

SENATE BILL 28

E1, E5
SB 744/23 – JPR

EMERGENCY BILL
(PRE-FILED)

4lr1062
CF 4lr1336

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

Requested: October 20, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes and Corrections – Penalties and Procedures**
3 **(Violent Firearms Offender Act of 2024)**

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 incarcerated individual with a certain reentry kit and assistance
8 in obtaining Medicaid benefits under certain circumstances; altering the elements of
9 certain prohibitions against using a certain firearm in the commission of a certain
10 crime; providing that the use of a firearm in the commission of the offense of
11 possession with intent to distribute a controlled dangerous substance is a crime of
12 violence for certain purposes; altering the penalties for unlawful possession of a
13 regulated firearm; prohibiting a dealer or other person from selling, renting, loaning,
14 or transferring a regulated firearm to a purchaser, lessee, borrower, or transferee if
15 the dealer or other person has actual knowledge that the purchaser, lessee, borrower,
16 or transferee intends to use the regulated firearm for a certain purpose; and
17 generally 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 and 2023 Supplement)

24 BY repealing and reenacting, without amendments,

25 Article – Correctional Services
26 Section 6–101(a)
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (2017 Replacement Volume and 2023 Supplement)
- 2 BY repealing and reenacting, with amendments,
3 Article – Correctional Services
4 Section 6–101(m)
5 Annotated Code of Maryland
6 (2017 Replacement Volume and 2023 Supplement)
- 7 BY adding to
8 Article – Correctional Services
9 Section 9–609.2
10 Annotated Code of Maryland
11 (2017 Replacement Volume and 2023 Supplement)
- 12 BY repealing and reenacting, with amendments,
13 Article – Criminal Law
14 Section 4–204, 4–306(b), 4–404, and 14–101(a)
15 Annotated Code of Maryland
16 (2021 Replacement Volume and 2023 Supplement)
- 17 BY repealing and reenacting, with amendments,
18 Article – Public Safety
19 Section 5–133(b)
20 Annotated Code of Maryland
21 (2022 Replacement Volume and 2023 Supplement)
- 22 BY repealing and reenacting, with amendments,
23 Article – Public Safety
24 Section 5–133(b–1)
25 Annotated Code of Maryland
26 (2022 Replacement Volume and 2023 Supplement)
27 (As enacted by Chapter 622 of the Acts of the General Assembly of 2023)
- 28 BY repealing and reenacting, without amendments,
29 Article – Public Safety
30 Section 5–134(b)
31 Annotated Code of Maryland
32 (2022 Replacement Volume and 2023 Supplement)
- 33 BY adding to
34 Article – Public Safety
35 Section 5–134(c)
36 Annotated Code of Maryland
37 (2022 Replacement Volume and 2023 Supplement)

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

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

6 **Article – Correctional Services**

7 6–101.

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

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

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

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

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

15 (4) absconding; OR

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

17 **9–609.2.**

18 **BEFORE RELEASE OF AN INCARCERATED INDIVIDUAL FROM A STATE**
19 **CORRECTIONAL FACILITY, THE COMMISSIONER OF CORRECTION SHALL PROVIDE**
20 **THE INCARCERATED INDIVIDUAL WITH:**

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

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

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

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

1 4–306.

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

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

9 [(2)] (3) (i) For a first violation, the person shall be sentenced to
10 imprisonment for not less than 5 years and not exceeding 20 years.

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

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

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

17 [(3)] (4) (i) For each subsequent violation, the person shall be
18 sentenced to imprisonment for not less than 10 years and not exceeding 20 years.

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

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

23 4–404.

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

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

28 14–101.

