SENATE BILL 620

E2 (9lr2935)

ENROLLED BILL

—Judicial Proceedings/Judiciary—

Introduced by Senators Simonaire, Greenip, Haines, Jacobs, Mooney, and Stone Stone, and Forehand

Read and	Examined	by Proo	freaders:			
					Proofre	ader.
					Proofre	ader.
Sealed with the Great Seal and	presented	to the	Governor,	for his a	approval	this
day of	at			_ o'clock	,	M.
					Presi	dent.
	CHAPTER	,				
AN ACT concerning						
Crimes of Violes Criminal Procedure – Viole Proceedings Hearing on Moti Sentence or Disposition – App	ation of C on for Rec	rime Vi vision, I	ctim Rigl Iodificati	nts – Subs	duction	of
FOR the purpose of requiring a condition defendant was convicted by imposed on the defendant requirements for service of	efore revisi - for a ce	ing, mod rtain c	lifying, or r ime of v	reducing	the senteroviding	tence ; the
schedule a certain hearing revision, modification, or re- court failed to notify the v	under cer duction of	rtain ci i the sent	rcumstance ence is voi	es; provid d on a fin	ing that ding tha	any t the
hearing under certain circu victim or the victim's repre	umstances;	-definin	g a term;	providing	g that, i	f the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

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Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



36

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 $\frac{(2)}{(2)}$

(3)

arson in the first degree;

kidnapping;

1	the victim's representative was not notified, the court shall schedule a hearing
$\overline{2}$	to make a certain determination; requiring the court, if a certain finding is
3	made, to allow the victim or the victim's representative to address the court or
4	submit a certain impact statement or recommendation; requiring the court to
5	consider certain information presented by the State, defendant, child
6	respondent, victim, or victim's representative; authorizing a court to reaffirm,
7	modify, or vacate a prior sentence or disposition of a certain defendant or child
8	respondent under certain circumstances; requiring a court to set forth certain
9	information in the record explaining why a certain modification is appropriate
10	under certain circumstances; providing for the application of this Act; and
11	generally relating to the revisory power of a court in criminal sentencing
12	requiring a prosecuting attorney, at a hearing on a motion for a revision,
13	modification, or reduction of a sentence or disposition in a certain court at which
14	a certain victim or victim's representative fails to appear, to make a certain
15	statement that proceeding without the appearance of the victim or the victim's
16	representative is justified; authorizing a court to postpone a certain hearing
17	under certain circumstances; and generally relating to the appearance of victims
18	or victims' representatives at hearings on motions for revision, modification, or
19	$\underline{reduction\ of\ sentence\ or\ disposition}.$
90	DV noncelling and recorded in a swith out with an andreast
20	BY repealing and reenacting, without with amendments, Article – Criminal Law Procedure
$\frac{21}{22}$	Section $\frac{14-101(a)}{11-503}$ $11-403$
23	Annotated Code of Maryland
$\frac{23}{24}$	(2002 Volume and 2008 Supplement) (2008 Replacement Volume)
4 4	(2005 volume and 2000 Supplement) (2000 Replacement volume)
25	BY adding to
26	Article - Criminal Procedure
27	Section 6-233
28	Annotated Code of Maryland
29	(2008 Replacement Volume)
30	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31	MARYLAND, That the Laws of Maryland read as follows:
32	Article - Criminal Law
33	14-101.
34	(a) In this section "crime of violence" means:
34	(a) In this section, "crime of violence" means:

1		(4)	mans	aughter, except involuntary manslaughter;						
2		(5)	mayh	9m;						
3 4	and 386 of th	(6) ie Cod		ing, as previously proscribed under former Article 27, §§ 385						
5		(7)	murde	er;						
6		(8)	rape;							
7		(9)	robbe	ry under § 3–402 or § 3–403 of this article;						
8		(10)	carjac	king;						
9		(11)	armed	l carjacking;						
10		(12)	sexua	l offense in the first degree;						
1	(13) sexual offense in the second degree;									
12 13	violence;	(14)	use of	a handgun in the commission of a felony or other crime of						
L 4		(15)	child (abuse in the first degree under § 3–601 of this article;						
15		(16)	sexua	l abuse of a minor under § 3–602 of this article if:						
L6 L7	adult at the t	time o	(i) f the ol	the victim is under the age of 13 years and the offender is an Tense; and						
18			(ii)	the offense involved:						
19 20	article;			1. vaginal intercourse, as defined in § 3–301 of this						
21				2. a sexual act, as defined in § 3–301 of this article;						
22 23	penetrates, h	10WeV	e r sligh	3. an act in which a part of the offender's body tly, into the victim's genital opening or anus; or						
24 25 26	the victim's gratification,			4. the intentional touching, not through the clothing, of ler's genital, anal, or other intimate area for sexual arousal,						
27 28	through (16)	(17) of thi	an at s subse	tempt to commit any of the crimes described in items (1) etion;						

