Unofficial Copy E4 2003 Regular Session 3lr0147 CF 3lr0148

By: The President (By Request - Administration) and Senators Haines, Jimeno, Stoltzfus, Stone, Harris, DeGrange, Hooper, Jacobs, Kittleman, Lawlah, Mooney, Munson, Pipkin, Schrader, Brinkley, Brochin, Colburn, Greenip, and Hafer

Introduced and read first time: January 31, 2003

Rules suspended

Assigned to: Judicial Proceedings

### A BILL ENTITLED

	$\Delta N$	$\Delta ($	concerning
1	7 77 4	1101	Concerning

Exile

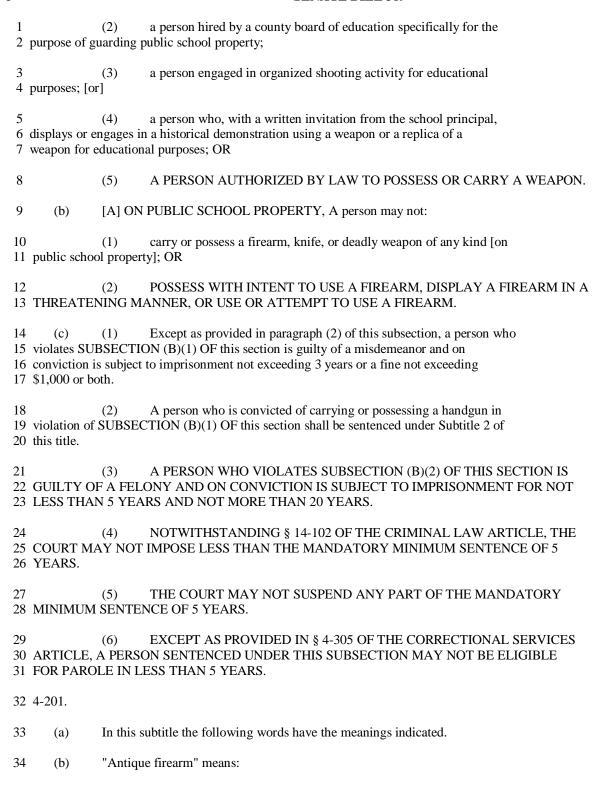
- 3 FOR the purpose of prohibiting a District Court commissioner from authorizing the
- 4 pretrial release of a defendant charged with certain crimes; requiring a judge to
- 5 consider as a rebuttable presumption that a defendant charged with certain
- 6 crimes will flee and pose a danger to another person or the community;
- 7 prohibiting a certain panel of judges, when reviewing a sentence, from
- 8 decreasing a mandatory minimum sentence imposed for crimes involving
- 9 firearms under certain circumstances; making it a felony to possess and intend
- to use a firearm, display a firearm in a threatening manner, or use or attempt to
- use a firearm on school property; making it a felony to use a firearm in the
- commission of certain crimes; repealing a prohibition relating to firearms and
- persons with certain convictions for controlled dangerous substances offenses;
- expanding certain prohibitions to apply to all firearms; expanding the type of
- crimes to which certain prohibitions relating to firearms apply; adding and
- altering certain penalties, including mandatory minimum penalties;
- establishing and altering certain requirements and procedures relating to
- 18 certain sentences; adding a certain exception; adding and altering certain
- definitions; and generally relating to firearms crimes.
- 20 BY repealing and reenacting, with amendments,
- 21 Article Criminal Procedure
- 22 Section 5-202(c), 8-105, and 8-107(c)
- 23 Annotated Code of Maryland
- 24 (2001 Volume and 2002 Supplement)
- 25 BY repealing and reenacting, with amendments,
- 26 Article Criminal Law
- 27 Section 4-102, 4-201, 4-204, 4-306(b), and 5-621(c)
- 28 Annotated Code of Maryland

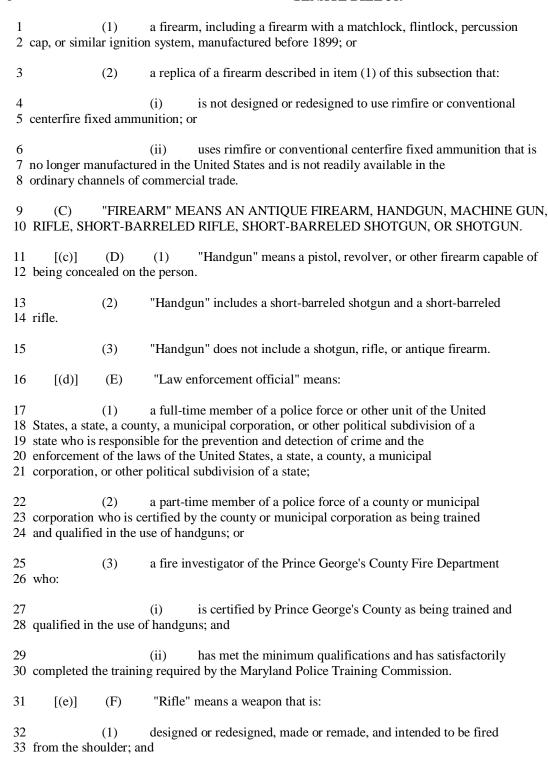
36 convicted:

