

SENATE BILL 339

E1
SB 852/21 – JPR

EMERGENCY BILL

2lr1548

By: **Senators Hough, Bailey, Carozza, Cassilly, Corderman, Eckardt, Edwards, Gallion, Hershey, Jennings, Ready, Salling, Simonaire, and West**

Introduced and read first time: January 20, 2022

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Penalties and Procedures**
3 **(Violent Firearms Offender Act of 2022)**

4 FOR the purpose of requiring the Commissioner of Correction to provide an inmate with a
5 reentry kit and assistance in obtaining Medicaid benefits; expanding the types of
6 cases in which the State may appeal from a decision of a trial court; authorizing a
7 court to release a defendant charged with a certain crime on certain terms or
8 conditions or to order the defendant remanded to custody pending a certain appeal;
9 prohibiting a dealer or other person from selling, renting, loaning, or transferring a
10 regulated firearm to a purchaser, lessee, borrower, or transferee if the dealer or other
11 person has actual knowledge that the purchaser, lessee, borrower, or transferee
12 intends to use the regulated firearm for a certain purpose; establishing that a person
13 convicted of a certain offense is not prohibited from participating in certain
14 treatment; requiring a State's Attorney to provide certain notice to a criminal
15 defendant or the defendant's counsel; and generally relating to firearms and violent
16 crimes.

17 BY renumbering
18 Article – Public Safety
19 Section 5–134(c) and (d), respectively
20 to be Section 5–134(d) and (e), respectively
21 Annotated Code of Maryland
22 (2018 Replacement Volume and 2021 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article – Correctional Services
25 Section 6–101(a)
26 Annotated Code of Maryland
27 (2017 Replacement Volume and 2021 Supplement)

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 2021 Supplement)

6 BY adding to
7 Article – Correctional Services
8 Section 9–609.2
9 Annotated Code of Maryland
10 (2017 Replacement Volume and 2021 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 12–302(c)(4)
14 Annotated Code of Maryland
15 (2020 Replacement Volume and 2021 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Criminal Law
18 Section 4–204, 4–306(b), 4–404, and 14–101(a)
19 Annotated Code of Maryland
20 (2021 Replacement Volume and 2021 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Public Safety
23 Section 5–133(b)
24 Annotated Code of Maryland
25 (2018 Replacement Volume and 2021 Supplement)

26 BY repealing and reenacting, without amendments,
27 Article – Public Safety
28 Section 5–134(b)
29 Annotated Code of Maryland
30 (2018 Replacement Volume and 2021 Supplement)

31 BY adding to
32 Article – Public Safety
33 Section 5–134(c)
34 Annotated Code of Maryland
35 (2018 Replacement Volume and 2021 Supplement)

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

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

Article – Correctional Services

6–101.

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

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

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

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

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

(4) absconding; **OR**

(5) USE OR POSSESSION OF A FIREARM.

9–609.2.

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

(1) A REENTRY KIT, INCLUDING:

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

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

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

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

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

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

Article – Courts and Judicial Proceedings

12–302.

(c) (4) (i) [In a case involving] **THIS PARAGRAPH APPLIES IN A CASE:**

1. INVOLVING a crime of violence as defined in § 14–101 of
the Criminal Law Article[, and in cases under];

2. UNDER §§ 5–602 through 5–609 and §§ 5–612 through
5–614 of the Criminal Law Article[.];

3. UNDER §§ 5–621 AND 5–622 OF THE CRIMINAL LAW
ARTICLE; OR

4. UNDER §§ 5–133, 5–133.1, 5–134, 5–136, 5–138,
5–140, 5–141, 5–142, 5–205, AND 5–206 OF THE PUBLIC SAFETY ARTICLE.

(II) FOR CASES LISTED IN SUBPARAGRAPH (I) OF THIS
PARAGRAPH, the State may appeal from a decision of a trial court that excludes evidence
offered by the State or requires the return of property alleged to have been seized in
violation of the Constitution of the United States, the Maryland Constitution, or the
Maryland Declaration of Rights.

[(ii)] (III) The appeal shall be made before jeopardy attaches to the
defendant. However, in all cases the appeal shall be taken no more than 15 days after the
decision has been rendered and shall be diligently prosecuted.

[(iii)] (IV) Before taking the appeal, the State shall certify to the
court that the appeal is not taken for purposes of delay and that the evidence excluded or
the property required to be returned is substantial proof of a material fact in the proceeding.
The appeal shall be heard and the decision rendered within 120 days of the time that the
record on appeal is filed in the appellate court. Otherwise, the decision of the trial court
shall be final.

[(iv)] (V) Except in a homicide case, if the State appeals on the basis
of this paragraph, and if on final appeal the decision of the trial court is affirmed, the
charges against the defendant shall be dismissed in the case from which the appeal was

taken. In that case, the State may not prosecute the defendant on those specific charges or on any other related charges arising out of the same incident.

[(v)] (VI) 1. Except as provided in subsubparagraph 2 of this subparagraph, pending the prosecution and determination of an appeal taken under this paragraph or paragraph (2) of this subsection, the defendant shall be released on personal recognizance bail. If the defendant fails to appear as required by the terms of the recognizance bail, the trial court shall subject the defendant to the penalties provided in § 5–211 of the Criminal Procedure Article.

2. A. Pending the prosecution and determination of an appeal taken under this paragraph or paragraph (2) of this subsection, in a case in which the defendant is charged with a crime of violence, as defined in § 14–101 of the Criminal Law Article, **OR A FIREARM–RELATED CRIME LISTED IN SUBPARAGRAPH (I)3 OR 4 OF THIS PARAGRAPH**, the court may release the defendant on any terms and conditions that the court considers appropriate or may order the defendant remanded to custody pending the outcome of the appeal.

