

# SENATE BILL 744

E1, E5  
SB 852/21 – JPR

EMERGENCY BILL

3lr1953

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By: **Senators Folden, Ready, Bailey, McKay, Mautz, West, Simonaire, Carozza, Watson, Salling, Corderman, Hershey, Jennings, and Gallion**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Crimes and Corrections – Penalties and Procedures**  
3 **(Violent Firearms Offender Act of 2023)**

4 FOR the purpose of establishing that a violation of a condition of probation, parole, or  
5 mandatory supervision that involves the use or possession of a firearm is not a  
6 technical violation for certain purposes; requiring the Commissioner of Correction to  
7 provide a certain inmate with a certain reentry kit and assistance in obtaining  
8 Medicaid benefits under certain circumstances; altering the elements of certain  
9 prohibitions against using a certain firearm in the commission of a certain crime;  
10 providing that the use of a firearm in the commission of the offense of possession  
11 with intent to distribute a controlled dangerous substance is a crime of violence for  
12 certain purposes; altering the penalties for unlawful possession of a regulated  
13 firearm; prohibiting a dealer or other person from selling, renting, loaning, or  
14 transferring a regulated firearm to a purchaser, lessee, borrower, or transferee if the  
15 dealer or other person has actual knowledge that the purchaser, lessee, borrower, or  
16 transferee intends to use the regulated firearm for a certain purpose; and generally  
17 relating to criminal and correctional penalties and procedures.

18 BY renumbering

19 Article – Public Safety  
20 Section 5–134(c) and (d)  
21 to be Section 5–134(d) and (e), respectively  
22 Annotated Code of Maryland  
23 (2022 Replacement Volume)

24 BY repealing and reenacting, without amendments,

25 Article – Correctional Services  
26 Section 6–101(a)  
27 Annotated Code of Maryland  
28 (2017 Replacement Volume and 2022 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,  
2 Article – Correctional Services  
3 Section 6–101(m)  
4 Annotated Code of Maryland  
5 (2017 Replacement Volume and 2022 Supplement)

6 BY adding to  
7 Article – Correctional Services  
8 Section 9–609.2  
9 Annotated Code of Maryland  
10 (2017 Replacement Volume and 2022 Supplement)

11 BY repealing and reenacting, with amendments,  
12 Article – Criminal Law  
13 Section 4–204, 4–306(b), 4–404, and 14–101(a)  
14 Annotated Code of Maryland  
15 (2021 Replacement Volume and 2022 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article – Public Safety  
18 Section 5–133(b)  
19 Annotated Code of Maryland  
20 (2022 Replacement Volume)

21 BY repealing and reenacting, without amendments,  
22 Article – Public Safety  
23 Section 5–134(b)  
24 Annotated Code of Maryland  
25 (2022 Replacement Volume)

26 BY adding to  
27 Article – Public Safety  
28 Section 5–134(c)  
29 Annotated Code of Maryland  
30 (2022 Replacement Volume)

31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
32 That Section(s) 5–134(c) and (d) of Article – Public Safety of the Annotated Code of  
33 Maryland be renumbered to be Section(s) 5–134(d) and (e), respectively.

34 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
35 as follows:

36 **Article – Correctional Services**

37 6–101.

1 (a) In this subtitle the following words have the meanings indicated.

2 (m) "Technical violation" means a violation of a condition of probation, parole, or  
3 mandatory supervision that does not involve:

4 (1) an arrest or a summons issued by a commissioner on a statement of  
5 charges filed by a law enforcement officer;

6 (2) a violation of a criminal prohibition other than a minor traffic offense;

7 (3) a violation of a no-contact or stay-away order; [or]

8 (4) absconding; OR

9 (5) USE OR POSSESSION OF A FIREARM.

10 **9-609.2.**

11 **BEFORE RELEASE OF AN INMATE FROM A STATE CORRECTIONAL FACILITY,**  
12 **THE COMMISSIONER OF CORRECTION SHALL PROVIDE THE INMATE WITH:**

13 (1) A REENTRY KIT, INCLUDING:

14 (I) AT LEAST 1 WEEK OF SUPPLIES FOR BASIC HUMAN NEEDS,  
15 INCLUDING TOILETRIES AND CLOTHING;

16 (II) THE IDENTIFICATION CARD REQUIRED TO BE ISSUED  
17 UNDER § 9-609.1 OF THIS SUBTITLE;

18 (III) 1. CONTACT INFORMATION FOR ENTITIES THAT  
19 SPECIALIZE IN PROVIDING REENTRY SERVICES, HOUSING ASSISTANCE, SUBSTANCE  
20 USE DISORDER TREATMENT, AND MENTAL HEALTH SERVICES; AND