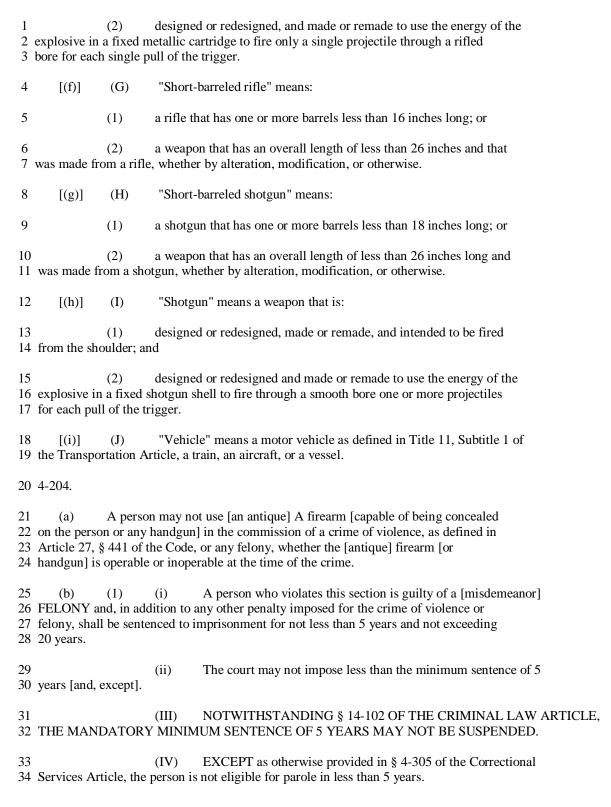
1	(2002 Volume)
2 3 4 5 6	BY repealing and reenacting, without amendments, Article - Criminal Law Section 5-621(a) and (b) Annotated Code of Maryland (2002 Volume)
7 8 9 10 11	BY repealing Article - Criminal Law Section 5-622 Annotated Code of Maryland (2002 Volume)
12 13 14 15 16 17	BY repealing and reenacting, with amendments, Article - Public Safety Section 5-101(c) and (g), 5-133(c) and (d) Annotated Code of Maryland (As enacted by Chapter (S.B. 1) of the Acts of the General Assembly of 2003)
18 19 20 21 22 23	BY adding to Article - Public Safety Section 5-133(d) Annotated Code of Maryland (As enacted by Chapter (S.B. 1) of the Acts of the General Assembly of 2003)
24 25 26 27 28 29	BY repealing and reenacting, without amendments, Article - Public Safety Section 5-101(h), 5-133(b), and 5-143 Annotated Code of Maryland (As enacted by Chapter (S.B. 1) of the Acts of the General Assembly of 2003)
30 31	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
32	Article - Criminal Procedure
33	5-202.
34 35	(c) (1) A District Court commissioner may not authorize the pretrial release of a defendant charged with a crime of violence if the defendant has been previously

1	(i)	) i	in this St	ate of a crime of violence; or		
2 3	(ii violence if committed in		in any other jurisdiction of a crime that would be a crime of state.			
4 5	(2) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH VIOLATING:					
6 7	(I INVOLVES A FIREAR		§ 4-102 (	OF THE CRIMINAL LAW ARTICLE IF THE OFFENSE		
8	I)	(I)	§ 4-204,	§ 4-306(B), OR § 5-621 OF THE CRIMINAL LAW ARTICLE;		
9	(I	II)	§ 5-133(I	B), (C), OR (D) OF THE PUBLIC SAFETY ARTICLE.		
10 11				A judge may authorize the pretrial release of a defendant APH (1) OR (2) of this subsection on:		
12			1.	suitable bail;		
13 14	defendant will not flee of			any other conditions that will reasonably ensure that the to another person or the community; or		
15 16	this subparagraph.	3	3.	both bail and other conditions described under item 2 of		
19 20 21	When a defendant described in [paragraph (1)] PARAGRAPH (1)  OR (2) of this subsection is presented to the court under Maryland Rule 4-216(g), the  judge shall order the continued detention of the defendant if the judge determines  that neither suitable bail nor any condition or combination of conditions will  reasonably ensure that the defendant will not flee or pose a danger to another person  or the community before the trial.					
	-	GRAPH	(1) OR (	a rebuttable presumption that a defendant described in 2) of this subsection will flee and pose a danger to		
26	8-105.					
27 28	7 (a) A review panel consists of three or more circuit court judges of the judicial 8 circuit in which the sentencing court is located.					
	member of the review p	anel, bu	ıt on requ	land Rule, the sentencing judge may not be a uest of the sentencing judge, the sentencing y in an advisory capacity.		
32 33	(c) (1) A sentence.	review	panel sh	all consider each application for review of a		
34 35	(2) A make investigations, rep			ay require the Division of Parole and Probation to mendations.		

