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HB 366/96 - JUD

1997 Regular Session
7r0040

By: Delegates Genn, Taylor, Preis, Owings, Dembrow, Grosfeld, Harkins, Bissett, Hutchins, M. Burns, E. Burns, O'Donnell, Petzold, Jacobs, Perry, Turner, Shriver, and Barve

Introduced and read first time: January 15, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Firearms - Use in the Commission of a Felony or Crime of Violence**

3 FOR the purpose of expanding the current law making it a separate offense to use certain
4 firearms in the commission of a felony or crime of violence by including certain
5 other firearms; establishing that a person convicted of a subsequent offense under
6 this Act is not eligible for parole for a certain period of time; and generally relating
7 to firearms.

8 BY repealing

9 Article 27 - Crimes and Punishments
10 Section 36B(d)
11 Annotated Code of Maryland
12 (1996 Replacement Volume)

13 BY adding to

14 Article 27 - Crimes and Punishments
15 Section 36L
16 Annotated Code of Maryland
17 (1996 Replacement Volume)

18 BY repealing and reenacting, without amendments,

19 Article 27 - Crimes and Punishments
20 Section 441(e)
21 Annotated Code of Maryland
22 (1996 Replacement Volume)

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

2

1 **Article 27 - Crimes and Punishments**

2 36B.

3 [(d) Any person who shall use a handgun or an antique firearm capable of being
4 concealed on the person in the commission of any felony or any crime of violence as
5 defined in § 441 of this article, whether operable or inoperable at the time of the offense,
6 shall be guilty of a separate misdemeanor and on conviction thereof shall, in addition to
7 any other sentence imposed by virtue of commission of said felony or misdemeanor:

8 (1) For a first offense, be sentenced to the Maryland Division of Correction
9 for a term of not less than 5 nor more than 20 years, and:

10 (i) It is mandatory upon the court to impose no less than the
11 minimum sentence of 5 years; and

12 (ii) Except as otherwise provided in Article 31B, § 11 of the Code, the
13 person is not eligible for parole in less than 5 years; and

14 (2) For a second or subsequent offense, be sentenced to the Maryland
15 Division of Correction for a term of not less than 5 nor more than 20 years, and it is
16 mandatory upon the court to impose no less than a minimum consecutive sentence of 5
17 years which shall be served consecutively and not concurrently to any other sentence
18 imposed by virtue of the commission of said felony or misdemeanor.]

19 36L.

20 (A) IN THIS SECTION, "FIREARM" MEANS ANY OF THE FOLLOWING WEAPONS,
21 WHETHER OPERABLE OR INOPERABLE AT THE TIME OF THE OFFENSE:

22 (1) A HANDGUN, ANTIQUE FIREARM, RIFLE, SHOTGUN,
23 SHORT-BARRELED RIFLE, OR SHORT-BARRELED SHOTGUN AS DEFINED IN § 36F OF
24 THIS SUBHEADING;

25 (2) AN ASSAULT PISTOL, AS DEFINED IN § 36H-1 OF THIS SUBHEADING;

26 (3) A MACHINE GUN, AS DEFINED IN § 372 OF THIS ARTICLE; OR

27 (4) A REGULATED FIREARM, AS DEFINED IN § 441 OF THIS ARTICLE.

28 (B) A PERSON WHO USES A FIREARM IN THE COMMISSION OF A FELONY OR
29 CRIME OF VIOLENCE, AS DEFINED IN § 441 OF THIS ARTICLE, SHALL BE GUILTY OF A
30 SEPARATE MISDEMEANOR AND ON CONVICTION SHALL, IN ADDITION TO ANY
31 OTHER SENTENCE IMPOSED BY VIRTUE OF COMMISSION OF THE FELONY OR
32 MISDEMEANOR:

33 (1) FOR A FIRST OFFENSE, BE SENTENCED TO THE MARYLAND DIVISION
34 OF CORRECTION FOR A TERM OF NOT LESS THAN 5 NOR MORE THAN 20 YEARS, AND:

35 (I) IT IS MANDATORY ON THE COURT TO IMPOSE NO LESS THAN
36 THE MINIMUM SENTENCE OF 5 YEARS; AND

37 (II) EXCEPT AS OTHERWISE PROVIDED IN ARTICLE 31B, § 11 OF THE
38 CODE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN LESS THAN 5 YEARS; AND

3

1 (2) FOR A SECOND OR SUBSEQUENT OFFENSE, BE SENTENCED TO THE
2 MARYLAND DIVISION OF CORRECTION FOR A TERM OF NOT LESS THAN 5 NOR MORE
3 THAN 20 YEARS, AND:

4 (I) IT IS MANDATORY ON THE COURT TO IMPOSE NO LESS THAN A
5 MINIMUM SENTENCE OF 5 YEARS WHICH SHALL BE SERVED CONSECUTIVELY AND
6 NOT CONCURRENTLY TO ANY OTHER SENTENCE IMPOSED BY VIRTUE OF THE
7 COMMISSION OF THE FELONY OR MISDEMEANOR; AND

8 (II) EXCEPT AS OTHERWISE PROVIDED IN ARTICLE 31B, § 11 OF THE
9 CODE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN LESS THAN 5 YEARS.

10 441.

11 (e) "Crime of violence" means:

12 (1) Abduction;

13 (2) Arson in the first degree;

14 (3) Burglary in the first, second, or third degree;

15 (4) Carjacking and armed carjacking;

16 (5) Escape;

17 (6) Kidnapping;

18 (7) Voluntary manslaughter;

19 (8) Maiming;

20 (9) Mayhem;

21 (10) Murder in the first or second degree;

22 (11) Rape in the first or second degree;

23 (12) Robbery;

24 (13) Robbery with a dangerous or deadly weapon;

25 (14) Sexual offense in the first, second, or third degree;

26 (15) An attempt to commit any of the aforesaid offenses; or

27 (16) Assault with intent to commit any of the aforesaid offenses or any
28 offense punishable by imprisonment for more than 1 year.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 July 1, 1997.