

SENATE BILL 852

E1
SB 35/20 – JPR

EMERGENCY BILL

1lr2181

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

Introduced and read first time: February 9, 2021

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2021

CHAPTER _____

1 AN ACT concerning

2 **Crimes – Penalties and Procedures**
3 **(Violent Firearms Offender Act of 2021)**

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

22 ~~BY renumbering~~

23 ~~Article Criminal Law~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~Section 7-104(h) through (j), respectively~~
2 ~~to be Section 7-104(i) through (k), respectively~~
3 ~~Annotated Code of Maryland~~
4 ~~(2012 Replacement Volume and 2020 Supplement)~~

5 BY renumbering
6 Article – Public Safety
7 Section 5-134(c) and (d), respectively
8 to be Section 5-134(d) and (e), respectively
9 Annotated Code of Maryland
10 (2018 Replacement Volume and 2020 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Correctional Services
13 Section 6-101(a)
14 Annotated Code of Maryland
15 (2017 Replacement Volume and 2020 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Correctional Services
18 Section 6-101(m)
19 Annotated Code of Maryland
20 (2017 Replacement Volume and 2020 Supplement)

21 BY adding to
22 Article – Correctional Services
23 Section 9-609.2
24 Annotated Code of Maryland
25 (2017 Replacement Volume and 2020 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Courts and Judicial Proceedings
28 Section 12-302(c)(4)
29 Annotated Code of Maryland
30 (2020 Replacement Volume)

31 BY repealing and reenacting, with amendments,
32 Article – Criminal Law
33 Section 4-204, 4-306(b), 4-404, ~~7-104(g)~~, and 14-101(a)
34 Annotated Code of Maryland
35 (2012 Replacement Volume and 2020 Supplement)

36 ~~BY adding to~~
37 ~~Article – Criminal Law~~
38 ~~Section 7-104(h)~~
39 ~~Annotated Code of Maryland~~
40 ~~(2012 Replacement Volume and 2020 Supplement)~~

1 ~~BY repealing and reenacting, with amendments,~~
 2 ~~Article – Criminal Law~~
 3 ~~Section 7–104(j)~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(2012 Replacement Volume and 2020 Supplement)~~
 6 ~~(As enacted by Section 1 of this Act)~~

7 ~~BY repealing and reenacting, without amendments,~~
 8 ~~Article – Criminal Procedure~~
 9 ~~Section 5–202(e)(1) and (d)(1)~~
 10 ~~Annotated Code of Maryland~~
 11 ~~(2018 Replacement Volume and 2020 Supplement)~~

12 ~~BY repealing and reenacting, with amendments,~~
 13 ~~Article – Criminal Procedure~~
 14 ~~Section 5–202(f)~~
 15 ~~Annotated Code of Maryland~~
 16 ~~(2018 Replacement Volume and 2020 Supplement)~~

17 BY repealing and reenacting, with amendments,
 18 Article – Public Safety
 19 Section 5–133(b)
 20 Annotated Code of Maryland
 21 (2018 Replacement Volume and 2020 Supplement)

22 BY repealing and reenacting, without amendments,
 23 Article – Public Safety
 24 Section 5–134(b)
 25 Annotated Code of Maryland
 26 (2018 Replacement Volume and 2020 Supplement)

27 BY adding to
 28 Article – Public Safety
 29 Section 5–134(c)
 30 Annotated Code of Maryland
 31 (2018 Replacement Volume and 2020 Supplement)

32 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 33 ~~That Section(s) 7–104(h) through (j), respectively, of Article – Criminal Law of the~~
 34 ~~Annotated Code of Maryland be renumbered to be Section(s) 7–104(i) through (k),~~
 35 ~~respectively.~~

36 ~~SECTION 2. AND BE IT FURTHER ENACTED,~~ That Section(s) 5–134(c) and (d),
 37 respectively, of Article – Public Safety of the Annotated Code of Maryland be renumbered
 38 to be Section(s) 5–134(d) and (e), respectively.