$\frac{1}{2}$	article;	(18)	continuing course of conduct with a child under § 3-315 of this
3		(19)	assault in the first degree;
4		(20)	assault with intent to murder;
5		(21)	assault with intent to rape;
6		(22)	assault with intent to rob;
7 8	and	(23)	assault with intent to commit a sexual offense in the first degree;
9 10	degree.	(24)	assault with intent to commit a sexual offense in the second
11			Article - Criminal Procedure
12	6-233.		
13	(A)	IN-7	THIS SECTION, "VICTIM" MEANS A VICTIM OR A VICTIM'S
14	REPRESEN		e who has filed a Crime Victim Notification Request
15			RDANCE WITH § 11-104 OF THIS ARTICLE OR WHO HAS
16			RITTEN REQUEST TO THE STATE'S ATTORNEY TO BE NOTIFIED
17			F PROCEEDINGS IN ACCORDANCE WITH § 11-503 OF THIS
18	ARTICLE.		
19	(B)	(1)	A COURT SHALL NOTIFY EACH VICTIM OF THE CRIME FOR
20	WHICH TH	E DEF	'ENDANT WAS CONVICTED BEFORE REVISING, MODIFYING, OR
21	REDUCING	THE	SENTENCE IMPOSED ON THE DEFENDANT FOR A CRIME OF
22	VIOLENCE	AS DE	FINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.
23		(2)	NOTICE PROVIDED TO A VICTIM UNDER PARAGRAPH (1) OF
24	THIS SUBS	\ —/	N SHALL BE:
25			(I) GIVEN IN WRITING; AND
26			(H) SENT BY CERTIFIED U.S. MAIL, RETURN RECEIPT
27	•	,	STAGE PREPAID TO THE MOST RECENT ADDRESS PROVIDED BY
28	THE VICTOR	M ON 1	THE CRIME VICTIM NOTIFICATION REQUEST FORM.
29		(3)	A NOTICE PROVIDED TO A VICTIM UNDER PARAGRAPH (2) OF

1 2 3	(I) SENT AT LEAST 14 BUSINESS DAYS BEFORE THE HEARING TO CONSIDER A MOTION TO REVISE, MODIFY, OR REDUCE THE SENTENCE IMPOSED ON THE DEFENDANT; AND
4	(II) CONSIDERED SERVED ON THE DATE THE NOTICE IS
5	DEPOSITED IN THE U.S. POST OFFICE.
6	(C) (1) If a victim notifies the State's Attorney's office or
7	THE COURT THAT THE VICTIM WAS NOT NOTIFIED, AS REQUIRED BY THIS
8	SECTION, WITHIN 1 YEAR OF THE COURT DATE THAT REVISED, MODIFIED, OR
9	REDUCED THE SENTENCE, THE COURT SHALL SCHEDULE A HEARING TO
LO	DETERMINE IF PROPER NOTICE WAS GIVEN TO THE VICTIM.
l 1	(2) On a court finding that the victim was not notified
12	AS REQUIRED BY THIS SECTION, ANY REVISION, MODIFICATION, OR REDUCTION
13	OF THE SENTENCE IS VOID.
L 4	(D) IF THE COURT VOIDS A REVISED, MODIFIED, OR REDUCED
15	SENTENCE BECAUSE A VICTIM WAS NOT NOTIFIED AS REQUIRED UNDER THIS
L 6	SECTION, THE COURT SHALL SCHEDULE A NEW HEARING AT WHICH THE COURT
L 7	MAY REVISE, MODIFY, OR REDUCE THE SENTENCE AFTER THE VICTIM HAS HAD
l 8	AN OPPORTUNITY TO BE HEARD.
L 9	<u>Article - Criminal Procedure</u>
20	11–503.
21	(a) In this section, "subsequent proceeding" includes:
22	(1) a sentence review under § 8-102 of this article;
23	(2) a hearing on a request to have a sentence modified or vacated
24	under the Maryland Rules;
25	(3) in a juvenile delinquency proceeding, a review of a commitment
26	order or other disposition under the Maryland Rules;
27	(4) an appeal to the Court of Special Appeals;
28	(5) an appeal to the Court of Appeals; and
29	(6) any other postsentencing court proceeding.