21 2. IF THE INMATE IS NOT ELIGIBLE FOR MEDICAID  
22 BENEFITS, CONTACT INFORMATION FOR THE MARYLAND HEALTH BENEFIT  
23 EXCHANGE; AND

24 (IV) PUBLIC TRANSPORTATION INFORMATION, INCLUDING  
25 LOCAL PUBLIC TRANSPORTATION SCHEDULES AND MAPS; AND

26 (2) IF THE INMATE IS ELIGIBLE FOR MEDICAID BENEFITS,  
27 ASSISTANCE IN OBTAINING MEDICAID BENEFITS.

1 4–204.

2 (a) (1) In this section[, “firearm”] **THE FOLLOWING WORDS HAVE THE**  
3 **MEANINGS INDICATED.**

4 (2) (I) **“FIREARM”** means:

5 [(i)] 1. a weapon that expels, is designed to expel, or may readily  
6 be converted to expel a projectile by the action of an explosive; or

7 [(ii)] 2. the frame or receiver of such a weapon.

8 [(2)] (II) “Firearm” includes an antique firearm, handgun, rifle, shotgun,  
9 short–barreled rifle, short–barreled shotgun, starter gun, or any other firearm, whether  
10 loaded or unloaded.

11 (3) **“USE A FIREARM” DOES NOT INCLUDE THE MERE POSSESSION OF**  
12 **A FIREARM.**

13 (b) A person may not use a firearm in the commission of a crime of violence, as  
14 defined in § 5–101 of the Public Safety Article, or any felony, whether the firearm is  
15 operable or inoperable at the time of the crime.

16 (c) (1) (i) A person who violates this section is guilty of a [misdemeanor]  
17 **FELONY** and, in addition to any other penalty imposed for the crime of violence or felony,  
18 shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

19 (ii) The court may not impose less than the minimum sentence of 5  
20 years and, except as otherwise provided in § 4–305 of the Correctional Services Article, the  
21 person is not eligible for parole in less than 5 years.

22 (2) For each subsequent violation, the sentence shall be consecutive to and  
23 not concurrent with any other sentence imposed for the crime of violence or felony.

24 4–306.

25 (b) (1) **IN THIS SUBSECTION, “USES” DOES NOT INCLUDE MERE**  
26 **POSSESSION.**

27 (2) A person who uses an assault weapon, a rapid fire trigger activator, or  
28 a magazine that has a capacity of more than 10 rounds of ammunition, in the commission  
29 of a felony or a crime of violence as defined in § 5–101 of the Public Safety Article is guilty  
30 of a [misdemeanor] **FELONY** and on conviction, in addition to any other sentence imposed  
31 for the felony or crime of violence, shall be sentenced under this subsection.

1            ~~[(2)]~~ (3)        (i)     For a first violation, the person shall be sentenced to  
2 imprisonment for not less than 5 years and not exceeding 20 years.

3                            (ii)    The court may not impose less than the minimum sentence of 5  
4 years.

5                            (iii)   The mandatory minimum sentence of 5 years may not be  
6 suspended.

7                            (iv)    Except as otherwise provided in § 4-305 of the Correctional  
8 Services Article, the person is not eligible for parole in less than 5 years.

9            ~~[(3)]~~ (4)        (i)     For each subsequent violation, the person shall be  
10 sentenced to imprisonment for not less than 10 years and not exceeding 20 years.

11                            (ii)    The court may not impose less than the minimum sentence of 10  
12 years.

13                            (iii)   A sentence imposed under this paragraph shall be consecutive to  
14 and not concurrent with any other sentence imposed for the felony or crime of violence.

15 4-404.

16            (a)     A person may not use or possess a machine gun in the commission or  
17 attempted commission of a **FELONY OR** crime of violence.

18            (b)     A person who violates this section is guilty of a felony and on conviction is  
19 subject to imprisonment not exceeding 20 years.

20 14-101.

