

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL NO. 381

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, strike “a”; in line 5, strike “reference” and substitute “terms”; and in the same line, after “Article;” insert “clarifying that certain rights of victims also apply to victims’ representatives; specifying that certain notification requirements apply when an investigation or enforcement action is on property of the Maryland Aviation Administration; clarifying the duties of the trier of fact when determining the level of proof needed to prove criminal responsibility; specifying that the right of a defendant to a preliminary hearing is subject to the Maryland Rules; restoring to former, unrevised language certain provisions concerning powers of District Court judges; repealing a certain provision authorizing the Governor to remove members of the State Commission on Criminal Sentencing Policy; restoring to former, unrevised language provisions concerning the expungement of certain records based on a full and unconditional pardon by the Governor; restoring to former, unrevised language a provision concerning the amount to be paid under a certain earnings withholding order; clarifying certain definitions; restoring a certain definition to former, unrevised language; repealing a certain definition; making certain technical corrections;”.

On page 3, strike line 33 in its entirety and substitute “Section 2-101(c)(8), (10), and (13), 2-102(b)(3), 2-104(b)(2) and (c)(1), 3-110(c), 4-103(c)(3), 4-204(b)(2) and (c), 5-101(b)(1), 5-205(a), 5-208(e)(1)(ii)3. and (2)(iii), 6-103(b), 6-104(a)(2), 6-202(3), 6-208(b)(2), 6-209(b)(2), 6-217(a), 6-218(b)(1), 6-219(c)(2), 6-220(a)(1), 9-101(c)(2), 10-105(a)(8), (c)(3), and (e)(4), 10-221(b)(4), 11-111(a)(2), 11-203, 11-607(c)(3), 11-617(e)(1), 11-625(a), 11-701(c), 11-704(7)(i), 11-705(a), 11-706(a)(3), (4), and (5), 11-709(c)(2), 11-712(a), 11-715(a)(2), 11-811(a)(4), 11-816(c), 11-910(f), and 11-1003(b)(2)”; and after line 35, insert:

“BY repealing

Article - Criminal Procedure

Section 6-204(c) and 11-910(g)

(Over)

Annotated Code of Maryland

(As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of 2001)”.

On page 4, in line 15, strike “12-106, 12-122(a)(1) and (c)(1)(ii),”.

AMENDMENT NO. 2

On page 16, in line 5, after “if” insert “:

(1) (I)”;

in the same line, after “TITLE” insert a comma; in lines 5 and 6, strike “: (1)”; in line 7, after “title” insert a semicolon; in the same line, after “or” insert:

“(II) A VICTIM OR A VICTIM’S REPRESENTATIVE”;

in line 9, after “hearing,” insert “THE VICTIM”; in line 13, strike “, AS DEFINED IN § 7-801 OF THIS TITLE,”; in line 14, after “or” insert “IF THE VICTIM OR THE VICTIM’S REPRESENTATIVE”; and in line 16, after “victim” insert “OR VICTIM’S REPRESENTATIVE”.

On page 17, in lines 1, 14, and 24, in each instance, after “victim” insert “OR THE VICTIM’S REPRESENTATIVE”; in line 4, strike “, AS DEFINED IN § 7-801 OF THIS SUBTITLE,” and substitute “OR A VICTIM’S REPRESENTATIVE”; in lines 10 and 11, strike “, AS DEFINED IN § 7-801 OF THIS SUBTITLE,”; in line 12, after “or” insert “IF THE VICTIM OR THE VICTIM’S REPRESENTATIVE”; and in line 22, strike “, AS DEFINED IN § 7-801 OF THIS SUBTITLE,”.

AMENDMENT NO. 3

On page 23, after line 25, insert:

“(8) a special [policeman] POLICE OFFICER who is appointed to enforce the law and maintain order on or protect property of the State or any of its units;

(10) the sheriff of a county [and] whose usual duties include the making of arrests;”;

and after line 27, insert:

“2-102.

(b) (3) A police officer may exercise the powers granted by this section when:

(i) 1. the police officer is participating in a joint investigation with officials from another state, federal, or local law enforcement unit, at least one of which has local jurisdiction;

2. the police officer is [helping] RENDERING ASSISTANCE TO another police officer;

3. the police officer is acting at the request of a police officer or State Police officer; or

4. an emergency exists; and

(ii) the police officer is acting in accordance with regulations adopted by the police officer's employing unit to carry out this section.

