

SENATE BILL 861

E1

3lr3090
CF HB 478

By: **Senator Zirkin**

Introduced and read first time: February 7, 2013

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Committing a Crime of Violence in the Presence of a Minor –**
3 **Penalties**

4 FOR the purpose of prohibiting a person from committing a certain crime of violence
5 when the person knows or reasonably should know that a minor of a certain age
6 is present in a residence; establishing certain circumstances under which a
7 minor is present; establishing a certain enhanced penalty for a violation of this
8 Act; authorizing a court to impose an enhanced penalty if the State's Attorney
9 provides certain notice to the defendant in a certain manner and if certain
10 elements have been proven beyond a reasonable doubt; authorizing the State to
11 include a certain notice in a certain indictment or information; providing that a
12 person who violates this Act is guilty of the abuse of a child under 18 for certain
13 purposes; and generally relating to the commission of crimes of violence in the
14 presence of minors.

15 BY repealing and reenacting, without amendments,
16 Article – Courts and Judicial Proceedings
17 Section 9–106(a)
18 Annotated Code of Maryland
19 (2006 Replacement Volume and 2012 Supplement)

20 BY adding to
21 Article – Criminal Law
22 Section 3–601.1
23 Annotated Code of Maryland
24 (2012 Replacement Volume and 2012 Supplement)

25 BY repealing and reenacting, without amendments,
26 Article – Public Safety
27 Section 5–101(a) and (c)
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2011 Replacement Volume and 2012 Supplement)

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

4 **Article – Courts and Judicial Proceedings**

5 9–106.

6 (a) The spouse of a person on trial for a crime may not be compelled to testify
7 as an adverse witness unless the charge involves:

8 (1) The abuse of a child under 18; or

9 (2) Assault in any degree in which the spouse is a victim if:

10 (i) The person on trial was previously charged with assault in
11 any degree or assault and battery of the spouse;

12 (ii) The spouse was sworn to testify at the previous trial; and

13 (iii) The spouse refused to testify at the previous trial on the
14 basis of the provisions of this section.

15 **Article – Criminal Law**

16 **3–601.1.**

17 (A) (1) A PERSON MAY NOT COMMIT A CRIME OF VIOLENCE AS
18 DEFINED IN § 5–101 OF THE PUBLIC SAFETY ARTICLE WHEN THE PERSON
19 KNOWS OR REASONABLY SHOULD KNOW THAT A MINOR WHO IS AT LEAST 2
20 YEARS OLD AND UNDER THE AGE OF 16 YEARS IS PRESENT IN A RESIDENCE.

21 (2) FOR THE PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION,
22 A MINOR IS PRESENT IF THE MINOR IS WITHIN SIGHT OR HEARING OF THE
23 CRIME OF VIOLENCE.

24 (B) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO
25 IMPRISONMENT NOT EXCEEDING 5 YEARS IN ADDITION TO ANY OTHER
26 SENTENCE IMPOSED FOR THE CRIME OF VIOLENCE.

27 (C) A COURT MAY IMPOSE AN ENHANCED PENALTY UNDER SUBSECTION
28 (B) OF THIS SECTION IF:

1 (1) AT LEAST 30 DAYS BEFORE TRIAL THE STATE’S ATTORNEY
2 NOTIFIES THE DEFENDANT IN WRITING OF THE STATE’S INTENTION TO SEEK
3 THE ENHANCED PENALTY; AND

4 (2) THE ELEMENTS OF SUBSECTION (A)(1) OF THIS SECTION HAVE
5 BEEN PROVEN BEYOND A REASONABLE DOUBT.

6 (D) IF THE DEFENDANT IS CHARGED BY INDICTMENT OR CRIMINAL
7 INFORMATION, THE STATE MAY INCLUDE THE NOTICE REQUIRED UNDER
8 SUBSECTION (C)(1) OF THIS SECTION IN THE INDICTMENT OR INFORMATION.

9 (E) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE ABUSE
10 OF A CHILD UNDER 18 FOR THE PURPOSES OF § 9-106 OF THE COURTS
11 ARTICLE.

12 Article – Public Safety

13 5-101.

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

15 (c) “Crime of violence” means:

- 16 (1) abduction;
- 17 (2) arson in the first degree;
- 18 (3) assault in the first or second degree;
- 19 (4) burglary in the first, second, or third degree;
- 20 (5) carjacking and armed carjacking;
- 21 (6) escape in the first degree;
- 22 (7) kidnapping;
- 23 (8) voluntary manslaughter;
- 24 (9) maiming as previously proscribed under former Article 27, § 386 of
25 the Code;
- 26 (10) mayhem as previously proscribed under former Article 27, § 384 of
27 the Code;
- 28 (11) murder in the first or second degree;

- 1 (12) rape in the first or second degree;
- 2 (13) robbery;
- 3 (14) robbery with a dangerous weapon;
- 4 (15) sexual offense in the first, second, or third degree;
- 5 (16) an attempt to commit any of the crimes listed in items (1) through
6 (15) of this subsection; or
- 7 (17) assault with intent to commit any of the crimes listed in items (1)
8 through (15) of this subsection or a crime punishable by imprisonment for more than 1
9 year.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2013.