

SENATE BILL 638

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6lr2519
CF HB 573

By: **Senators Pugh and McFadden**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

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

16 BY repealing and reenacting, with amendments,
17 Article – Criminal Law
18 Section 4–203(a)(1) and (c)
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2015 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Public Safety
23 Section 5–133
24 Annotated Code of Maryland
25 (2011 Replacement Volume and 2015 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Criminal Law**

2 4–203.

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

4 (i) wear, carry, or transport a handgun, whether concealed or open,
5 on or about the person;6 (ii) wear, carry, or knowingly transport a handgun, whether
7 concealed or open, in a vehicle traveling on a road or parking lot generally used by the
8 public, highway, waterway, or airway of the State;9 (iii) violate item (i) or (ii) of this paragraph while on public school
10 property in the State; [or]11 (iv) violate item (i) or (ii) of this paragraph with the deliberate
12 purpose of injuring or killing another person; OR13 (v) VIOLATE ITEM (I) OR (II) OF THIS PARAGRAPH WITH A
14 HANDGUN LOADED WITH AMMUNITION.15 (c) (1) (I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
16 PARAGRAPH, A person who violates this section is guilty of a misdemeanor and on
17 conviction is subject to the penalties provided in this subsection.18 (II) 1. A PERSON WHO VIOLATES SUBSECTION (A)(1)(V) OF
19 THIS SECTION:20 A. FOR A FIRST OFFENSE, IS GUILTY OF A MISDEMEANOR
21 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 1 YEAR
22 AND NOT EXCEEDING 5 YEARS; OR23 B. FOR A SECOND OR SUBSEQUENT OFFENSE, IS GUILTY
24 OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS
25 THAN 5 YEARS AND NOT EXCEEDING 20 YEARS.26 2. IF THE STATE INTENDS TO PROCEED AGAINST A
27 PERSON AS A SUBSEQUENT OFFENDER UNDER THIS SUBPARAGRAPH, THE STATE
28 SHALL COMPLY WITH THE PROCEDURES SET FORTH IN THE MARYLAND RULES FOR
29 INDICTMENT AND TRIAL OF A SUBSEQUENT OFFENDER.30 3. A MANDATORY MINIMUM SENTENCE UNDER THIS
31 SUBPARAGRAPH MAY NOT BE IMPOSED UNLESS THE STATE'S ATTORNEY NOTIFIES

1 THE DEFENDANT IN WRITING AT LEAST 30 DAYS BEFORE TRIAL OF THE STATE'S
2 INTENTION TO SEEK THE MANDATORY MINIMUM SENTENCE.

3 4. A COURT MAY NOT SUSPEND ANY PART OF A
4 MANDATORY MINIMUM SENTENCE UNDER THIS SUBPARAGRAPH.

5 5. EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
6 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE
7 DURING THE MANDATORY MINIMUM SENTENCE.

8 6. A COURT MAY NOT ORDER PROBATION BEFORE
9 JUDGMENT IN A CASE ARISING UNDER THIS SUBPARAGRAPH.

10 7. EACH VIOLATION OF SUBSECTION (A)(1)(V) OF THIS
11 SECTION IS A SEPARATE OFFENSE.

12 (2) If the person has not previously been convicted under this section,
13 § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

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

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

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

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

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

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

27 (4) (i) If the person has previously been convicted more than once under
28 this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title, or of any combination
29 of these crimes:

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

1 (11) 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) except as provided in subsection (e) of this section, is a respondent
5 against whom:

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

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

11 (13) 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 (c) (1) A person may not possess a regulated firearm if the person was
15 previously convicted of:

16 (i) a crime of violence;

17 (ii) a violation of § 5–602, § 5–603, § 5–604, § 5–605, § 5–612,
18 § 5–613, or § 5–614 of the Criminal Law Article; or

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

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

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

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

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

1 (i) the imposition of the mandatory minimum sentence is within the
2 discretion of the court; and

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

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

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

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

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

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

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

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

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

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

23 1. participating in marksmanship training of a recognized
24 organization; and

25 2. under the supervision of a qualified instructor;

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

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

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

4 (1) the regulated firearm is unloaded;

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

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

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

12 **(2) A PERSON WHO VIOLATES THIS SUBSECTION:**

13 **(I) FOR A FIRST OFFENSE, IS GUILTY OF A MISDEMEANOR AND**
14 **ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 1 YEAR AND**
15 **NOT EXCEEDING 5 YEARS; OR**

16 **(II) FOR A SECOND OR SUBSEQUENT OFFENSE, IMPRISONMENT**
17 **FOR NOT LESS THAN 5 YEARS AND NOT EXCEEDING 20 YEARS.**

18 **(3) IF THE STATE INTENDS TO PROCEED AGAINST A PERSON AS A**
19 **SUBSEQUENT OFFENDER UNDER THIS SUBSECTION, THE STATE SHALL COMPLY**
20 **WITH THE PROCEDURES SET FORTH IN THE MARYLAND RULES FOR THE**
21 **INDICTMENT AND TRIAL OF A SUBSEQUENT OFFENDER.**

22 **(4) A MANDATORY MINIMUM SENTENCE UNDER PARAGRAPH (2) OF**
23 **THIS SUBSECTION MAY NOT BE IMPOSED UNLESS THE STATE'S ATTORNEY NOTIFIES**
24 **THE DEFENDANT IN WRITING AT LEAST 30 DAYS BEFORE TRIAL OF THE STATE'S**
25 **INTENTION TO SEEK THE MANDATORY MINIMUM SENTENCE.**

26 **(5) A COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY**
27 **MINIMUM SENTENCE UNDER THIS SUBSECTION.**

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

31 **(7) A COURT MAY NOT ORDER PROBATION BEFORE JUDGMENT IN A**
32 **CASE ARISING UNDER THIS SUBSECTION.**

1 **(8) EACH VIOLATION OF THIS SUBSECTION IS A SEPARATE OFFENSE.**

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
3 October 1, 2016.