

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

1 AN ACT concerning

2 **Possession of Loaded Handgun or Regulated Firearm – Enhanced Penalties**

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

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Law
16 Section 4–203(a)(1) and (c)
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2013 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Public Safety
21 Section 5–133
22 Annotated Code of Maryland
23 (2011 Replacement Volume and 2013 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – Public Safety
26 Section 5–144
27 Annotated Code of Maryland
28 (2011 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Law**

4 4–203.

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

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

9 (ii) wear, carry, or knowingly transport a handgun, whether
10 concealed or open, in a vehicle traveling on a road or parking lot generally used by the
11 public, highway, waterway, or airway of the State;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1

Article – Public Safety

2 5–133.

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

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

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

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

12 (3) is a fugitive from justice;

13 (4) is a habitual drunkard;

14 (5) is addicted to a controlled dangerous substance or is a habitual
15 user;

16 (6) suffers from a mental disorder as defined in § 10–101(f)(2) of the
17 Health – General Article and has a history of violent behavior against the person or
18 another;

19 (7) has been found incompetent to stand trial under § 3–106 of the
20 Criminal Procedure Article;

21 (8) has been found not criminally responsible under § 3–110 of the
22 Criminal Procedure Article;

23 (9) has been voluntarily admitted for more than 30 consecutive days to
24 a facility as defined in § 10–101 of the Health – General Article;

25 (10) has been involuntarily committed to a facility as defined in §
26 10–101 of the Health – General Article;

27 (11) is under the protection of a guardian appointed by a court under §
28 13–201(c) or § 13–705 of the Estates and Trusts Article, except for cases in which the
29 appointment of a guardian is solely a result of a physical disability;

30 (12) except as provided in subsection (e) of this section, is a respondent
31 against whom:

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

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

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

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

11 (i) a crime of violence;

12 (ii) a violation of § 5–602, § 5–603, § 5–604, § 5–605, § 5–612, §
13 5–613, or § 5–614 of the Criminal Law Article; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 2. under the supervision of a qualified instructor;

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

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

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

29 (1) the regulated firearm is unloaded;

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

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

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

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

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

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

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

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

17 5-144.

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

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

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

23 (b) A person who violates this section is guilty of a misdemeanor and on
24 conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding
25 \$10,000 or both.

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

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