

# HOUSE BILL 561

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9lr0518  
CF SB 620

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By: **Delegates Kramer, Kelly, McComas, Shank, ~~and Smigiel~~ Smigiel, Waldstreicher, and Vallario**

Introduced and read first time: February 6, 2009

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 26, 2009

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 ~~Crimes of Violence – Voided Revised Sentences~~  
3 Criminal Procedure – Sentencing or Disposition Hearing – Appearance of  
4 Victim or Victim’s Representative

5 FOR the purpose of requiring a ~~court to notify each victim of the crime for which the~~  
6 ~~defendant was convicted before revising, modifying, or reducing the sentence~~  
7 ~~imposed on the defendant for a certain crime of violence; providing the~~  
8 ~~requirements for service of a certain notice to a victim; requiring a court to~~  
9 ~~schedule a certain hearing under certain circumstances; providing that any~~  
10 ~~revision, modification, or reduction of the sentence is void on a finding that the~~  
11 ~~court failed to notify the victim; requiring a court to schedule a subsequent~~  
12 ~~hearing under certain circumstances; defining a term; providing for the~~  
13 ~~application of this Act; and generally relating to the revisory power of a court in~~  
14 criminal sentencing prosecuting attorney, at a certain sentencing or disposition  
15 hearing at which a certain victim or victim’s representative fails to appear, to  
16 make a certain statement that proceeding without the appearance of the victim  
17 or the victim’s representative is justified; requiring a court to postpone a certain  
18 sentencing or disposition hearing under certain circumstances; and generally  
19 relating to the appearance of victims or victims’ representatives at sentencing or  
20 disposition hearings.

21 ~~BY repealing and reenacting, without amendments,~~  
22 ~~Article – Criminal Law~~  
23 ~~Section 14 – 101(a)~~  
24 ~~Annotated Code of Maryland~~

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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 ~~(2002 Volume and 2008 Supplement)~~

2 BY ~~adding to~~ repealing and reenacting, with amendments,

3 Article – Criminal Procedure

4 Section ~~6-233~~ 11-403

5 Annotated Code of Maryland

6 (2008 Replacement Volume)

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

9 **Article – Criminal ~~Law~~ Procedure**

10 ~~14-101.~~

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

12 ~~(1) abduction;~~

13 ~~(2) arson in the first degree;~~

14 ~~(3) kidnapping;~~

15 ~~(4) manslaughter, except involuntary manslaughter;~~

16 ~~(5) mayhem;~~

17 ~~(6) maiming, as previously proscribed under former Article 27, §§ 385~~  
18 ~~and 386 of the Code;~~

19 ~~(7) murder;~~

20 ~~(8) rape;~~

21 ~~(9) robbery under § 3-402 or § 3-403 of this article;~~

22 ~~(10) carjacking;~~

23 ~~(11) armed carjacking;~~

24 ~~(12) sexual offense in the first degree;~~

25 ~~(13) sexual offense in the second degree;~~

26 ~~(14) use of a handgun in the commission of a felony or other crime of~~  
27 ~~violence;~~

28 ~~(15) child abuse in the first degree under § 3-601 of this article;~~

1           ~~(16) sexual abuse of a minor under § 3-602 of this article if:~~

2                   ~~(i) the victim is under the age of 13 years and the offender is an~~  
3 ~~adult at the time of the offense; and~~

4                   ~~(ii) the offense involved:~~

5                           ~~1. vaginal intercourse, as defined in § 3-301 of this~~  
6 ~~article;~~

7                           ~~2. a sexual act, as defined in § 3-301 of this article;~~

8                           ~~3. an act in which a part of the offender's body~~  
9 ~~penetrates, however slightly, into the victim's genital opening or anus; or~~

10                           ~~4. the intentional touching, not through the clothing, of~~  
11 ~~the victim's or the offender's genital, anal, or other intimate area for sexual arousal,~~  
12 ~~gratification, or abuse;~~

13           ~~(17) an attempt to commit any of the crimes described in items (1)~~  
14 ~~through (16) of this subsection;~~

15           ~~(18) continuing course of conduct with a child under § 3-315 of this~~  
16 ~~article;~~

17           ~~(19) assault in the first degree;~~

18           ~~(20) assault with intent to murder;~~

19           ~~(21) assault with intent to rape;~~

20           ~~(22) assault with intent to rob;~~

21           ~~(23) assault with intent to commit a sexual offense in the first degree;~~  
22 ~~and~~

23           ~~(24) assault with intent to commit a sexual offense in the second~~  
24 ~~degree.~~

**~~Article Criminal Procedure~~**

25  
26 **~~6-233.~~**

27           ~~(A) IN THIS SECTION, "VICTIM" MEANS A VICTIM OR A VICTIM'S~~  
28 ~~REPRESENTATIVE WHO HAS FILED A CRIME VICTIM NOTIFICATION REQUEST~~  
29 ~~FORM IN ACCORDANCE WITH § 11-104 OF THIS ARTICLE OR WHO HAS~~

~~1 SUBMITTED A WRITTEN REQUEST TO THE STATE'S ATTORNEY TO BE NOTIFIED  
2 OF SUBSEQUENT PROCEEDINGS IN ACCORDANCE WITH § 11-503 OF THIS  
3 ARTICLE.~~

~~4 (B) (1) A COURT SHALL NOTIFY EACH VICTIM OF THE CRIME FOR  
5 WHICH THE DEFENDANT WAS CONVICTED BEFORE REVISING, MODIFYING, OR  
6 REDUCING THE SENTENCE IMPOSED ON THE DEFENDANT FOR A CRIME OF  
7 VIOLENCE AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.~~

