

SENATE BILL 861

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By: ~~Senator Beidle~~ **Senators Beidle, Smith, Waldstreicher, Bailey, Carter, Cassilly, Hettleman, Hough, Lee, Sydnor, Watson, and West**

Introduced and read first time: February 7, 2022

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 2, 2022

CHAPTER _____

1 AN ACT concerning

2 ~~Maryland State Police Gun Center – Establishment~~
3 **Public Safety – Firearm Crimes – Enforcement Center, Offenses, and**
4 **Procedures**

5 FOR the purpose of expanding the types of cases in which the State may appeal from a
6 decision of a trial court; altering the classification of certain crimes involving
7 firearms; establishing that for certain offenses the use of a firearm does not include
8 mere possession; establishing the felony of theft of a handgun; establishing the
9 Maryland State Police Gun Center as a statewide firearms enforcement center for
10 the tracking, screening, and vetting of all firearm crimes committed in the State;
11 requiring the Center to create and maintain a statewide database to track certain
12 information related to crimes committed with crime firearms; and generally relating
13 to the Maryland State Police Gun Center.

14 BY repealing and reenacting, with amendments,
15 Article – Courts and Judicial Proceedings
16 Section 12–302(c)(4)
17 Annotated Code of Maryland
18 (2020 Replacement Volume and 2021 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 4–204, 4–306(b), 7–104, and 14–101(a)
22 Annotated Code of Maryland

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 (2021 Replacement Volume and 2021 Supplement)

2 BY adding to

3 Article – Public Safety

4 Section 5–701 through ~~5–704~~ 5–705 to be under the new subtitle “Subtitle 7. The
5 Maryland State Police Gun Center”

6 Annotated Code of Maryland

7 (2018 Replacement Volume and 2021 Supplement)

8 Preamble

9 ~~WHEREAS, The Governor’s Office of Crime Prevention, Youth, and Victim Services,~~
10 ~~in accordance with Chapter 335 of the Acts of the General Assembly of 2019, studied and~~
11 ~~compiled information for a Report on Crime Firearms Study, including, among other things,~~
12 ~~the number and type of crimes committed with crime firearms in the State, the sources of~~
13 ~~crime firearms in the State, and the jurisdictions where crime firearms were recovered in~~
14 ~~the State; and~~

15 ~~WHEREAS, Between October 1, 2019, and September 30, 2020, there were a total of~~
16 ~~2,772 crime firearms cases in Maryland, of which 61.8% occurred in Baltimore City and~~
17 ~~Prince George’s County; and~~

18 ~~WHEREAS, Between October 1, 2019, and September 30, 2020, there were a total of~~
19 ~~1,722 criminal charges associated with crime firearms, of which approximately 87% were~~
20 ~~for an illegal possession offense, approximately 9% were for the use of a firearm in~~
21 ~~conjunction with a crime of violence, and approximately 4% were for a straw~~
22 ~~purchase related offense; and~~

23 ~~WHEREAS, Between October 1, 2019, and September 30, 2020, 2,188 individuals~~
24 ~~prohibited from possessing a firearm were found to be in possession of crime firearms; and~~

25 ~~WHEREAS, On January 1, 2013, the Department of State Police opened the~~
26 ~~Maryland State Police Gun Center as a component of the Department’s firearms~~
27 ~~enforcement program to operate around the clock, 7 days per week to provide immediate~~
28 ~~assistance and guidance to local law enforcement agencies on firearm crimes; and~~

29 ~~WHEREAS, The Governor’s Office of Crime Prevention, Youth, and Victim Services~~
30 ~~has developed recommendations based on the findings of the Report on Crime Firearms~~
31 ~~Study that include creating a statewide database to track crime firearms and designating~~
32 ~~the Maryland State Police Gun Center as a one stop statewide firearms enforcement center~~
33 ~~for the tracking, screening, and vetting of all firearm crimes committed in the State to~~
34 ~~ensure that offenders are systematically held accountable; now therefore,~~

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

37 Article – Courts and Judicial Proceedings

1 12-302.

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

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

5 2. UNDER §§ 5-602 through 5-609 and §§ 5-612 through
6 5-614 of the Criminal Law Article[.];

7 3. UNDER §§ 5-621 AND 5-622 OF THE CRIMINAL LAW
8 ARTICLE; OR

9 4. UNDER §§ 5-133, 5-133.1, 5-134, 5-136, 5-138,
10 5-140, 5-141, 5-142, 5-205, AND 5-206 OF THE PUBLIC SAFETY ARTICLE.