2-104.

(b) (2) A federal law enforcement officer may exercise the powers granted by this subsection when:

(i) the federal law enforcement officer is participating in a joint investigation with officials from a State or local law enforcement unit;

(ii) the federal law enforcement officer is [helping] RENDERING ASSISTANCE TO a police officer;

(iii) the federal law enforcement officer is acting at the request of a local police officer or State Police officer; or

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(iv) an emergency exists.

(c) (1) A federal law enforcement officer who acts under the authority granted by this section shall notify the following persons of an investigation or enforcement action:

(i) 1. The chief of police, if any, or chief's designee, when in a municipal corporation;

2. The police commissioner or police commissioner's designee, when in Baltimore City;

3. The chief of police or chief's designee, when in a county with a county police department, except Baltimore City;

4. The sheriff or sheriff's designee, when in a county without a county police department;

5. The Secretary of Natural Resources or Secretary's designee, when on property owned, leased, operated by, or under the control of the Department of Natural Resources; or

6. The respective chief of police or chief's designee, when on property owned, leased, operated by, or under the control of the Maryland Transportation Authority, MARYLAND AVIATION ADMINISTRATION, or Maryland Port Administration; and

(ii) the Department of State Police barrack commander or commander's designee, unless there is an agreement otherwise with the Department of State Police.

3-110.

(c) If the trier of fact finds that the State has proved beyond a reasonable doubt that the defendant committed the criminal act charged, then, if the defendant has pleaded not criminally responsible, the trier of fact separately shall [find, by a preponderance of the evidence, whether] FIND WHETHER THE DEFENDANT HAS ESTABLISHED, BY A PREPONDERANCE OF THE

EVIDENCE, THAT the defendant was at the time criminally responsible or not criminally responsible by reason of insanity under the test for criminal responsibility in § 3-109 of this title.

4-103.

(c) (3) In any other case, the right of a defendant to a preliminary hearing is not absolute, but on motion of the State's Attorney or the defendant, AND SUBJECT TO THE MARYLAND RULES, the court may allow the defendant to have a preliminary hearing.

4-204.

(b) Except for a sentencing proceeding under Article 27, § 413 of the Code:

(2) an accessory before the fact may be charged, tried, [and] convicted, and sentenced as a principal.

(c) An accessory before the fact may be charged, tried, [and] convicted, and sentenced for a crime regardless of whether a principal in the crime has been:

(1) charged with the crime;

(2) acquitted of the crime; or

(3) convicted of a lesser or different crime.

5-101.

(b) (1) Except as provided in subsection (c) of this section, if, from all the circumstances, the court believes that a minor or adult defendant in a criminal case will appear as required for trial before verdict or pending [a new] trial, the defendant may be released on personal recognizance.

5-205.

- (a) A District Court judge may:
- (1) set bond or bail;
 - (2) release a defendant on personal recognizance or on a personal or other bail bond;
 - (3) commit a defendant to a correctional facility in default of a bail bond; [and]
 - (4) order a bail bond forfeited if the defendant fails to meet the conditions of the bond; AND
 - (5) EXERCISE ALL OF THE POWERS OF A JUSTICE OF THE PEACE UNDER THE CONSTITUTION OF 1867.

5-208.

- (e) (1) A court exercising criminal jurisdiction may not order a forfeiture of the bail bond or collateral posted by a surety and shall give back the bail bond or collateral to the surety if:
- (ii) the surety produces evidence, within the time limits established under subsection (b) of this section, that:
 - 3. the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with subsection [(b)] (C) of this section.
- (2) A court exercising criminal jurisdiction that has ordered forfeiture of a bail bond or collateral after expiration of the time limits established under subsection (b) of this section for a surety to return a defendant shall give back the forfeited bail bond or collateral if, within 10 years after the date the bail bond or collateral was posted, the surety produces evidence that:

(iii) the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with subsection [(b)] (C) of this section.

6-103.