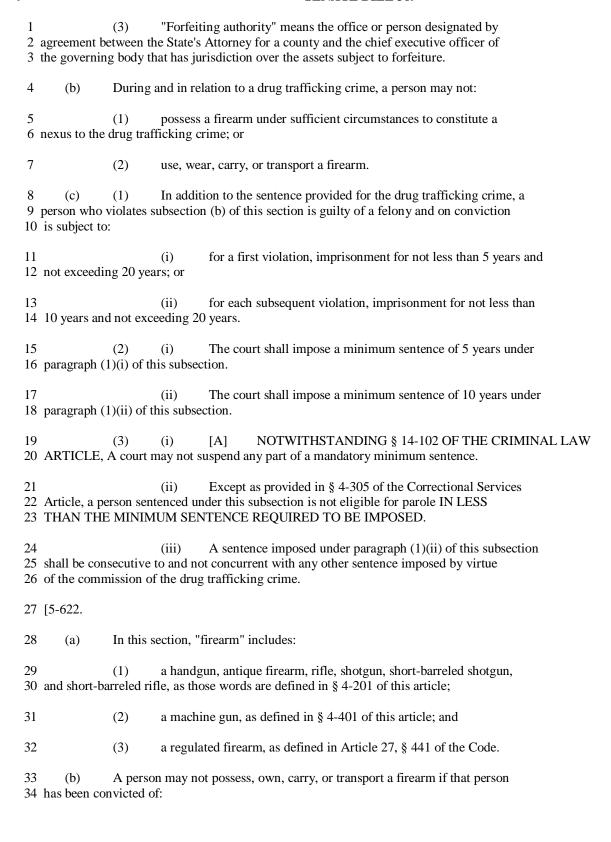
1	(3)	A review	w panel:	
2	review should remain	(i) unchang		without a hearing, may decide that the sentence under
4 5	served, including:	(ii)	after a h	earing, may order a different sentence to be imposed or
6			1.	an increased sentence;
7 8	SUBSECTION AND	subject t	2. o § 8-107	EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS (c) of this subtitle, a decreased sentence;
9			3.	a suspended sentence to be served wholly or partly; or
10			4.	a sentence to be suspended with or without probation.
		at the rev	iew pane	der a different sentence, the review panel may d considers just and that could have been art when the sentence was imposed.
	(5) THE MANDATORY FOLLOWING SECT	MINIM		NEL MAY NOT DECREASE A SENTENCE TO LESS THAN VITENCE REQUIRED TO BE IMPOSED UNDER THE
17 18	INVOLVES A FIRE	(I) ARM;	§ 4-102	OF THE CRIMINAL LAW ARTICLE IF THE OFFENSE
19 20	OR	(II)	§ 4-204,	, § 4-306(B), OR § 5-621 OF THE CRIMINAL LAW ARTICLE;
21		(III)	§ 5-1330	(B), (C), OR (D) OF THE PUBLIC SAFETY ARTICLE.
22 23				a different sentence, the review panel shall accordance with the order of the panel.
24	8-107.			
25 26	(c) (1) SENTENCE THAT			TION DOES NOT APPLY TO A MANDATORY MINIMUM ECREASED UNDER § 8-105(B)(5) OF THIS SUBTITLE.
27 28	(2) sentence unless the d			nay not order a decrease in a mandatory minimum ew panel is unanimous.
29				Article - Criminal Law
30	4-102.			
31	(a) This sec	tion does	not appl	y to:
32	(1)	a law en	forcemen	nt officer in the regular course of the officer's duty;





