

SENATE BILL 785

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2001 Regular Session
11r2449
CF 11r2306

By: **Senator Forehand**

Introduced and read first time: February 9, 2001

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Use of a Firearm in the Commission of a Felony or Crime of**
3 **Violence**

4 FOR the purpose of expanding a certain law prohibiting the use of handguns and
5 certain antique firearms in the commission of a felony or crime of violence to
6 include a prohibition on the use of other firearms in the commission of a felony
7 or crime of violence; applying certain penalties to violations of this Act; making
8 certain technical changes; and generally relating to the use of firearms in the
9 commission of a felony or crime of violence.

10 BY repealing and reenacting, with amendments,
11 Article 27 - Crimes and Punishments
12 Section 36B
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 2000 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article 27 - Crimes and Punishments
17 Section 441(e) and (i)
18 Annotated Code of Maryland
19 (1996 Replacement Volume and 2000 Supplement)

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

22 **Article 27 - Crimes and Punishments**

23 36B.

24 (a) The General Assembly of Maryland hereby finds and declares that:

25 (1) There has, in recent years, been an alarming increase in the number
26 of violent crimes perpetrated in Maryland, and a high percentage of those crimes
27 involve the use of handguns;

1 (2) The result has been a substantial increase in the number of persons
2 killed or injured which is traceable, in large part, to the carrying of handguns on the
3 streets and public ways by persons inclined to use them in criminal activity;

4 (3) The laws currently in force have not been effective in curbing the
5 more frequent use of handguns in perpetrating crime; and

6 (4) Further regulations on the wearing, carrying, and transporting of
7 handguns are necessary to preserve the peace and tranquility of the State and to
8 protect the rights and liberties of its citizens.

9 (b) Any person who shall wear, carry, or transport any handgun, whether
10 concealed or open, upon or about his person, and any person who shall wear, carry or
11 knowingly transport any handgun, whether concealed or open, in any vehicle
12 traveling upon the public roads, highways, waterways, or airways or upon roads or
13 parking lots generally used by the public in this State shall be guilty of a
14 misdemeanor; and it shall be a rebuttable presumption that the person is knowingly
15 transporting the handgun; and on conviction of the misdemeanor shall be fined or
16 imprisoned as follows:

17 (1) If the person has not previously been convicted of unlawfully
18 wearing, carrying or transporting a handgun in violation of this section, or of
19 unlawfully using a handgun OR ANY OTHER FIREARM in the commission of a crime in
20 violation of subsection (d) of this section, or of unlawfully carrying a concealed weapon
21 in violation of § 36 of this article, or of unlawfully carrying a deadly weapon on public
22 school property in violation of § 36A of this article, he shall be fined not less than two
23 hundred and fifty (\$250.00) dollars, nor more than twenty-five hundred (\$2,500.00)
24 dollars, or be imprisoned in jail or sentenced to the Maryland Division of Correction
25 for a term of not less than 30 days nor more than three years, or both; provided,
26 however, that if it shall appear from the evidence that the handgun was worn,
27 carried, or transported on any public school property in this State, the court shall
28 impose a sentence of imprisonment of not less than 90 days.

29 (2) If the person has previously been once convicted of unlawfully
30 wearing, carrying, or transporting a handgun in violation of this section, or of
31 unlawfully using a handgun OR ANY OTHER FIREARM in the commission of a crime in
32 violation of subsection (d) of this section, or of unlawfully carrying a concealed weapon
33 in violation of § 36 of this article, or of unlawfully carrying a deadly weapon on public
34 school property in violation of § 36A of this article, he shall be sentenced to the
35 Maryland Division of Correction for a term of not less than 1 year nor more than 10
36 years, and it is mandatory upon the court to impose no less than the minimum
37 sentence of 1 year; provided, however, that if it shall appear from the evidence that
38 the handgun was worn, carried, or transported on any public school property in this
39 State, the court shall impose a sentence of imprisonment of not less than three years.

40 (3) If the person has previously been convicted more than once of
41 unlawfully wearing, carrying, or transporting a handgun in violation of this section,
42 or of unlawfully using a handgun OR ANY OTHER FIREARM in the commission of a
43 crime in violation of subsection (d) of this section, or of unlawfully carrying a

1 concealed weapon in violation of § 36 of this article, or of unlawfully carrying a deadly
2 weapon on public school property in violation of § 36A of this article, or any
3 combination thereof, he shall be sentenced to the Maryland Division of Correction for
4 a term of not less than three years nor more than 10 years, and it is mandatory upon
5 the court to impose no less than the minimum sentence of three years; provided,
6 however, that if it shall appear from the evidence that the handgun was worn,
7 carried, or transported on any public school property in this State, the court shall
8 impose a sentence of imprisonment of not less than 5 years.

9 (4) If it shall appear from the evidence that any handgun referred to in
10 this subsection was carried, worn, or transported with the deliberate purpose of
11 injuring or killing another person, the court shall impose a sentence of imprisonment
12 of not less than 5 years.

13 (c) (1) Nothing in this section shall prevent the wearing, carrying, or
14 transporting of a handgun by: (i) law-enforcement personnel of the United States, or
15 of this State, or of any county or city of this State; (ii) members of the armed forces of
16 the United States or of the National Guard while on duty or traveling to or from duty;
17 (iii) law-enforcement personnel of some other state or subdivision thereof temporarily
18 in this State on official business; (iv) any jailer, prison guard, warden, or guard or
19 keeper at any penal, correctional or detention institution in this State; (v) sheriffs of
20 this State or full-time assistant or deputy sheriffs of this State; or (vi) temporary or
21 part-time sheriffs' deputies, as to all of whom this exception shall apply only when
22 they are on active assignment engaged in law enforcement; provided, that any such
23 person mentioned in this paragraph is duly authorized at the time and under the
24 circumstances he is wearing, carrying, or transporting the weapon to wear, carry, or
25 transport such weapon as part of his official equipment.