21            (a)     In this section, "crime of violence" means:

22                            (1)    abduction;

23                            (2)    arson in the first degree;

24                            (3)    kidnapping;

25                            (4)    manslaughter, except involuntary manslaughter;

26                            (5)    mayhem;

27                            (6)    maiming, as previously proscribed under former Article 27, §§ 385 and  
28 386 of the Code;

29                            (7)    murder;

- 1 (8) rape;
- 2 (9) robbery under § 3–402 or § 3–403 of this article;
- 3 (10) carjacking;
- 4 (11) armed carjacking;
- 5 (12) sexual offense in the first degree;
- 6 (13) sexual offense in the second degree;
- 7 (14) use of a firearm in the commission of a felony [except possession with  
8 intent to distribute a controlled dangerous substance under § 5–602(2) of this article,] or  
9 other crime of violence;
- 10 (15) child abuse in the first degree under § 3–601 of this article;
- 11 (16) sexual abuse of a minor under § 3–602 of this article if:
- 12 (i) the victim is under the age of 13 years and the offender is an  
13 adult at the time of the offense; and
- 14 (ii) the offense involved:
- 15 1. vaginal intercourse, as defined in § 3–301 of this article;
- 16 2. a sexual act, as defined in § 3–301 of this article;
- 17 3. an act in which a part of the offender’s body penetrates,  
18 however slightly, into the victim’s genital opening or anus; or
- 19 4. the intentional touching of the victim’s or the offender’s  
20 genital, anal, or other intimate area for sexual arousal, gratification, or abuse;
- 21 (17) home invasion under § 6–202(b) of this article;
- 22 (18) a felony offense under Title 3, Subtitle 11 of this article;
- 23 (19) an attempt to commit any of the crimes described in items (1) through  
24 (18) of this subsection;
- 25 (20) continuing course of conduct with a child under § 3–315 of this article;
- 26 (21) assault in the first degree;

- 1 (22) assault with intent to murder;
- 2 (23) assault with intent to rape;
- 3 (24) assault with intent to rob;
- 4 (25) assault with intent to commit a sexual offense in the first degree; and
- 5 (26) assault with intent to commit a sexual offense in the second degree.

6 **Article – Public Safety**

7 5–133.

8 (b) (1) Subject to § 5–133.3 of this subtitle, a person may not possess a  
9 regulated firearm if the person:

- 10 [(1)] (I) has been convicted of a disqualifying crime;
- 11 [(2)] (II) has been convicted of a violation classified as a common law  
12 crime and received a term of imprisonment of more than 2 years;
- 13 [(3)] (III) is a fugitive from justice;
- 14 [(4)] (IV) is a habitual drunkard;
- 15 [(5)] (V) is addicted to a controlled dangerous substance or is a habitual  
16 user;
- 17 [(6)] (VI) suffers from a mental disorder as defined in § 10–101(i)(2) of the  
18 Health – General Article and has a history of violent behavior against the person or  
19 another;
- 20 [(7)] (VII) has been found incompetent to stand trial under § 3–106 of the  
21 Criminal Procedure Article;
- 22 [(8)] (VIII) has been found not criminally responsible under § 3–110 of the  
23 Criminal Procedure Article;
- 24 [(9)] (IX) has been voluntarily admitted for more than 30 consecutive days  
25 to a facility as defined in § 10–101 of the Health – General Article;
- 26 [(10)] (X) has been involuntarily committed to a facility as defined in §  
27 10–101 of the Health – General Article;

1            [(11)] (XI) is under the protection of a guardian appointed by a court under  
 2 § 13–201(c) or § 13–705 of the Estates and Trusts Article, except for cases in which the  
 3 appointment of a guardian is solely a result of a physical disability;

4            [(12)] (XII) except as provided in subsection (e) of this section, is a  
 5 respondent against whom:

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

8            [(ii)] 2. an order for protection, as defined in § 4–508.1 of the  
 9 Family Law Article, has been issued by a court of another state or a Native American tribe  
 10 and is in effect; or

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

14           **(2) (I) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,**  
 15 **A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON**  
 16 **CONVICTION IS SUBJECT TO:**

17           **1. EXCEPT AS PROVIDED IN ITEM 2 OF THIS**  
 18 **SUBPARAGRAPH, IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT**  
 19 **EXCEEDING \$10,000 OR BOTH; AND**

20           **2. SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION,**  
 21 **FOR A SECOND OR SUBSEQUENT OFFENSE, IMPRISONMENT NOT EXCEEDING 10**  
 22 **YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.**

23           **(II) EACH VIOLATION OF THIS SUBSECTION IS A SEPARATE**  
 24 **CRIME.**

25           **(III) A PERSON CONVICTED UNDER THIS SUBSECTION IS NOT**  
 26 **PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §**  
 27 **8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE**  
 28 **SENTENCE.**

29           **(3) THE COURT MAY NOT IMPOSE THE PENALTIES UNDER**  
 30 **PARAGRAPH (2)(I)2 OF THIS SUBSECTION UNLESS THE STATE’S ATTORNEY SERVES**  
 31 **NOTICE ON THE DEFENDANT OR THE DEFENDANT’S COUNSEL BEFORE THE**  
 32 **ACCEPTANCE OF A PLEA OF GUILTY OR NOLO CONTENDERE OR AT LEAST 15 DAYS**  
 33 **BEFORE TRIAL THAT:**



1                   **(I) THE STATE WILL SEEK THE PENALTIES UNDER PARAGRAPH**  
2 **(2)(I)2 OF THIS SUBSECTION; AND**

3                   **(II) LISTS THE ALLEGED PRIOR CONVICTIONS.**

4 5–134.