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

3 **Article – Correctional Services**

4 6–101.

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

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

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

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

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

12 (4) absconding; OR

13 **(5) USE OR POSSESSION OF A FIREARM.**

14 **9–609.2.**

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

17 **(1) A REENTRY KIT, INCLUDING:**

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

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

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

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

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

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

5 **Article – Courts and Judicial Proceedings**

6 12–302.

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

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

10 2. UNDER §§ 5–602 through 5–609 and §§ 5–612 through
11 5–614 of the Criminal Law Article[.];

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

14 4. UNDER §§ 5–133, 5–133.1, 5–134, 5–136, 5–138,
15 5–140, 5–141, 5–142, 5–205, AND 5–206 OF THE PUBLIC SAFETY ARTICLE.

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

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

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

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

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

3 ~~[(v)]~~ **(VI)** 1. Except as provided in subparagraph 2 of this
4 subparagraph, pending the prosecution and determination of an appeal taken under this
5 paragraph or paragraph (2) of this subsection, the defendant shall be released on personal
6 recognizance bail. If the defendant fails to appear as required by the terms of the
7 recognizance bail, the trial court shall subject the defendant to the penalties provided in §
8 5–211 of the Criminal Procedure Article.

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

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

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

22 Article – Criminal Law

23 4–204.

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

26 **(2) (I) “FIREARM” means:**

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

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

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

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

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

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

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

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

12 4–306.

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

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

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

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

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

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

28 [(3)] (4) (i) For each subsequent violation, the person shall be
29 sentenced to imprisonment for not less than 10 years and not exceeding 20 years.

30 (ii) The court may not impose less than the minimum sentence of 10
31 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.

~~7-104.~~

~~(g) (1) THIS SUBSECTION DOES NOT APPLY TO THEFT OF A FIREARM.~~

~~(2) A person convicted of theft of property or services with a value of:~~

~~(i) at least \$1,500 but less than \$25,000 is guilty of a felony and:~~

~~1. is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both; and~~

~~2. shall restore the property taken to the owner or pay the owner the value of the property or services;~~

~~(ii) at least \$25,000 but less than \$100,000 is guilty of a felony and:~~

~~1. is subject to imprisonment not exceeding 10 years or a fine not exceeding \$15,000 or both; and~~

~~2. shall restore the property taken to the owner or pay the owner the value of the property or services; or~~

~~(iii) \$100,000 or more is guilty of a felony and:~~

~~1. is subject to imprisonment not exceeding 20 years or a fine not exceeding \$25,000 or both; and~~

~~2. shall restore the property taken to the owner or pay the owner the value of the property or services.~~

~~[(2)] (3) Except as provided in paragraph [(3)] (4) of this subsection, a person convicted of theft of property or services with a value of at least \$100 but less than \$1,500, is guilty of a misdemeanor and:~~

~~(i) is subject to:~~

1 ~~1. for a first conviction, imprisonment not exceeding 6~~
2 ~~months or a fine not exceeding \$500 or both; and~~

3 ~~2. for a second or subsequent conviction, imprisonment not~~
4 ~~exceeding 1 year or a fine not exceeding \$500 or both; and~~

5 ~~(ii) shall restore the property taken to the owner or pay the owner~~
6 ~~the value of the property or services.~~

7 ~~[(3)] (4) A person convicted of theft of property or services with a value of~~
8 ~~less than \$100 is guilty of a misdemeanor and:~~

9 ~~(i) is subject to imprisonment not exceeding 90 days or a fine not~~
10 ~~exceeding \$500 or both; and~~

11 ~~(ii) shall restore the property taken to the owner or pay the owner~~
12 ~~the value of the property or services.~~

13 ~~[(4)] (5) Subject to paragraph [(5)] (6) of this subsection, a person who~~
14 ~~has four or more prior convictions under this subtitle and who is convicted of theft of~~
15 ~~property or services with a value of less than \$1,500 under paragraph [(2)] (3) of this~~
16 ~~subsection is guilty of a misdemeanor and:~~