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

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

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

25 [(iv)] (V) Except in a homicide case, if the State appeals on the basis
26 of this paragraph, and if on final appeal the decision of the trial court is affirmed, the
27 charges against the defendant shall be dismissed in the case from which the appeal was
28 taken. In that case, the State may not prosecute the defendant on those specific charges or
29 on any other related charges arising out of the same incident.

30 [(v)] (VI) 1. Except as provided in subsubparagraph 2 of this
31 subparagraph, pending the prosecution and determination of an appeal taken under this
32 paragraph or paragraph (2) of this subsection, the defendant shall be released on personal
33 recognizance bail. If the defendant fails to appear as required by the terms of the
34 recognizance bail, the trial court shall subject the defendant to the penalties provided in §
35 5-211 of the Criminal Procedure Article.

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

4 (2) For each subsequent violation, the sentence shall be consecutive to and
5 not concurrent with any other sentence imposed for the crime of violence or felony.
6 4–306.

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

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

14 [(2)] (3) (i) For a first violation, the person shall be sentenced to
15 imprisonment for not less than 5 years and not exceeding 20 years.

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

18 (iii) The mandatory minimum sentence of 5 years may not be
19 suspended.

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

22 [(3)] (4) (i) For each subsequent violation, the person shall be
23 sentenced to imprisonment for not less than 10 years and not exceeding 20 years.

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

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

28 7–104.

29 (a) A person may not willfully or knowingly obtain or exert unauthorized control
30 over property, if the person:

31 (1) intends to deprive the owner of the property;

1 (2) willfully or knowingly uses, conceals, or abandons the property in a
2 manner that deprives the owner of the property; or

3 (3) uses, conceals, or abandons the property knowing the use, concealment,
4 or abandonment probably will deprive the owner of the property.

5 (b) A person may not obtain control over property by willfully or knowingly using
6 deception, if the person:

7 (1) intends to deprive the owner of the property;

8 (2) willfully or knowingly uses, conceals, or abandons the property in a
9 manner that deprives the owner of the property; or

10 (3) uses, conceals, or abandons the property knowing the use, concealment,
11 or abandonment probably will deprive the owner of the property.

12 (c) (1) A person may not possess stolen personal property knowing that it has
13 been stolen, or believing that it probably has been stolen, if the person:

14 (i) intends to deprive the owner of the property;

15 (ii) willfully or knowingly uses, conceals, or abandons the property
16 in a manner that deprives the owner of the property; or

17 (iii) uses, conceals, or abandons the property knowing that the use,
18 concealment, or abandonment probably will deprive the owner of the property.

19 (2) In the case of a person in the business of buying or selling goods, the
20 knowledge required under this subsection may be inferred if:

21 (i) the person possesses or exerts control over property stolen from
22 more than one person on separate occasions;

23 (ii) during the year preceding the criminal possession charged, the
24 person has acquired stolen property in a separate transaction; or

25 (iii) being in the business of buying or selling property of the sort
26 possessed, the person acquired it for a consideration that the person knew was far below a
27 reasonable value.

28 (3) In a prosecution for theft by possession of stolen property under this
29 subsection, it is not a defense that:

30 (i) the person who stole the property has not been convicted,
31 apprehended, or identified;

1 (ii) the defendant stole or participated in the stealing of the property;

2 (iii) the property was provided by law enforcement as part of an
3 investigation, if the property was described to the defendant as being obtained through the
4 commission of theft; or

5 (iv) the stealing of the property did not occur in the State.

6 (4) Unless the person who criminally possesses stolen property
7 participated in the stealing, the person who criminally possesses stolen property and a
8 person who has stolen the property are not accomplices in theft for the purpose of any rule
9 of evidence requiring corroboration of the testimony of an accomplice.

10 (d) A person may not obtain control over property knowing that the property was
11 lost, mislaid, or was delivered under a mistake as to the identity of the recipient or nature
12 or amount of the property, if the person:

13 (1) knows or learns the identity of the owner or knows, is aware of, or
14 learns of a reasonable method of identifying the owner;

15 (2) fails to take reasonable measures to restore the property to the owner;
16 and

17 (3) intends to deprive the owner permanently of the use or benefit of the
18 property when the person obtains the property or at a later time.

19 (e) A person may not obtain the services of another that are available only for
20 compensation:

21 (1) by deception; or

22 (2) with knowledge that the services are provided without the consent of
23 the person providing them.

24 (f) Under this section, an offender's intention or knowledge that a promise would
25 not be performed may not be established by or inferred solely from the fact that the promise
26 was not performed.