1	(b) Following conviction or adjudication and sentencing or disposition of a
2	defendant or child respondent, the State's Attorney shall notify the victim or victim's
3	representative of a subsequent proceeding in accordance with § 11-104(e) of this title
4	<u>#</u>
5	(1) before the State's Attorney distributes notification request forms
6	under § 11-104(c) of this title, the victim or victim's representative submitted to the
7	State's Attorney a written request to be notified of subsequent proceedings; or
0	
8	(2) after the State's Attorney distributes notification request forms
9	under § 11-104(c) of this title, the victim or victim's representative submits a notification request form in accordance with § 11-104(d) of this title.
10	Hotineation request form in accordance with 3 11-104(a) of this title.
11	(e) (1) The State's Attorney's office shall:
11	110 State S Hooffie, S office Shaff.
12	(i) notify the victim or victim's representative of all appeals to
13	the Court of Special Appeals and the Court of Appeals; and
14	(ii) send an information copy of the notification to the office of
15	the Attorney General.
16	(2) After the initial notification to the victim or victim's representative
17	or receipt of a notification request form, as defined in § 11-104 of this title, the office of
18	the Attorney General shall:
19	(i) notify the victim or victim's representative of each
20	subsequent date pertinent to the appeal, including dates of hearings, postponements,
21	and decisions of the appellate courts; and
22	
22	(ii) send an information copy of the notification to the State's
23	Attorney's office.
24	(d) A notice sent under this section shall include the date, the time, the
$\frac{24}{25}$	location, and a brief description of the subsequent proceeding.
20	iocation, and a prier description of the subsequent proceeding.
26	(E) (1) IF A VICTIM OR VICTIM'S REPRESENTATIVE NOTIFIES THE
27	STATE'S ATTORNEY'S OFFICE, THE OFFICE OF THE ATTORNEY GENERAL, OR
28	THE COURT THAT THE VICTIM OR THE VICTIM'S REPRESENTATIVE WAS NOT
29	NOTIFIED, AS REQUIRED BY THIS SECTION, WITHIN 1 YEAR OF THE COURT DATE
30	THAT REVISED, MODIFIED, OR REDUCED THE SENTENCE, THE COURT SHALL
31	SCHEDULE A HEARING TO DETERMINE IF PROPER NOTICE WAS GIVEN TO THE
32	VICTIM OR THE VICTIM'S REPRESENTATIVE.
OZ	VIOLINI OIL LIE VIOLINI O ILLI RESENTATIVE.
33	(2) On a finding of the court that the victim or the
34	VICTIM'S REPRESENTATIVE WAS NOT NOTIFIED AS REQUIRED BY THIS SECTION,
35	THE COURT SHALL ALLOW THE VICTIM OR THE VICTIM'S REPRESENTATIVE TO
55	THE COURT DIMER MELOW THE VICTOR OR THE VICTOR OF REPRESENTATIVE TO

1	ADDRESS THE COURT OR SUBMIT A WRITTEN UPDATED VICTIM IMPACT
2	STATEMENT OR RECOMMENDATION.
_	
3	(3) AFTER HEARING FROM THE VICTIM OR THE VICTIM'S
4	REPRESENTATIVE OR CONSIDERING A WRITTEN UPDATED VICTIM IMPACT
5	STATEMENT OR RECOMMENDATION, THE COURT SHALL CONSIDER
6	INFORMATION PRESENTED BY THE STATE, DEFENDANT, CHILD RESPONDENT,
7	VICTIM, OR VICTIM'S REPRESENTATIVE, INCLUDING WHETHER THE DEFENDANT
8	OR CHILD RESPONDENT HAS BEEN RELEASED AND HOW THE DEFENDANT OR
9	CHILD RESPONDENT HAS CONFORMED BEHAVIOR TO THE CONDITIONS OF
10	RELEASE, IF ANY.
11	(4) AFTER CONSIDERING THE INFORMATION PROVIDED TO THE
12	COURT UNDER THIS SUBSECTION AND THE CONSTITUTIONAL AND STATUTORY
13	RIGHTS OF THE DEFENDANT, CHILD RESPONDENT, VICTIM, OR VICTIM'S
14	REPRESENTATIVE, THE COURT MAY REAFFIRM, MODIFY, OR VACATE A PRIOR
15	SENTENCE OR DISPOSITION IMPOSED IN A SUBSEQUENT PROCEEDING IN THE
16	INTERESTS OF JUSTICE.
1 P	(F) T
17	(5) IF THE COURT MODIFIES A PRIOR SENTENCE OR DISPOSITION
18	UNDER THIS SUBSECTION AND THE MODIFICATION RESULTS IN AN INCREASED
19	SENTENCE, THE COURT SHALL SET FORTH THE FACTS IN THE RECORD
00	·
20	EXPLAINING WHY THE MODIFICATION IS APPROPRIATE.
	EXPLAINING WHY THE MODIFICATION IS APPROPRIATE.
21	EXPLAINING WHY THE MODIFICATION IS APPROPRIATE. SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
21 22	EXPLAINING WHY THE MODIFICATION IS APPROPRIATE. SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have
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21 22 23	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act.
21 22 23 24	EXPLAINING WHY THE MODIFICATION IS APPROPRIATE. SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this
21 22 23 24	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act.
21 22 23 24 25	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act. 11–403.
21 22 23 24 25	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act. 11–403. (a) In this section, "sentencing or disposition hearing" means a hearing at
21 22 23 24 25 26 27 28	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act. 11–403. (a) In this section, "sentencing or disposition hearing" means a hearing at which the imposition of a sentence, disposition in a juvenile court proceeding, or alteration of a sentence or disposition in a juvenile court proceeding is considered.
21 22 23 24 25 26 27	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act. 11–403. (a) In this section, "sentencing or disposition hearing" means a hearing at which the imposition of a sentence, disposition in a juvenile court proceeding, or
21 22 23 24 25 26 27 28	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act. 11–403. (a) In this section, "sentencing or disposition hearing" means a hearing at which the imposition of a sentence, disposition in a juvenile court proceeding, or alteration of a sentence or disposition in a juvenile court proceeding is considered. (b) In the sentencing or disposition hearing the court:
21 22 23 24 25 26 27 28 29	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act. 11–403. (a) In this section, "sentencing or disposition hearing" means a hearing at which the imposition of a sentence, disposition in a juvenile court proceeding, or alteration of a sentence or disposition in a juvenile court proceeding is considered. (b) In the sentencing or disposition hearing the court: (1) if practicable, shall allow the victim or the victim's representative to
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21 22 23 24 25 26 27 28 29	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act. 11–403. (a) In this section, "sentencing or disposition hearing" means a hearing at which the imposition of a sentence, disposition in a juvenile court proceeding, or alteration of a sentence or disposition in a juvenile court proceeding is considered. (b) In the sentencing or disposition hearing the court: (1) if practicable, shall allow the victim or the victim's representative to
21 22 23 24 25 26 27 28 29 30 31	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sentence imposed before the effective date of this Act. 11–403. (a) In this section, "sentencing or disposition hearing" means a hearing at which the imposition of a sentence, disposition in a juvenile court proceeding, or alteration of a sentence or disposition in a juvenile court proceeding is considered. (b) In the sentencing or disposition hearing the court: (1) if practicable, shall allow the victim or the victim's representative to address the court under oath before the imposition of sentence or other disposition:

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MAY POSTPONE THE HEARING.

	o SENATE BILL 020
1 2 3	(2) may allow the victim or the victim's representative to address the court under oath before the imposition of sentence or other disposition at the request of the victim or the victim's representative.
4 5 6	(c) (1) If the victim or the victim's representative is allowed to address the court, the defendant or child respondent may cross-examine the victim or the victim's representative.
7 8	(2) The cross–examination is limited to the factual statements made to the court.
9 10	(d) (1) A victim or the victim's representative has the right not to address the court at the sentencing or disposition hearing.
11 12	(2) A person may not attempt to coerce a victim or the victim's representative to address the court at the sentencing or disposition hearing.
13	(E) (1) IF THE VICTIM OR THE VICTIM'S REPRESENTATIVE FAILS TO
14	APPEAR AT A HEARING ON A MOTION FOR A REVISION, MODIFICATION, OF
15	REDUCTION OF A SENTENCE OR DISPOSITION IN CIRCUIT COURT OR JUVENILE
16	COURT, THE PROSECUTING ATTORNEY SHALL STATE ON THE RECORD THAT
17	PROCEEDING WITHOUT THE APPEARANCE OF THE VICTIM OR THE VICTIM'S
18	REPRESENTATIVE IS JUSTIFIED BECAUSE:
19	(I) THE VICTIM OR VICTIM'S REPRESENTATIVE WAS
20	CONTACTED BY THE PROSECUTING ATTORNEY AND WAIVED THE RIGHT TO
21	ATTEND THE HEARING;
22	(II) EFFORTS WERE MADE TO CONTACT THE VICTIM OR THE
23	VICTIM'S REPRESENTATIVE AND, TO THE BEST KNOWLEDGE AND BELIEF OF THE
24	PROSECUTING ATTORNEY, THE VICTIM OR VICTIM'S REPRESENTATIVE CANNOT
25	BE LOCATED; OR
oc	(III) WHE MODING OF MODING PERFECTIVE HAS NOT
26	(III) THE VICTIM OR VICTIM'S REPRESENTATIVE HAS NOT
27	FILED A NOTIFICATION REQUEST FORM UNDER § 11–104 OF THIS TITLE.
28	(2) If the court is not satisfied by the statement that
29	PROCEEDING WITHOUT THE APPEARANCE OF THE VICTIM OR THE VICTIM'S
30	REPRESENTATIVE IS JUSTIFIED, OR, IF NO STATEMENT IS MADE, THE COURT

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

SECTION 3. 2 effect October 1, 2009	2. A	ND	BE	IT	FURTHER	ENACTED,	That	this Act	shall	ta
Approved:										
								Gov	ernor.	
						Pre	sident	of the Se	enate.	
					S	peaker of the	House	e of Dele	gates.	