(b) For good cause shown, the COUNTY administrative judge [of a county] or a designee of the judge may grant a change of the trial date in a circuit court:

- (1) on a motion of a party; or
- (2) on the initiative of the circuit court.

6-104.

(a) (2) Subject to paragraph (3) of this subsection, if the court denies the [move] MOTION for judgment of acquittal, the defendant may offer evidence on the defendant's behalf without having reserved the right to do so.

6-202.

The General Assembly intends that:

(3) sentencing policies should preserve MEANINGFUL judicial discretion and sufficient flexibility to allow individualized sentences;

6-204.

[(c) The Governor may remove a member for incompetence or misconduct.]

6-208.

(b) The sentencing guidelines for ordinary sentences shall call for sentences within the

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limits set by law and shall set forth:

(2) a range of INCREASED severity for defendants previously convicted of or adjudicated delinquent for a previous crime; and

6-209.

(b) (2) The Commission shall consider a sentence to a corrections options program to be within the sentencing guidelines if the sentence falls within a corrections options zone shown on the matrix [for property offenses, drug offenses, or offenses against persons].

6-217.

(a) When a sentence of confinement that is to be served is imposed for a violent crime AS DEFINED IN § 7-101 OF THE CORRECTIONAL SERVICES ARTICLE for which a defendant will be eligible for parole under § 7-301(c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve before becoming eligible for parole.

6-218.

(b) (1) A defendant who is convicted and sentenced shall receive credit against and a reduction of the term of a definite or life sentence, or the minimum and maximum terms of an indeterminate sentence, for all time spent in the custody of a [State correctional facility, local] correctional facility, hospital, facility for persons with mental disorders, or other unit because of:

(i) the charge for which the sentence is imposed; or

(ii) the conduct on which the charge is based.

6-219.

(c) (2) In Prince George's County, the court on conviction may sentence a defendant to the local correctional facility [or place of confinement under the jurisdiction of the sheriff], if:

(i) the sentence is to be performed during any 48-hour period in a 7-day

period, with each period of confinement to be not less than 2 days of the sentence imposed;

(ii) the crime leading to the conviction allows confinement in the local correctional facility; and

(iii) the total sentence does not exceed 30 [two-day] 2-DAY periods of confinement.

6-220.

(a) (1) When a defendant pleads guilty or nolo contendere or is found guilty of a crime, a court may stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions if:

(i) the court [is satisfied] FINDS that the best interests of the defendant and the public welfare would be served; and

(ii) the defendant gives written consent after determination of guilt or acceptance of a nolo contendere plea.

9-101.

(c) (2) "State" includes THE DISTRICT OF COLUMBIA AND any other state or territory of the United States of America.

10-105.

(a) A person who has been charged with the commission of a crime, including a violation of the Transportation Article for which a term of imprisonment may be imposed, may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State if:

(8) The person:

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(i) is convicted of only one criminal act, and that act is not a crime of violence; and

(ii) is granted a FULL AND UNCONDITIONAL pardon by the Governor.

(c) (3) A petition for expungement based on a FULL AND UNCONDITIONAL pardon by the Governor may not be filed earlier than 5 years or later than 10 years after the pardon was signed by the Governor.

(e) (4) The person is not entitled to expungement if:

(ii) the person:

1. since the FULL AND UNCONDITIONAL pardon or entry, has been convicted of a crime other than a minor traffic violation; or

2. is a defendant in a pending criminal proceeding.

10-221.

(b) Subject to Title 3, Subtitle 4 of the State Finance and Procurement Article, the regulations adopted by the Secretary under subsection (a)(1) of this section and the rules adopted by the Court of Appeals under subsection (a)(2) of this section shall:

(4) regulate the procedures for inspecting and challenging [of] criminal history record information;

11-111.

(a) (2) The [court shall notify both the] victim or victim's representative and the person charged with a prohibited exposure SHALL BE NOTIFIED of:

- (i) the date, time, and location of the hearing; and
- (ii) their right to be present at the hearing.”.

AMENDMENT NO. 4

On page 24, after line 3, insert:

“11-607.

(c) (3) If the court finds that the restitution obligor intentionally became impoverished to avoid payment of the restitution, the court may find the [defendant or child respondent] RESTITUTION OBLIGOR in contempt of court or in violation of probation.

11-617.

