imposed unless the State's Attorney notifies the person in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.

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

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

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

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

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

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

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

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

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

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

2. under the supervision of a qualified instructor;

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

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

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

(1) the regulated firearm is unloaded;

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

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

(F) (1) A PERSON MAY NOT VIOLATE SUBSECTION (B) OR (D) OF THIS SECTION WITH A REGULATED FIREARM LOADED WITH AMMUNITION.

(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 18 MONTHS AND NOT EXCEEDING 10 YEARS.

(3) A COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY MINIMUM SENTENCE OF 18 MONTHS.

(4) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE DURING THE MANDATORY MINIMUM SENTENCE.

(5) A COURT MAY NOT ORDER PROBATION BEFORE JUDGMENT IN A CASE ARISING UNDER THIS SUBSECTION.

(6) EACH VIOLATION OF THIS SUBSECTION IS A SEPARATE CRIME.

5-144.

(a) Except as otherwise provided in this subtitle, a dealer or other person may not:

(1) knowingly participate in the illegal sale, rental, transfer, purchase, possession, or receipt of a regulated firearm in violation of this subtitle; or

(2) knowingly violate § 5-142 of this subtitle.

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

(c) Each violation of this section is a separate crime.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.