26 (2) Nothing in this section shall prevent the wearing, carrying, or
27 transporting of a handgun by any person to whom a permit to wear, carry or transport
28 any such weapon has been issued under § 36E of this article.

29 (3) Nothing in this section shall prevent any person from carrying a
30 handgun on his person or in any vehicle while transporting the same to or from the
31 place of legal purchase or sale, or between bona fide residences of the individual, or
32 between his bona fide residence and his place of business, if the business is operated
33 and substantially owned by the individual, or to or from any bona fide repair shop.
34 Nothing in this section shall prevent any person from wearing, carrying, or
35 transporting a handgun used in connection with a target shoot, formal or informal
36 target practice, sport shooting event, hunting, a Department of Natural Resources
37 sponsored firearms and hunter safety class, trapping, dog obedience training class or
38 show or any organized military activity while engaged in, on the way to, or returning
39 from any such activity. Nothing in this section shall prevent any bona fide gun
40 collector from moving any part or all of his gun collection from place to place for
41 public or private exhibition. However, while traveling to or from any such place or
42 event referred to in this paragraph, a handgun shall be unloaded and carried in an
43 enclosed case or enclosed holster.

1 (4) Nothing in this section shall prevent a person from wearing,
2 carrying, or transporting a handgun within the confines of real estate owned or leased
3 by him or upon which he resides or within the confines of a business establishment
4 owned or leased by him. Nothing in this section shall prevent a supervisory employee
5 from wearing, carrying, or transporting a handgun within the confines of a business
6 establishment in which he is employed during such time as he is acting in the course
7 of his employment and has been authorized to wear, carry, or transport the handgun
8 by the owner or manager of the business establishment.

9 (5) Nothing in this section shall prevent a person from carrying or
10 transporting any signal pistol or other visual distress signal approved by the United
11 States Coast Guard, in any vessel used upon the waterways of this State, or if
12 unloaded and carried in an enclosed case, in any vehicle.

13 (d) Any person who shall use a handgun or [an antique firearm capable of
14 being concealed on the person] ANY FIREARM AS DEFINED IN § 441(I) OF THIS
15 ARTICLE in the commission of any felony or any crime of violence as defined in [§
16 441] § 441(E) of this article, whether operable or inoperable at the time of the offense,
17 shall be guilty of a separate misdemeanor and on conviction thereof shall, in addition
18 to any other sentence imposed by virtue of commission of said felony or misdemeanor:

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

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

23 (ii) Except as otherwise provided in § 4-305 of the Correctional
24 Services Article, the person is not eligible for parole in less than 5 years; and

25 (2) For a second or subsequent offense, be sentenced to the Maryland
26 Division of Correction for a term of not less than 5 nor more than 20 years, and it is
27 mandatory upon the court to impose no less than a minimum consecutive sentence of
28 5 years which shall be served consecutively and not concurrently to any other
29 sentence imposed by virtue of the commission of said felony or misdemeanor.

30 (e) Notwithstanding any other provision of law to the contrary, including the
31 provisions of § 643 of this article, (1) except with respect to a sentence prescribed in
32 subsection (b)(1) of this section, no court shall enter a judgment for less than the
33 mandatory minimum sentence prescribed in this subheading in those cases for which
34 a mandatory minimum sentence is specified in this subheading; (2) except with
35 respect to a sentence prescribed in subsection (b)(1) of this section, no court shall
36 suspend a mandatory minimum sentence prescribed in this subheading; (3) except
37 with respect to a sentence prescribed in subsection (b)(1) of this section for wearing,
38 carrying, or transporting a handgun in violation of this section other than on public
39 school property, no court shall enter a judgment of probation before or without verdict
40 with respect to any case arising under this subheading; and (4) except with respect to
41 a sentence prescribed in subsection (b)(1) of this section no court shall enter a
42 judgment of probation after verdict with respect to any case arising under this

1 subheading which would have the effect of reducing the actual period of
2 imprisonment prescribed in this subheading as a mandatory minimum sentence.

3 441.

4 (e) "Crime of violence" means:

- 5 (1) Abduction;
- 6 (2) Arson in the first degree;
- 7 (3) Assault in the first or second degree;
- 8 (4) Burglary in the first, second, or third degree;
- 9 (5) Carjacking and armed carjacking;
- 10 (6) Escape in the first degree;
- 11 (7) Kidnapping;
- 12 (8) Voluntary manslaughter;
- 13 (9) Maiming;
- 14 (10) Mayhem as previously proscribed under former § 384 of this article;
- 15 (11) Murder in the first or second degree;
- 16 (12) Rape in the first or second degree;
- 17 (13) Robbery under § 486 or § 487 of this article;
- 18 (14) Sexual offense in the first, second, or third degree;
- 19 (15) An attempt to commit any of the aforesaid offenses; or
- 20 (16) Assault with intent to commit any of the aforesaid offenses or any
21 offense punishable by imprisonment for more than 1 year.

22 (i) "Firearm" means:

- 23 (1) Any weapon (including a starter gun) which will or is designed to or
24 may readily be converted to expel a projectile by the action of an explosive; or
- 25 (2) The frame or receiver of any such weapon.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2001.