(e) (1) Subject to paragraphs (2) and (3) of this subsection, the payment amount under an earnings withholding order under this section is 20% of the earnings of a restitution obligor LESS OTHER DEDUCTIONS REQUIRED BY LAW TO BE PAID OUT OF ANY FUNDS EARNED UNDER A WORK RELEASE PLAN.

11-625.

(a) The Attorney General shall pay the defendant from the escrow account the money that a court of competent jurisdiction IN AN ORDER[:

(1) finds will be used to hire legal counsel at any stage of the criminal case, including an appeal]; and

(2) orders to be paid to the defendant].

11-701.

(c) “Local law enforcement unit” means the law enforcement unit in a county that has

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been designated by resolution of the county governing body [or created by law] as the primary law enforcement unit in the county.

11-704.

A person shall register with the person's supervising authority if the person is:

(7) a child sexual offender, offender, sexually violent offender, or sexually violent predator who is required to register in another state, who is not a resident of this State, and who enters this State:

(i) to carry on employment or a vocation that is full-time or part-time for a period exceeding 14 days or for an aggregate period exceeding 30 days during a calendar year, whether financially compensated, [voluntary] VOLUNTEERED, or for [a governmental] THE PURPOSE OF GOVERNMENT or educational benefit; or

11-705.

(a) In this section, "resident" means a person who lives in this State when the person:

(1) is released;

(2) is granted probation [before judgment];

(3) is granted probation after judgment];

[(4)] (3) is granted a suspended sentence; or

[(5)] (4) receives a sentence that does not include a term of imprisonment.

11-706.

(a) A registration statement shall include:

(3) a description of the crime for which the registrant was convicted[, granted probation before judgment, or found not criminally responsible];

(4) the date that the registrant was convicted[, granted probation before judgment, or found not criminally responsible];

(5) the jurisdiction in which the registrant was convicted[, granted probation before judgment, or found not criminally responsible];

11-709.

(c) A local law enforcement unit that receives a notice from a supervising authority under this section shall send a copy of the notice to the police department, if any, of a municipal corporation if the registrant:

(2) escapes from a [correctional] facility but resided in the municipal corporation before being committed to the custody of a supervising authority.

11-712.

(a) If a registrant escapes from a [correctional] facility, the supervising authority of the [correctional] facility by the most reasonable and expedient means available shall immediately notify:

(1) the local law enforcement unit in the jurisdiction where the registrant resided before the registrant was committed to the custody of the supervising authority; and

(2) each person who is entitled to receive notice under § 11-715(a) of this subtitle.

11-715.

(a) (2) Subject to [item] PARAGRAPH (3) of this subsection, the supervising

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authority shall send a copy of a registration statement to each:

(i) victim of the crime for which the registrant was convicted; or

(ii) [victim's representative as defined in § 11-104 of this title] IF THE VICTIM IS A MINOR, THE PARENTS OR LEGAL GUARDIAN OF THE VICTIM."

AMENDMENT NO. 5

On page 24, after line 9, insert:

"11-816.

(c) In each case under this subtitle that provides for compensation TO AN EMPLOYEE OR THE EMPLOYEE'S DEPENDENT, the Board may convert the compensation to be paid in a partial or total lump sum without discount, if in the Board's opinion the facts and circumstances of the case warrant.

11-910.

(f) (1) "Victim" means a person who suffers direct or threatened physical, emotional, or financial harm as a direct result of a crime or of a violation of § 21-902 of the Transportation Article.

(2) "VICTIM" INCLUDES A FAMILY MEMBER OF A MINOR, INCOMPETENT, OR HOMICIDE VICTIM.

[(g) "Victim's representative" includes a family member or guardian of a victim who is:

(1) a minor;

(2) deceased; or

(3) disabled.]

11-1003.

(b) A victim of a delinquent act, victim's representative, or witness:

(2) should be told in advance of dates and times of juvenile court proceedings in the case and should be told if the court proceedings to which the victim, VICTIM'S REPRESENTATIVE, or witness has been summoned will not proceed as scheduled;".

AMENDMENT NO. 6

On pages 25 and 26, strike in their entirety the lines beginning with line 11 on page 25 through line 2 on page 26, inclusive.

(Over)