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

30 (1) abduction;

- 1 (2) arson in the first degree;
- 2 (3) kidnapping;
- 3 (4) manslaughter, except involuntary manslaughter;
- 4 (5) mayhem;
- 5 (6) maiming, as previously proscribed under former Article 27, §§ 385 and
6 386 of the Code;
- 7 (7) murder;
- 8 (8) rape;
- 9 (9) robbery under § 3–402 or § 3–403 of this article;
- 10 (10) carjacking;
- 11 (11) armed carjacking;
- 12 (12) sexual offense in the first degree;
- 13 (13) sexual offense in the second degree;
- 14 (14) use of a firearm in the commission of a felony [except possession with
15 intent to distribute a controlled dangerous substance under § 5–602(2) of this article,] or
16 other crime of violence;
- 17 (15) child abuse in the first degree under § 3–601 of this article;
- 18 (16) sexual abuse of a minor under § 3–602 of this article if:
 - 19 (i) 1. the victim is under the age of 13 years and the offender is
20 an adult at the time of the offense; or
 - 21 2. the offender is at least 21 years old and the victim is under
22 the age of 16 years; and
 - 23 (ii) the offense involved:
 - 24 1. vaginal intercourse, as defined in § 3–301 of this article;
 - 25 2. a sexual act, as defined in § 3–301 of this article;
 - 26 3. an act in which a part of the offender’s body penetrates,
27 however slightly, into the victim’s genital opening or anus; or

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

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

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

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

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

8 (21) assault in the first degree;

9 (22) assault with intent to murder;

10 (23) assault with intent to rape;

11 (24) assault with intent to rob;

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

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

14 **Article – Public Safety**

15 5–133.

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

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

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

21 **[(3) (i)] (III) 1.** has been convicted on or after October 1, 2023, of a
22 second or subsequent violation of § 4–104 of the Criminal Law Article; or

23 **[(ii)] 2.** has been convicted on or after October 1, 2023, of a
24 violation of § 4–104 of the Criminal Law Article if the violation resulted in the use of a
25 loaded firearm by a minor causing death or serious bodily injury to the minor or another
26 person;

1 **[(4)] (IV)** subject to subsection (b–1) of this section, is on supervised
2 probation after being convicted:

3 **[(i)] 1.** of a crime punishable by imprisonment for 1 year or more;

4 **[(ii)] 2.** for a violation of § 21–902(b) or (c) of the Transportation
5 Article; or

6 **[(iii)] 3.** for violating a protective order under § 4–509 of the Family
7 Law Article;

8 **[(5)] (V)** is a fugitive from justice;

9 **[(6)] (VI)** is a habitual drunkard;

10 **[(7)] (VII)** is addicted to a controlled dangerous substance or is a habitual
11 user;

12 **[(8)] (VIII)** suffers from a mental disorder as defined in § 10–101(i)(2) of the
13 Health – General Article and has a history of violent behavior against the person or
14 another;

15 **[(9)] (IX)** has been found incompetent to stand trial under § 3–106 of the
16 Criminal Procedure Article;

17 **[(10)] (X)** has been found not criminally responsible under § 3–110 of the
18 Criminal Procedure Article;

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

21 **[(12)] (XII)** has been involuntarily committed to a facility as defined in §
22 10–101 of the Health – General Article;

23 **[(13)] (XIII)** is under the protection of a guardian appointed by a court under
24 § 13–201(c) or § 13–705 of the Estates and Trusts Article, except for cases in which the
25 appointment of a guardian is solely a result of a physical disability;

26 **[(14)] (XIV)** except as provided in subsection (e) of this section, is a
27 respondent against whom:

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

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

4 [(15)] **(XV)** if under the age of 30 years at the time of possession, has been
5 adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if
6 committed by an adult.

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

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

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

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

18 **(III) A PERSON CONVICTED UNDER THIS SUBSECTION IS NOT**
19 **PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §**
20 **8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE**
21 **SENTENCE.**

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

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

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

30 (b–1) Subsection [(b)(4)] **(B)(1)(IV)** of this section may not be construed to prohibit
31 possession of a regulated firearm by a person who was not convicted of but received only
32 probation before judgment for an offense listed in subsection [(b)(4)] **(B)(1)(IV)** of this
33 section.

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

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

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

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

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

10 (5) is a fugitive from justice;

11 (6) is a habitual drunkard;

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

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

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

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

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

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

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

31 (14) subject to subsection (c) of this section for a transaction under this
32 subsection that is made on or after January 1, 2002, has not completed a certified firearms

1 safety training course conducted free of charge by the Maryland Police Training and
2 Standards Commission or that meets standards established by the Maryland Police
3 Training and Standards Commission under § 3–207 of this article; or

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

5 (i) commit a crime; or

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

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

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

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

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

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

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

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

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