17 ~~(i) is subject to imprisonment not exceeding 5 years or a fine not~~
18 ~~exceeding \$5,000 or both; and~~

19 ~~(ii) shall restore the property taken to the owner or pay the owner~~
20 ~~the value of the property or services.~~

21 ~~[(5)] (6) The court may not impose the penalties under paragraph [(4)]~~
22 ~~(5) of this subsection unless the State's Attorney serves notice on the defendant or the~~
23 ~~defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at least~~
24 ~~15 days before trial that:~~

25 ~~(i) the State will seek the penalties under paragraph [(4)] (5) of this~~
26 ~~subsection; and~~

27 ~~(ii) lists the alleged prior convictions.~~

28 ~~(H) A PERSON CONVICTED OF THEFT OF A FIREARM, INCLUDING AN~~
29 ~~ANTIQUE FIREARM OR A REPLICA OF AN ANTIQUE FIREARM:~~

30 ~~(1) IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO~~
31 ~~IMPRISONMENT NOT EXCEEDING 5 YEARS AND A FINE NOT EXCEEDING \$10,000; AND~~

1 ~~(2) SHALL RESTORE THE FIREARM TO THE OWNER OR PAY THE~~
2 ~~OWNER THE VALUE OF THE FIREARM.~~

3 ~~(j) An action or prosecution for a violation of subsection [(g)(2) or (3)] (G)(3) OR~~
4 ~~(4) of this section shall be commenced within 2 years after the commission of the crime.~~

5 14-101.

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

7 (1) abduction;

8 (2) arson in the first degree;

9 (3) kidnapping;

10 (4) manslaughter, except involuntary manslaughter;

11 (5) mayhem;

12 (6) maiming, as previously proscribed under former Article 27, §§ 385 and
13 386 of the Code;

14 (7) murder;

15 (8) rape;

16 (9) robbery under § 3-402 or § 3-403 of this article;

17 (10) carjacking;

18 (11) armed carjacking;

19 (12) sexual offense in the first degree;

20 (13) sexual offense in the second degree;

21 (14) use of a firearm in the commission of a felony [except possession with
22 intent to distribute a controlled dangerous substance under § 5-602(2) of this article,] or
23 other crime of violence;

24 (15) child abuse in the first degree under § 3-601 of this article;

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

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

3 (ii) the offense involved:

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

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

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

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

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

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

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

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

15 (21) assault in the first degree;

16 (22) assault with intent to murder;

17 (23) assault with intent to rape;

18 (24) assault with intent to rob;

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

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

21 ~~Article Criminal Procedure~~

22 ~~5–202.~~

23 ~~(e) (1) A District Court commissioner may not authorize the pretrial release of~~
24 ~~a defendant charged with a crime of violence if the defendant has been previously convicted~~

25 ~~(i) in this State of a crime of violence;~~

26 ~~(ii) in any other jurisdiction of a crime that would be a crime of~~
27 ~~violence if committed in this State; or~~

(iii) ~~of an offense listed in subsection (f)(1) of this section.~~

~~(d) (1) A District Court commissioner may not authorize the pretrial release of a defendant charged with committing one of the following crimes while the defendant was released on bail or personal recognizance for a pending prior charge of committing one of the following crimes:~~

~~(i) aiding, counseling, or procuring arson in the first degree under § 6-102 of the Criminal Law Article;~~

~~(ii) arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree under § 6-103 of the Criminal Law Article;~~

~~(iii) burglary in the first degree under § 6-202 of the Criminal Law Article;~~

~~(iv) burglary in the second degree under § 6-203 of the Criminal Law Article;~~

~~(v) burglary in the third degree under § 6-204 of the Criminal Law Article;~~

~~(vi) causing abuse to a child under § 3-601 or § 3-602 of the Criminal Law Article;~~