27 (g) (1) **THIS SUBSECTION DOES NOT APPLY TO THEFT OF A HANDGUN, AS**
28 **DEFINED IN § 5-101 OF THE PUBLIC SAFETY ARTICLE.**

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

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

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

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

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

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

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

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

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

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

13 [(2)] (3) Except as provided in paragraph [(3)] (4) of this subsection, a
14 person convicted of theft of property or services with a value of at least \$100 but less than
15 \$1,500, is guilty of a misdemeanor and:

16 (i) is subject to:

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

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

21 (ii) shall restore the property taken to the owner or pay the owner
22 the value of the property or services.

23 [(3)] (4) A person convicted of theft of property or services with a value of
24 less than \$100 is guilty of a misdemeanor and:

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

27 (ii) shall restore the property taken to the owner or pay the owner
28 the value of the property or services.

29 [(4)] (5) Subject to paragraph [(5)] (6) of this subsection, a person who
30 has four or more prior convictions under this subtitle and who is convicted of theft of

1 property or services with a value of less than \$1,500 under paragraph [(2)] (3) of this
2 subsection is guilty of a misdemeanor and:

3 (i) is subject to imprisonment not exceeding 5 years or a fine not
4 exceeding \$5,000 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 [(5)] (6) The court may not impose the penalties under paragraph [(4)]
8 (5) of this subsection unless the State's Attorney serves notice on the defendant or the
9 defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at least
10 15 days before trial that:

11 (i) the State will seek the penalties under paragraph [(4)] (5) of this
12 subsection; and

13 (ii) lists the alleged prior convictions.

14 (H) A PERSON CONVICTED OF THEFT OF A HANDGUN, AS DEFINED IN §
15 5-101 OF THE PUBLIC SAFETY ARTICLE, IS GUILTY OF A FELONY AND IS SUBJECT
16 TO, FOR A FIRST CONVICTION, IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE
17 NOT EXCEEDING \$1,000 OR BOTH.

18 [(h)] (I) (1) If a person is convicted of a violation under this section for failure
19 to pay for motor fuel after the motor fuel was dispensed into a vehicle, the court shall:

20 (i) notify the person that the person's driver's license may be
21 suspended under § 16-206.1 of the Transportation Article; and

22 (ii) notify the Motor Vehicle Administration of the violation.

23 (2) The Chief Judge of the District Court and the Administrative Office of
24 the Courts, in conjunction with the Motor Vehicle Administration, shall establish uniform
25 procedures for reporting a violation under this subsection.

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

29 [(i)] (K) A person who violates this section by use of an interactive computer
30 service may be prosecuted, indicted, tried, and convicted in any county in which the victim
31 resides or the electronic communication originated or terminated.

32 14-101.

1 (a) (1) In this section[, “crime of violence” means:

2 (1)] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

3 (2) “CRIME OF VIOLENCE” MEANS:

4 (I) abduction;

5 [(2)] (II) arson in the first degree;

6 [(3)] (III) kidnapping;

7 [(4)] (IV) manslaughter, except involuntary manslaughter;

8 [(5)] (V) mayhem;

9 [(6)] (VI) maiming, as previously proscribed under former Article 27, §§
10 385 and 386 of the Code;

11 [(7)] (VII) murder;

12 [(8)] (VIII) rape;

13 [(9)] (IX) robbery under § 3–402 or § 3–403 of this article;

14 [(10)] (X) carjacking;

15 [(11)] (XI) armed carjacking;

16 [(12)] (XII) sexual offense in the first degree;

17 [(13)] (XIII) sexual offense in the second degree;

18 [(14)] (XIV) use of a firearm in the commission of a felony [except possession
19 with intent to distribute a controlled dangerous substance under § 5–602(2) of this article,]
20 or other crime of violence;

21 [(15)] (XV) child abuse in the first degree under § 3–601 of this article;

22 [(16)] (XVI) sexual abuse of a minor under § 3–602 of this article if:

23 [(i)] 1. the victim is under the age of 13 years and the offender is
24 an adult at the time of the offense; and

25 [(ii)] 2. the offense involved:

1 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (B) "CENTER" MEANS THE MARYLAND STATE POLICE GUN CENTER.

4 (C) "CRIME FIREARM" MEANS A FIREARM THAT IS:

5 (1) USED IN THE COMMISSION OF A CRIME OF VIOLENCE, AS DEFINED
6 IN § 5-101 OF THIS TITLE; OR

7 (2) RECOVERED BY A LAW ENFORCEMENT AGENCY IN CONNECTION
8 WITH ILLEGAL FIREARM POSSESSION, TRANSPORTATION, OR TRANSFER.

9 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF STATE POLICE.

10 (E) "FEDERALLY LICENSED FIREARMS DEALER" MEANS A PERSON
11 LICENSED BY THE FEDERAL BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND
12 EXPLOSIVES TO DEAL IN FIREARMS.

