



Legislation Text

File #: 17-0056, **Version:** 0

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore Council Bill

Introduced by: The Council President
At the request of: The Administration (Law Department)

A Bill Entitled

An Ordinance concerning **Electronic Control Devices - Authorizing Possession in Most Circumstances**

For the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense in the home and in public; prohibiting a person from possessing and using an electronic control device in sensitive places; prohibiting a person who poses an unacceptable risk to public safety from possessing and using an electronic control device; prohibiting the sale of an electronic control device to persons who pose an unacceptable risk to public safety; establishing certain penalties; defining certain terms; providing for a special effective date; and generally relating to electronic control devices.

By repealing and reordaining, with amendments

Article 19 - Police Ordinances
Section(s) 59-28
Baltimore City Code
(Edition 2000)

Recitals

Whereas, the Second Amendment to the United States Constitution reserves to the people the right to keep and bear arms.

Whereas, in 2008, the Supreme Court of the United States decided in the case of *District of Columbia v. Heller* that the Second Amendment to the United States Constitution protects an individual's right to possess and use a firearm for traditionally lawful purposes, such as self-defense in the home, and that the Second Amendment encompasses weapons that are typically used by law-abiding citizens for lawful purposes.

Whereas, in 2010, the Supreme Court of the United States decided in the case of *McDonald v. City of Chicago* that the Second Amendment's right to possess a firearm for self-defense in the home also applies to the states.

Whereas, in 2016, the Supreme Court of the United States concluded in a per curiam opinion in the case of

Caetano v. Massachusetts that a state government's categorical ban on the possession and use of electronic control devices had not been sufficiently justified under *Heller*, and the concurring opinion stated that such a ban clearly violates the Second Amendment.

Whereas, in order to promote public welfare and safety, non-lethal self-defense weapons such as electronic control devices are preferable to more lethal self-defense weapons, such as handguns, and it is therefore desirable to permit the sale, use, and possession of electronic control devices for use in self-defense, with reasonable restrictions.

Whereas, in order to promote public welfare and safety, it is necessary to promptly pass an ordinance that provides for reasonable regulation of the sale, possession, and use of electronic control devices, in addition to those regulations already established in Maryland State law.

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 19. Police Ordinances

Subtitle 59. Weapons

§ 59-28. [Stun guns] Electronic control devices.

(a) *Definitions.*

(1) *In general.*

In this section, the following terms have the meanings indicated.

(2) *“Electronic control device”.*

“Electronic control device” means a portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current.

(3) *“Adjudicated as a mental defective”.*

“Adjudicated as a mental defective” means a determination by a court, board, commission, or other lawful authority, that, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease, a person:

(i) is a danger to themselves or to others; or

(ii) lacks the mental capacity to contract or manage his or her own affairs.

(4) *“Mental disorder”.*

(i) “Mental disorder” means a behavioral or emotional illness that results from a psychiatric disorder.

(ii) “Mental disorder” includes a mental illness that so substantially impairs the mental or emotional functioning of an individual as to make care or treatment necessary or advisable for the welfare of the individual or for the safety of the person or property of another.

(5) “Protective order”.

“Protective order” means a temporary or final protective order entered under the authority of Maryland Code, Family Law Article, §§ 4-505 and 4-506.

(b) [(a)] *Possession or sale, etc., prohibited.*

(1) It shall be unlawful *to possess an electronic control device in a:*

(i) *public school;*

(ii) *State public building; or*

(iii) *City public building* [for any person, firm, or corporation to sell, give away, lend, rent or transfer to any individual, firm, or corporation a stun gun or other electronic device by whatever name or description which discharges a non-projectile electric current within the limits of the City of Baltimore].

(2) *It shall be unlawful to sell or ship an electronic control device to any person knowing or having reasonable cause to believe that the person has been:*

(i) *adjudicated as a mental defective; or*

(ii) *committed to any mental institution.* [It further shall be unlawful for any person to possess, fire, or discharge any such stun gun or electronic device within the City.]

(3) It shall be unlawful for any person to possess an electronic control device if the person suffers from a mental disorder and has a history of violent behavior against themselves or another.

(4) It shall be unlawful for any person subject to a protective order to possess an electronic control device for the duration of the protective order.

(c) [(b)] *Exceptions.*

Nothing in this [subsection] section shall be held to apply to any member of the Baltimore City Police Department or any other law enforcement officer while in the performance of his or her official duty.

(d) [(c)] *Penalties.*

Any violation of the provisions of this section shall be deemed to be a misdemeanor, subject upon conviction to a fine of not more than \$500 or to imprisonment for not longer than 60 days or to both fine and imprisonment, in the discretion of the Court.

Section 2. And be it further ordained, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

Section 3. And be it further ordained, That this Ordinance takes effect on the date it is enacted.