~~(vii) a crime that relates to a destructive device under § 4-503 of the Criminal Law Article;~~

~~(viii) a crime that relates to a controlled dangerous substance under §§ 5-602 through 5-609 or § 5-612 or § 5-613 of the Criminal Law Article;~~

~~(ix) manslaughter by vehicle or vessel under § 2-209 of the Criminal Law Article; and~~

~~(x) a crime of violence.~~

~~(f) (1) (H) A District Court commissioner may not authorize the pretrial release of a defendant charged with [one of the following crimes] A CRIME LISTED IN SUBPARAGRAPH (H) OF THIS PARAGRAPH if the defendant:~~

~~1. has previously been convicted of a crime of violence or [one of the following crimes:] A CRIME LISTED IN SUBPARAGRAPH (H) OF THIS PARAGRAPH; OR~~

1 ~~2. IS ON PRETRIAL RELEASE FOR A CRIME OF VIOLENCE~~
2 ~~OR A CRIME LISTED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH.~~

3 ~~(II) THIS SUBSECTION APPLIES TO THE FOLLOWING CRIMES:~~

4 ~~[(i)] 1. wearing, carrying, or transporting a handgun under §~~
5 ~~4-203 of the Criminal Law Article;~~

6 ~~[(ii)] 2. use of a handgun or an antique firearm in commission of a~~
7 ~~crime under § 4-204 of the Criminal Law Article;~~

8 ~~[(iii)] 3. violating prohibitions relating to assault weapons under §~~
9 ~~4-303 of the Criminal Law Article;~~

10 ~~[(iv)] 4. use of a machine gun in a crime of violence under § 4-404~~
11 ~~of the Criminal Law Article;~~

12 ~~[(v)] 5. use of a machine gun for an aggressive purpose under §~~
13 ~~4-405 of the Criminal Law Article;~~

14 ~~[(vi)] 6. use of a weapon as a separate crime under § 5-621 of the~~
15 ~~Criminal Law Article;~~

16 ~~[(vii)] 7. possession of a regulated firearm under § 5-133 of the~~
17 ~~Public Safety Article;~~

18 ~~[(viii)] 8. transporting a regulated firearm for unlawful sale or~~
19 ~~trafficking under § 5-140 of the Public Safety Article; or~~

20 ~~[(ix)] 9. possession of a rifle or shotgun by a person with a mental~~
21 ~~disorder under § 5-205 of the Public Safety Article.~~

22 ~~(2) (i) A judge may authorize the pretrial release of a defendant~~
23 ~~described in paragraph (1) of this subsection on:~~

24 ~~1. suitable bail;~~

25 ~~2. any other conditions that will reasonably ensure that the~~
26 ~~defendant will not flee or pose a danger to another person or the community; or~~

27 ~~3. both bail and other conditions described under item 2 of~~
28 ~~this subparagraph.~~

29 ~~(ii) When a defendant described in paragraph (1) of this subsection~~
30 ~~is presented to the court under Maryland Rule 4-216(f), the judge shall order the continued~~
31 ~~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.~~

~~(3) There is a rebuttable presumption that a defendant described in paragraph (1) of this subsection will flee and pose a danger to another person or the community.~~

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;

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

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

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

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

[(6)] (VI) 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 person or another;

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

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

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

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

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

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

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

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

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

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

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

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

20 **(II) EACH VIOLATION OF THIS SUBSECTION IS A SEPARATE
21 CRIME.**

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

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

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

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

1 5–134.

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

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

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

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

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

11 (5) is a fugitive from justice;

12 (6) is a habitual drunkard;

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

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

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

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

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

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

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

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

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

7 (i) commit a crime; or

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

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

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

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

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

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

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

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

28 SECTION ~~4~~ 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
29 measure, is necessary for the immediate preservation of the public health or safety, has
30 been passed by a yea and nay vote supported by three-fifths of all the members elected to
31 each of the two Houses of the General Assembly, and shall take effect from the date it is
32 enacted.