

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 Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 ~~**Crimes of Violence – Voided Revised Sentences**~~

3 ~~**Criminal Procedure – Violation of Crime Victim Rights – Subsequent**~~

4 ~~**Proceedings Hearing on Motion for Revision, Modification, or Reduction of**~~

5 ~~**Sentence or Disposition – Appearance of Victim or Victim’s Representative**~~

6 FOR the purpose of ~~requiring a court to notify each victim of the crime for which the~~
7 ~~defendant was convicted before revising, modifying, or reducing the sentence~~
8 ~~imposed on the defendant for a certain crime of violence; providing the~~
9 ~~requirements for service of a certain notice to a victim; requiring a court to~~
10 ~~schedule a certain hearing under certain circumstances; providing that any~~
11 ~~revision, modification, or reduction of the sentence is void on a finding that the~~
12 ~~court failed to notify the victim; requiring a court to schedule a subsequent~~
13 ~~hearing under certain circumstances; defining a term; providing that, if the~~
14 ~~victim or the victim’s representative notifies certain offices that the victim or~~

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.

Italics indicate opposite chamber / conference committee amendments.



~~the victim's representative was not notified, the court shall schedule a hearing to make a certain determination; requiring the court, if a certain finding is made, to allow the victim or the victim's representative to address the court or submit a certain impact statement or recommendation; requiring the court to consider certain information presented by the State, defendant, child respondent, victim, or victim's representative; authorizing a court to reaffirm, modify, or vacate a prior sentence or disposition of a certain defendant or child respondent under certain circumstances; requiring a court to set forth certain information in the record explaining why a certain modification is appropriate under certain circumstances; providing for the application of this Act; and generally relating to the revisory power of a court in criminal sentencing requiring a prosecuting attorney, at a hearing on a motion for a revision, modification, or reduction of a sentence or disposition in a certain court at which a certain victim or victim's representative fails to appear, to make a certain statement that proceeding without the appearance of the victim or the victim's representative is justified; authorizing a court to postpone a certain hearing under certain circumstances; and generally relating to the appearance of victims or victims' representatives at hearings on motions for revision, modification, or reduction of sentence or disposition.~~

BY repealing and reenacting, ~~without~~ with amendments,
 Article – Criminal ~~Law~~ Procedure
 Section ~~14-101(a)~~ ~~11-503~~ 11-403
 Annotated Code of Maryland
 (~~2002 Volume and 2008 Supplement~~) (2008 Replacement Volume)

~~BY adding to~~
~~Article – Criminal Procedure~~
~~Section 6-233~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume)~~

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

~~Article – Criminal Law~~

~~14-101.~~

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

- ~~(1) abduction;~~
- ~~(2) arson in the first degree;~~
- ~~(3) kidnapping;~~

- 1 ~~(4) manslaughter, except involuntary manslaughter;~~
- 2 ~~(5) mayhem;~~
- 3 ~~(6) maiming, as previously proscribed under former Article 27, §§ 385~~
4 ~~and 386 of the Code;~~
- 5 ~~(7) murder;~~
- 6 ~~(8) rape;~~
- 7 ~~(9) robbery under § 3-402 or § 3-403 of this article;~~
- 8 ~~(10) carjacking;~~
- 9 ~~(11) armed carjacking;~~
- 10 ~~(12) sexual offense in the first degree;~~
- 11 ~~(13) sexual offense in the second degree;~~
- 12 ~~(14) use of a handgun in the commission of a felony or other crime of~~
13 ~~violence;~~
- 14 ~~(15) child abuse in the first degree under § 3-601 of this article;~~
- 15 ~~(16) sexual abuse of a minor under § 3-602 of this article if:~~
- 16 ~~(i) the victim is under the age of 13 years and the offender is an~~
17 ~~adult at the time of the offense; and~~
- 18 ~~(ii) the offense involved:~~
- 19 ~~1. vaginal intercourse, as defined in § 3-301 of this~~
20 ~~article;~~
- 21 ~~2. a sexual act, as defined in § 3-301 of this article;~~
- 22 ~~3. an act in which a part of the offender's body~~
23 ~~penetrates, however slightly, into the victim's genital opening or anus; or~~
- 24 ~~4. the intentional touching, not through the clothing, of~~
25 ~~the victim's or the offender's genital, anal, or other intimate area for sexual arousal,~~
26 ~~gratification, or abuse;~~
- 27 ~~(17) an attempt to commit any of the crimes described in items (1)~~
28 ~~through (16) of this subsection;~~

~~(b) Following conviction or adjudication and sentencing or disposition of a defendant or child respondent, the State's Attorney shall notify the victim or victim's representative of a subsequent proceeding in accordance with § 11-104(e) of this title if:~~

~~(1) before the State's Attorney distributes notification request forms under § 11-104(e) of this title, the victim or victim's representative submitted to the State's Attorney a written request to be notified of subsequent proceedings; or~~

~~(2) after the State's Attorney distributes notification request forms under § 11-104(e) of this title, the victim or victim's representative submits a notification request form in accordance with § 11-104(d) of this title.~~

~~(c) (1) The State's Attorney's office shall:~~

~~(i) notify the victim or victim's representative of all appeals to the Court of Special Appeals and the Court of Appeals; and~~

~~(ii) send an information copy of the notification to the office of the Attorney General.~~

~~(2) After the initial notification to the victim or victim's representative or receipt of a notification request form, as defined in § 11-104 of this title, the office of the Attorney General shall:~~

~~(i) notify the victim or victim's representative of each subsequent date pertinent to the appeal, including dates of hearings, postponements, and decisions of the appellate courts; and~~

~~(ii) send an information copy of the notification to the State's Attorney's office.~~

~~(d) A notice sent under this section shall include the date, the time, the location, and a brief description of the subsequent proceeding.~~

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

~~(2) ON A FINDING OF THE COURT THAT THE VICTIM OR THE VICTIM'S REPRESENTATIVE WAS NOT NOTIFIED AS REQUIRED BY THIS SECTION, THE COURT SHALL ALLOW THE VICTIM OR THE VICTIM'S 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.~~

~~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
20 EXPLAINING WHY THE MODIFICATION IS APPROPRIATE.~~

~~21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
22 construed to apply only prospectively and may not be applied or interpreted to have
23 any effect on or application to any sentence imposed before the effective date of this
24 Act.~~

~~25 11-403.~~

~~26 (a) *In this section, "sentencing or disposition hearing" means a hearing at
27 which the imposition of a sentence, disposition in a juvenile court proceeding, or
28 alteration of a sentence or disposition in a juvenile court proceeding is considered.*~~

~~29 (b) *In the sentencing or disposition hearing the court:*~~

~~30 (1) *if practicable, shall allow the victim or the victim's representative to
31 address the court under oath before the imposition of sentence or other disposition:*~~

~~32 (i) *at the request of the prosecuting attorney; or*~~

~~33 (ii) *if the victim has filed a notification request form under §
34 11-104 of this title; and*~~

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

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

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

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

11 (2) A person may not attempt to coerce a victim or the victim's
12 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, OR**
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**

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**
31 **MAY POSTPONE THE HEARING.**

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.