

HOUSE BILL 211

E4
HB 1135/12 – JUD

3lr1797

By: **Delegates Vitale, Dwyer, George, McDermott, and Schuh**
Introduced and read first time: January 21, 2013
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Handgun Permits – Qualifications**

3 FOR the purpose of altering a certain provision of law so as to prohibit a person with a
4 certain mental disorder from possessing a regulated firearm if the mental
5 disorder impairs the mental or emotional functioning of the person in a certain
6 manner, instead of if the person has a certain history of violent behavior;
7 altering a certain provision of law so as to require the Secretary of State Police
8 to issue a certain handgun permit to a certain person within a certain number
9 of days, instead of within a reasonable time; prohibiting the Secretary from
10 issuing a certain handgun permit to a person who the Secretary finds is
11 prohibited from possessing a certain regulated firearm under a certain provision
12 of law, is an illegal alien, has been dishonorably discharged from the armed
13 forces of the United States, has a pending charge for a felony or a misdemeanor
14 for which a sentence of imprisonment for more than a certain amount of time
15 may be imposed, or has not completed a certain firearms safety training course
16 and field training course or test unless a certain ground for exemption applies;
17 repealing the requirement that the Secretary find that a person has a good and
18 substantial reason to wear, carry, or transport a handgun before issuing a
19 handgun permit to the person; and generally relating to the issuing of handgun
20 permits by the Secretary of State Police.

21 BY repealing and reenacting, with amendments,
22 Article – Public Safety
23 Section 5–133 and 5–306
24 Annotated Code of Maryland
25 (2011 Replacement Volume and 2012 Supplement)

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

28 **Article – Public Safety**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5-133.

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

6 (b) A person may not possess a regulated firearm if the person:

7 (1) has been convicted of a disqualifying crime;

8 (2) has been convicted of a violation classified as a common law crime
9 and received a term of imprisonment of more than 2 years;

10 (3) is a fugitive from justice;

11 (4) is a habitual drunkard;

12 (5) is addicted to a controlled dangerous substance or is a habitual
13 user;

14 (6) suffers from a mental disorder as defined in § 10-101(f)(2) of the
15 Health – General Article [and has a history of violent behavior against the person or
16 another], **WHICH MENTAL DISORDER SO SUBSTANTIALLY IMPAIRS THE MENTAL
17 OR EMOTIONAL FUNCTIONING OF THE PERSON AS TO MAKE CARE OR
18 TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE PERSON OR
19 FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER**, unless the person
20 has a physician's certificate that the person is capable of possessing a regulated
21 firearm without undue danger to the person or to another;

22 (7) has been confined for more than 30 consecutive days to a facility as
23 defined in § 10-101 of the Health – General Article, unless the person has a
24 physician's certificate that the person is capable of possessing a regulated firearm
25 without undue danger to the person or to another;

26 (8) except as provided in subsection (e) of this section, is a respondent
27 against whom a current non ex parte civil protective order has been entered under §
28 4-506 of the Family Law Article; or

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

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

- 1 (i) a crime of violence;
- 2 (ii) a violation of § 5–602, § 5–603, § 5–604, § 5–605, § 5–612, §
3 5–613, or § 5–614 of the Criminal Law Article; or
- 4 (iii) an offense under the laws of another state or the United
5 States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph
6 if committed in this State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 2. under the supervision of a qualified instructor;

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

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

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

20 (1) the regulated firearm is unloaded;

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

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

26 5-306.

27 (a) Subject to subsection (b) of this section, the Secretary shall issue a permit
28 within [a reasonable time] **45 DAYS** to a person who the Secretary finds:

29 (1) is an adult;

30 (2) (i) has not been convicted of a felony or of a misdemeanor for
31 which a sentence of imprisonment for more than 1 year has been imposed; or

1 (ii) if convicted of a crime described in item (i) of this item, has
2 been pardoned or has been granted relief under 18 U.S.C. § 925(c);

3 (3) has not been convicted of a crime involving the possession, use, or
4 distribution of a controlled dangerous substance;

5 (4) is not presently an alcoholic, addict, or habitual user of a controlled
6 dangerous substance unless the habitual use of the controlled dangerous substance is
7 under legitimate medical direction; [and]

8 **(5) IS NOT PROHIBITED FROM POSSESSING A REGULATED**
9 **FIREARM UNDER § 5-133 OF THIS TITLE;**

10 **(6) IS NOT AN ILLEGAL ALIEN;**

11 **(7) HAS NOT BEEN DISHONORABLY DISCHARGED FROM THE**
12 **ARMED FORCES OF THE UNITED STATES;**

13 **(8) DOES NOT HAVE A PENDING CHARGE FOR A FELONY OR A**
14 **MISDEMEANOR FOR WHICH A SENTENCE OF IMPRISONMENT FOR MORE THAN 1**
15 **YEAR MAY BE IMPOSED;**

16 **(9) HAS COMPLETED A CERTIFIED FIREARMS SAFETY TRAINING**
17 **COURSE THAT THE POLICE TRAINING COMMISSION CONDUCTS WITHOUT**
18 **CHARGE OR THAT MEETS THE STANDARDS THAT THE POLICE TRAINING**
19 **COMMISSION ESTABLISHES UNDER § 3-207 OF THIS ARTICLE AND A FIELD**
20 **TRAINING COURSE OR TEST AT THE PERSON'S EXPENSE UNLESS A GROUND FOR**
21 **EXEMPTION SET FORTH IN ITEMS (1) THROUGH (4) OF § 5-119 OF THIS TITLE**
22 **APPLIES; AND**

23 **[(5)] (10) based on an investigation[**

24 **(i)], has not exhibited a propensity for violence or instability that**
25 **may reasonably render the person's possession of a handgun a danger to the person or**
26 **to another[; and**

27 **(ii) has good and substantial reason to wear, carry, or transport**
28 **a handgun, such as a finding that the permit is necessary as a reasonable precaution**
29 **against apprehended danger].**

30 **(b) An applicant under the age of 30 years is qualified only if the Secretary**
31 **finds that the applicant has not been:**

1 (1) committed to a detention, training, or correctional institution for
2 juveniles for longer than 1 year after an adjudication of delinquency by a juvenile
3 court; or

4 (2) adjudicated delinquent by a juvenile court for:

5 (i) an act that would be a crime of violence if committed by an
6 adult;

7 (ii) an act that would be a felony in this State if committed by
8 an adult; or

9 (iii) an act that would be a misdemeanor in this State that
10 carries a statutory penalty of more than 2 years if committed by an adult.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2013.