5           (b) A dealer or other person may not sell, rent, loan, or transfer a regulated  
6 firearm to a purchaser, lessee, borrower, or transferee who the dealer or other person knows  
7 or has reasonable cause to believe:

8                   (1) is under the age of 21 years, unless the regulated firearm is loaned to a  
9 borrower who may possess the regulated firearm under § 5–133(d) of this subtitle;

10                   (2) has been convicted of a disqualifying crime;

11                   (3) has been convicted of a conspiracy to commit a felony;

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

14                   (5) is a fugitive from justice;

15                   (6) is a habitual drunkard;

16                   (7) is addicted to a controlled dangerous substance or is a habitual user;

17                   (8) suffers from a mental disorder as defined in § 10–101(i)(2) of the Health  
18 – General Article, and has a history of violent behavior against the purchaser, lessee,  
19 borrower, or transferee or another, unless the purchaser, lessee, borrower, or transferee  
20 possesses a physician’s certificate that the recipient is capable of possessing a regulated  
21 firearm without undue danger to the purchaser, lessee, borrower, or transferee or to  
22 another;

23                   (9) has been confined for more than 30 consecutive days to a facility as  
24 defined in § 10–101 of the Health – General Article, unless the purchaser, lessee, borrower,  
25 or transferee possesses a physician’s certificate that the recipient is capable of possessing  
26 a regulated firearm without undue danger to the purchaser, lessee, borrower, or transferee  
27 or to another;

28                   (10) is a respondent against whom a current non ex parte civil protective  
29 order has been entered under § 4–506 of the Family Law Article;

30                   (11) if under the age of 30 years at the time of the transaction, has been  
31 adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if  
32 committed by an adult;

1 (12) is visibly under the influence of alcohol or drugs;

2 (13) is a participant in a straw purchase;

3 (14) subject to subsection (c) of this section for a transaction under this  
4 subsection that is made on or after January 1, 2002, has not completed a certified firearms  
5 safety training course conducted free of charge by the Maryland Police Training and  
6 Standards Commission or that meets standards established by the Maryland Police  
7 Training and Standards Commission under § 3-207 of this article; or

8 (15) intends to use the regulated firearm to:

9 (i) commit a crime; or

10 (ii) cause harm to the purchaser, lessee, transferee, or recipient or  
11 another person.

12 **(C) (1) A DEALER OR OTHER PERSON MAY NOT SELL, RENT, LOAN, OR**  
13 **TRANSFER A REGULATED FIREARM TO A PURCHASER, LESSEE, BORROWER, OR**  
14 **TRANSFeree IF THE DEALER OR OTHER PERSON HAS ACTUAL KNOWLEDGE THAT**  
15 **THE PURCHASER, LESSEE, BORROWER, OR TRANSFeree INTENDS TO USE THE**  
16 **REGULATED FIREARM TO:**

17 **(I) COMMIT A CRIME; OR**

18 **(II) CAUSE HARM TO THE PURCHASER, LESSEE, TRANSFeree,**  
19 **OR RECIPIENT OR ANOTHER PERSON.**

20 **(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A**  
21 **FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10**  
22 **YEARS.**

23 **(3) EACH VIOLATION OF THIS SUBSECTION IS A SEPARATE CRIME.**

24 **(4) A PERSON CONVICTED UNDER THIS SUBSECTION IS NOT**  
25 **PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §**  
26 **8-507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE**  
27 **SENTENCE.**

28 **(5) A DEFENDANT CHARGED WITH VIOLATING THIS SUBSECTION**  
29 **SHALL ALSO BE CHARGED WITH VIOLATING SUBSECTION (B) OF THIS SECTION.**

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency  
31 measure, is necessary for the immediate preservation of the public health or safety, has  
32 been passed by a ye and nay vote supported by three-fifths of all the members elected to

1 each of the two Houses of the General Assembly, and shall take effect from the date it is  
2 enacted.