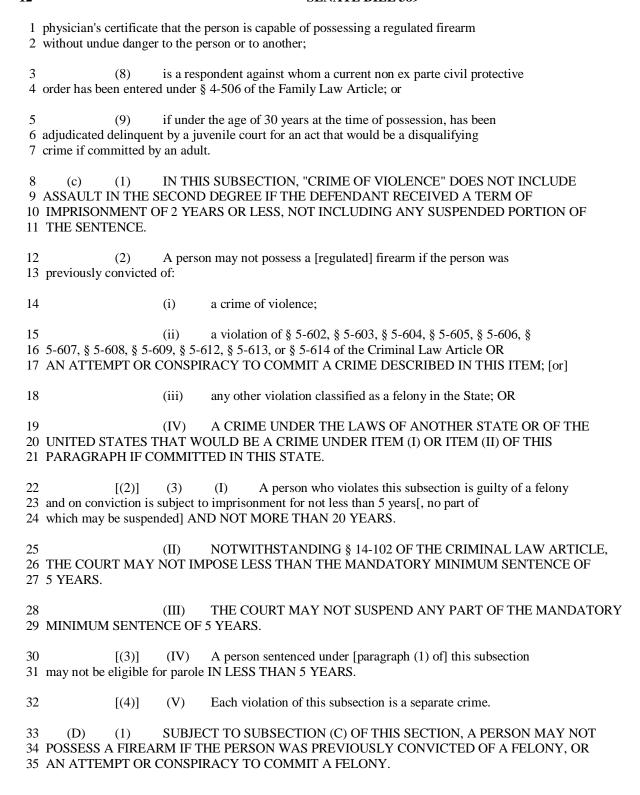


	(2) and not concurrent wi felony.		a subsequent violation, the sentence shall be consecutive to her sentence imposed for the crime of violence or
4	4-306.		
7 8	crime of violence as d	20 round lefined in addition	h who uses an assault pistol, or a magazine that has a ds of ammunition, in the commission of a felony or a Article 27, § 441 of the Code is guilty of a misdemeanor to any other sentence imposed for the felony or crime of der this subsection.
10 11	(2) imprisonment for not	(i) less than	For a first violation, the person shall be sentenced to 5 years and not exceeding 20 years.
12 13	years.	(ii)	The court may not impose less than the minimum sentence of 5
14 15	ARTICLE, THE man	(iii) idatory m	[The] NOTWITHSTANDING § 14-102 OF THE CRIMINAL LAW inimum sentence of 5 years may not be suspended.
16 17	Services Article, the	(iv) person is	Except as otherwise provided in § 4-305 of the Correctional not eligible for parole in less than 5 years.
18 19	(3) imprisonment for not	(i) less than	For each subsequent violation, the person shall be sentenced to 10 years and not exceeding 20 years.
20 21	10 years.	(ii)	The court may not impose less than the minimum sentence of
22 23	THE MANDATORY	(III) Y MINIM	NOTWITHSTANDING § 14-102 OF THE CRIMINAL LAW ARTICLE UM SENTENCE OF 10 YEARS MAY NOT BE SUSPENDED.
	CORRECTIONAL S LESS THAN 10 YEAR		EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE S ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
	consecutive to and no crime of violence.	[(iii)] ot concuri	(V) A sentence imposed under this paragraph shall be rent with any other sentence imposed for the felony or
30	5-621.		
31	(a) (1)	In this so	ection the following words have the meanings indicated.
34		possessio	afficking crime" means a felony or a conspiracy to commit a n, distribution, manufacture, or importation of a e under §§ 5-602 through 5-609 and 5-614 of this



1		(1)	a felony under this title;
2 3	would be a fe	(2) elony und	a crime under the laws of another state or of the United States that der this title if committed in this State;
4 5	this subsection	(3) on; or	conspiracy to commit a crime referred to in paragraphs (1) and (2) of
6 7	this subsection	(4) on.	an attempt to commit a crime referred to in paragraphs (1) and (2) of
	(c) subject to im both.]		n who violates this section is guilty of a felony and on conviction is ent not exceeding 5 years or a fine not exceeding \$10,000 or
11			Article - Public Safety
12	5-101.		
13	(c)	"Crime	of violence" means:
14		(1)	abduction;
15		(2)	arson in the first degree;
16		(3)	assault in the first or second degree;
17		(4)	burglary in the first, second, or third degree;
18		(5)	carjacking and armed carjacking;
19		(6)	escape in the first degree;
20		(7)	kidnapping;
21		(8)	voluntary manslaughter;
22 23	the Code;	(9)	maiming as previously proscribed under former Article 27, § 386 of
24 25	the Code.	(10)	mayhem as previously proscribed under former Article 27, § 384 of
26		(11)	murder in the first or second degree;
27		(12)	rape in the first or second degree;
28		(13)	robbery;
29		(14)	robbery with a dangerous weapon;