B. The determination and enforcement of any terms and conditions of release shall be in accordance with the provisions of Title 5 of the Criminal Procedure Article.

[(vi)] (VII) If the State loses the appeal, the jurisdiction shall pay all the costs related to the appeal, including reasonable attorney’s fees incurred by the defendant as a result of the appeal.

Article – Criminal Law

4–204.

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

(2) (I) “FIREARM” means:

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

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

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

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

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

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

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

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

4–306.

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

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

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

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

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

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

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

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

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

4–404.

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

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

14–101.

(a) In this section, “crime of violence” means:

- (1) abduction;
- (2) arson in the first degree;
- (3) kidnapping;
- (4) manslaughter, except involuntary manslaughter;
- (5) mayhem;
- (6) maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Code;
- (7) murder;
- (8) rape;
- (9) robbery under § 3–402 or § 3–403 of this article;
- (10) carjacking;
- (11) armed carjacking;
- (12) sexual offense in the first degree;
- (13) sexual offense in the second degree;
- (14) use of a firearm in the commission of a felony [except possession with intent to distribute a controlled dangerous substance under § 5–602(2) of this article,] or other crime of violence;
- (15) child abuse in the first degree under § 3–601 of this article;

(16) sexual abuse of a minor under § 3–602 of this article if:

(i) the victim is under the age of 13 years and the offender is an adult at the time of the offense; and

(ii) the offense involved:

1. vaginal intercourse, as defined in § 3–301 of this article;

2. a sexual act, as defined in § 3–301 of this article;

3. an act in which a part of the offender's body penetrates, however slightly, into the victim's genital opening or anus; or

4. the intentional touching of the victim's or the offender's genital, anal, or other intimate area for sexual arousal, gratification, or abuse;

(17) home invasion under § 6–202(b) of this article;

(18) a felony offense under Title 3, Subtitle 11 of this article;

(19) an attempt to commit any of the crimes described in items (1) through (18) of this subsection;

(20) continuing course of conduct with a child under § 3–315 of this article;

(21) assault in the first degree;

(22) assault with intent to murder;

(23) assault with intent to rape;

(24) assault with intent to rob;

(25) assault with intent to commit a sexual offense in the first degree; and

(26) assault with intent to commit a sexual offense in the second degree.

Article – Public Safety

5–133.

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

[(1)] (I) has been convicted of a disqualifying crime;

1 [(2)] (II) has been convicted of a violation classified as a common law
2 crime and received a term of imprisonment of more than 2 years;

3 [(3)] (III) is a fugitive from justice;

4 [(4)] (IV) is a habitual drunkard;

5 [(5)] (V) is addicted to a controlled dangerous substance or is a habitual
6 user;

7 [(6)] (VI) suffers from a mental disorder as defined in § 10–101(i)(2) of the
8 Health – General Article and has a history of violent behavior against the person or
9 another;

10 [(7)] (VII) has been found incompetent to stand trial under § 3–106 of the
11 Criminal Procedure Article;

12 [(8)] (VIII) has been found not criminally responsible under § 3–110 of the
13 Criminal Procedure Article;

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

16 [(10)] (X) has been involuntarily committed to a facility as defined in §
17 10–101 of the Health – General Article;

18 [(11)] (XI) is under the protection of a guardian appointed by a court under
19 § 13–201(c) or § 13–705 of the Estates and Trusts Article, except for cases in which the
20 appointment of a guardian is solely a result of a physical disability;

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

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

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

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

1 **(2) (I) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A**
2 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:**

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

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

9 **(II) EACH VIOLATION OF THIS SUBSECTION IS A SEPARATE**
10 **CRIME.**

11 **(III) A PERSON CONVICTED UNDER THIS SUBSECTION IS NOT**
12 **PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §**
13 **8-507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE**
14 **SENTENCE.**

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

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

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

23 5-134.

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

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

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

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

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

(5) is a fugitive from justice;

(6) is a habitual drunkard;

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

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

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

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

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

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

(13) is a participant in a straw purchase;

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

(15) intends to use the regulated firearm to:

(i) commit a crime; or

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

(C) (1) A DEALER OR OTHER PERSON MAY NOT SELL, RENT, LOAN, OR TRANSFER A REGULATED FIREARM TO A PURCHASER, LESSEE, BORROWER, OR TRANSFEEE IF THE DEALER OR OTHER PERSON HAS ACTUAL KNOWLEDGE THAT

1 THE PURCHASER, LESSEE, BORROWER, OR TRANSFEREE INTENDS TO USE THE
2 REGULATED FIREARM TO:

3 (I) COMMIT A CRIME; OR

4 (II) CAUSE HARM TO THE PURCHASER, LESSEE, TRANSFEREE,
5 OR RECIPIENT OR ANOTHER PERSON.

6 (2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A
7 FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10
8 YEARS.

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

10 (4) A PERSON CONVICTED UNDER THIS SUBSECTION IS NOT
11 PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §
12 8-507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE
13 SENTENCE.

14 (5) A DEFENDANT CHARGED WITH VIOLATING THIS SUBSECTION
15 SHALL ALSO BE CHARGED WITH VIOLATING SUBSECTION (B) OF THIS SECTION.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
17 measure, is necessary for the immediate preservation of the public health or safety, has
18 been passed by a yea and nay vote supported by three-fifths of all the members elected to
19 each of the two Houses of the General Assembly, and shall take effect from the date it is
20 enacted.