13 (F) "FEDERALLY LICENSED FIREARMS IMPORTER" MEANS A PERSON
14 LICENSED BY THE FEDERAL BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND
15 EXPLOSIVES TO IMPORT FIREARMS.

16 (G) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3-201
17 OF THIS ARTICLE.

18 **5-702.**

19 (A) THE CENTER IS ESTABLISHED WITHIN THE DEPARTMENT AS A
20 STATEWIDE FIREARMS ENFORCEMENT CENTER FOR THE TRACKING, SCREENING,
21 AND VETTING OF ALL FIREARM CRIMES COMMITTED IN THE STATE.

22 (B) THIS SUBTITLE SHALL BE LIBERALLY CONSTRUED AND APPLIED TO
23 PROMOTE ITS UNDERLYING PURPOSES AND POLICIES.

24 **5-703.**

25 (A) THE CENTER SHALL CREATE AND MAINTAIN A STATEWIDE DATABASE
26 TO TRACK INFORMATION ON CRIMES COMMITTED WITH CRIME FIREARMS.

27 (B) EACH LAW ENFORCEMENT AGENCY SHALL REPORT TO THE CENTER THE
28 FOLLOWING INFORMATION ON CRIMES COMMITTED IN THE JURISDICTION OF THE
29 LAW ENFORCEMENT AGENCY WITH CRIME FIREARMS:

1 **(1) THE NUMBER AND TYPE OF CRIME FIREARMS;**

2 **(2) THE JURISDICTIONS WHERE CRIME FIREARMS ARE RECOVERED;**

3 **(3) THE SOURCES OF THE CRIME FIREARMS RECOVERED, IF**
4 **DISCOVERABLE, INCLUDING:**

5 **(I) THE FEDERALLY LICENSED FIREARMS IMPORTER;**

6 **(II) THE FEDERALLY LICENSED FIREARMS DEALER; AND**

7 **(III) THE FIRST PURCHASER OF THE CRIME FIREARM;**

8 **(4) INFORMATION REGARDING THE INDIVIDUAL FOUND IN**
9 **POSSESSION OF THE CRIME FIREARM, INCLUDING:**

10 **(I) THE INDIVIDUAL'S AGE;**

11 **(II) THE INDIVIDUAL'S JURISDICTION OF RESIDENCE;**

12 **(III) THE JURISDICTION WHERE THE INDIVIDUAL IS CHARGED;**

13 **AND**

14 **(IV) WHETHER THE INDIVIDUAL WAS PROHIBITED FROM**
15 **POSSESSING A FIREARM; AND**

16 **(5) ANY OTHER INFORMATION REQUESTED BY THE CENTER.**

17 **(C) THE CENTER MAY REQUIRE A LAW ENFORCEMENT AGENCY TO REPORT**
18 **ANY OTHER INFORMATION RELATING TO FIREARM CRIMES COMMITTED IN THE**
19 **JURISDICTION OF THE LAW ENFORCEMENT AGENCY TO ASSIST THE CENTER IN THE**
20 **TRACKING OF FIREARM CRIMES COMMITTED IN THE STATE.**

21 **(D) THE CENTER SHALL DESIGNATE HOW OFTEN LAW ENFORCEMENT**
22 **AGENCIES ARE REQUIRED TO REPORT THE INFORMATION REQUIRED UNDER THIS**
23 **SECTION.**

24 **5-704.**

25 **(A) THE CENTER SHALL COORDINATE WITH THE DEPARTMENT AND LAW**
26 **ENFORCEMENT AGENCIES TO SCREEN AND VET ALL FIREARM CRIMES COMMITTED**
27 **IN THE STATE BY:**

28 **(1) DETERMINING WHETHER AN INDIVIDUAL CHARGED WITH A**
29 **FIREARM CRIME WAS PROHIBITED FROM POSSESSING A FIREARM; AND**

1 **(2) RECOMMENDING SPECIFIC FIREARM CHARGES TO ENSURE THAT**
2 **AN INDIVIDUAL CHARGED WITH A FIREARM CRIME IS APPROPRIATELY CHARGED.**

3 **(B) THE CENTER SHALL ASSIST THE DEPARTMENT AND LAW**
4 **ENFORCEMENT AGENCIES WITH FIREARM ENFORCEMENT AND FIREARM VIOLATION**
5 **REDUCTION EFFORTS.**

6 **5-705.**

7 **BEGINNING IN 2023, AND EACH YEAR THEREAFTER, THE GOVERNOR SHALL**
8 **INCLUDE IN THE ANNUAL STATE BUDGET AN APPROPRIATION SUFFICIENT TO FUND**
9 **THE OPERATIONS OF THE CENTER.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.