1		(15)	sexual offense in the first, second, or third degree;
2	items (1) thro	(16) ough (15)	an attempt OR CONSPIRACY to commit any of the crimes listed in of this subsection; or
	through (15) 1 year.	(17) of this su	assault with intent to commit any of the crimes listed in items (1) absection or a crime punishable by imprisonment for more than
7	(g)	"Disqua	lifying crime" means:
8		(1)	a crime of violence;
9 10	CONSPIRA	(2) CY TO (	a violation classified as a felony in the State, OR AN ATTEMPT OR COMMIT A FELONY; or
			a violation classified as a misdemeanor in the State that carries a more than 2 years, OR AN ATTEMPT OR CONSPIRACY TO COMMIT THAT CARRIES A STATUTORY PENALTY OF MORE THAN 2 YEARS.
14	(h)	(1)	"Firearm" means:
15 16		expel a	(i) a weapon that expels, is designed to expel, or may readily be projectile by the action of an explosive; or
17			(ii) the frame or receiver of such a weapon.
18		(2)	"Firearm" includes a starter gun.
19	5-133.		
20	(b)	A person	n may not possess a regulated firearm if the person:
21		(1)	has been convicted of a disqualifying crime;
22 23	and received	(2) I a term o	has been convicted of a violation classified as a common law crime of imprisonment of more than 2 years;
24		(3)	is a fugitive from justice;
25		(4)	is a habitual drunkard;
26		(5)	is addicted to a controlled dangerous substance or is a habitual user;
29	another, unle	ess the pe	suffers from a mental disorder as defined in § 10-101(f)(2) of the cle and has a history of violent behavior against the person or erson has a physician's certificate that the person is capable of d firearm without undue danger to the person or to another;
31 32	defined in §	(7) 10-101 c	has been confined for more than 30 consecutive days to a facility as of the Health - General Article, unless the person has a



	(2) AND ON CONVICT AND NOT MORE T	ION IS S	UBJECT	O VIOLATES THIS SUBSECTION IS GUILTY OF A FELONY TO IMPRISONMENT FOR NOT LESS THAN 2 YEARS
	(3) COURT MAY NOT YEARS.			NDING § 14-102 OF THE CRIMINAL LAW ARTICLE, THE HAN THE MANDATORY MINIMUM SENTENCE OF 2
7 8	(4) MINIMUM SENTER			AY NOT SUSPEND ANY PART OF THE MANDATORY
9 10	(5) ELIGIBLE FOR PA			TENCED UNDER THIS SUBSECTION MAY NOT BE THAN 2 YEARS.
11	(6)	EACH	VIOLAT	ION OF THIS SUBSECTION IS A SEPARATE CRIME.
	-		ars may n	as provided in paragraph (2) of this subsection, a person not possess a regulated firearm or ammunition
15 16	(2) firearm, this subsect			is otherwise prohibited from possessing a regulated to:
17 18	ammunition solely d	(i) esigned f		porary transfer or possession of a regulated firearm or lated firearm if the person is:
19 20	old and who is not p	rohibited	1. by State o	under the supervision of another who is at least 21 years or federal law from possessing a firearm; and
21 22	of the transferee or p	erson in j	2. possession	acting with the permission of the parent or legal guardian n;
23 24	regulated firearm;	(ii)	the trans	sfer by inheritance of title, and not of possession, of a
25 26	National Guard while	(iii) e perform		er of the armed forces of the United States or the ial duties;
27 28	ammunition solely d	(iv) esigned f		porary transfer or possession of a regulated firearm or lated firearm if the person is:
29 30	organization; and		1.	participating in marksmanship training of a recognized
31			2.	under the supervision of a qualified instructor;
32 33	employment and wh	(v) o holds a		n who is required to possess a regulated firearm for onder Subtitle 3 of this title; or

- 1 (vi) the possession of a firearm or ammunition for self-defense or
- 2 the defense of others against a trespasser into the residence of the person in
- 3 possession or into a residence in which the person in possession is an invited guest.
- 4 5-143.
- 5 (a) Except as otherwise provided in this subtitle, a dealer or other person may 6 not knowingly participate in the illegal sale, rental, transfer, purchase, possession, or 7 receipt of a regulated firearm in violation of this subtitle.
- 8 (b) A person who violates this section is guilty of a misdemeanor and on 9 conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding 10 \$10,000 or both.
- 11 (c) Each violation of this section is a separate crime.
- 12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take 13 effect October 1, 2003.