~~8 (2) NOTICE PROVIDED TO A VICTIM UNDER PARAGRAPH (1) OF  
9 THIS SUBSECTION SHALL BE:~~

~~10 (I) GIVEN IN WRITING; AND~~

~~11 (II) SENT BY CERTIFIED U.S. MAIL, RETURN RECEIPT  
12 REQUESTED, POSTAGE PREPAID TO THE MOST RECENT ADDRESS PROVIDED BY  
13 THE VICTIM ON THE CRIME VICTIM NOTIFICATION REQUEST FORM.~~

~~14 (3) A NOTICE PROVIDED TO A VICTIM UNDER PARAGRAPH (2) OF  
15 THIS SUBSECTION SHALL BE:~~

~~16 (I) SENT AT LEAST 14 BUSINESS DAYS BEFORE THE  
17 HEARING TO CONSIDER A MOTION TO REVISE, MODIFY, OR REDUCE THE  
18 SENTENCE IMPOSED ON THE DEFENDANT; AND~~

~~19 (II) CONSIDERED SERVED ON THE DATE THE NOTICE IS  
20 DEPOSITED IN THE U.S. POST OFFICE.~~

~~21 (C) (1) IF A VICTIM NOTIFIES THE STATE'S ATTORNEY'S OFFICE OR  
22 THE COURT THAT THE VICTIM WAS NOT NOTIFIED, AS REQUIRED BY THIS  
23 SECTION, WITHIN 1 YEAR OF THE COURT DATE THAT REVISED, MODIFIED, OR  
24 REDUCED THE SENTENCE, THE COURT SHALL SCHEDULE A HEARING TO  
25 DETERMINE IF PROPER NOTICE WAS GIVEN TO THE VICTIM.~~

~~26 (2) ON A COURT FINDING THAT THE VICTIM WAS NOT NOTIFIED  
27 AS REQUIRED BY THIS SECTION, ANY REVISION, MODIFICATION, OR REDUCTION  
28 OF THE SENTENCE IS VOID.~~

~~29 (D) IF THE COURT VOIDS A REVISED, MODIFIED, OR REDUCED  
30 SENTENCE BECAUSE A VICTIM WAS NOT NOTIFIED AS REQUIRED UNDER THIS  
31 SECTION, THE COURT SHALL SCHEDULE A NEW HEARING AT WHICH THE COURT  
32 MAY REVISE, MODIFY, OR REDUCE THE SENTENCE AFTER THE VICTIM HAS HAD  
33 AN OPPORTUNITY TO BE HEARD.~~

1 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be~~  
2 ~~construed to apply only prospectively and may not be applied or interpreted to have~~  
3 ~~any effect on or application to any sentence imposed before the effective date of this~~  
4 ~~Act.~~

5 11-403.

6 (a) In this section, "sentencing or disposition hearing" means a hearing at  
7 which the imposition of a sentence, disposition in a juvenile court proceeding, or  
8 alteration of a sentence or disposition in a juvenile court proceeding is considered.

9 (b) In the sentencing or disposition hearing the court:

10 (1) if practicable, shall allow the victim or the victim's representative  
11 to address the court under oath before the imposition of sentence or other disposition:

12 (i) at the request of the prosecuting attorney; or

13 (ii) if the victim has filed a notification request form under §  
14 11-104 of this title; and

15 (2) may allow the victim or the victim's representative to address the  
16 court under oath before the imposition of sentence or other disposition at the request  
17 of the victim or the victim's representative.

18 (c) (1) If the victim or the victim's representative is allowed to address the  
19 court, the defendant or child respondent may cross-examine the victim or the victim's  
20 representative.

21 (2) The cross-examination is limited to the factual statements made to  
22 the court.

23 (d) (1) A victim or the victim's representative has the right not to address  
24 the court at the sentencing or disposition hearing.

25 (2) A person may not attempt to coerce a victim or the victim's  
26 representative to address the court at the sentencing or disposition hearing.

27 **(E) (1) IF THE VICTIM OR THE VICTIM'S REPRESENTATIVE FAILS TO**  
28 **APPEAR AT THE SENTENCING OR DISPOSITION HEARING, THE PROSECUTING**  
29 **ATTORNEY SHALL STATE ON THE RECORD THAT PROCEEDING WITHOUT THE**  
30 **APPEARANCE OF THE VICTIM OR THE VICTIM'S REPRESENTATIVE IS JUSTIFIED**  
31 **BECAUSE:**

32 **(I) THE VICTIM OR VICTIM'S REPRESENTATIVE WAS**  
33 **CONTACTED BY THE PROSECUTING ATTORNEY AND WAIVED THE RIGHT TO**  
34 **ATTEND THE HEARING;**

1                    (II) EFFORTS WERE MADE TO CONTACT THE VICTIM OR THE  
2 VICTIM’S REPRESENTATIVE AND, TO THE BEST KNOWLEDGE AND BELIEF OF THE  
3 PROSECUTING ATTORNEY, THE VICTIM OR VICTIM’S REPRESENTATIVE CANNOT  
4 BE LOCATED; OR

5                    (III) THE VICTIM OR VICTIM’S REPRESENTATIVE HAS NOT  
6 FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS TITLE.

7                    (2) IF THE COURT IS NOT SATISFIED BY THE STATEMENT THAT  
8 PROCEEDING WITHOUT THE APPEARANCE OF THE VICTIM OR THE VICTIM’S  
9 REPRESENTATIVE IS JUSTIFIED, OR, IF NO STATEMENT IS MADE, THE COURT  
10 SHALL POSTPONE THE SENTENCING OR DISPOSITION HEARING.

11                    [(e)] (F) A victim or victim’s representative who has been denied a right  
12 provided under this section may file an application for leave to appeal in the manner  
13 provided under § 11-103 of this title.

14                    SECTION ~~3~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take  
15 effect October 1, 2009.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.