

SB0861/223022/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 861
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “**Senator Beidle**” and substitute “**Senators Beidle, Smith, Waldstreicher, Bailey, Carter, Cassilly, Hettleman, Hough, Lee, Sydnor, Watson, and West**”; strike line 2 in its entirety and substitute “**Public Safety – Firearm Crimes – Enforcement Center, Offenses, and Procedures**”; in line 3, after “of” insert “expanding the types of cases in which the State may appeal from a decision of a trial court; altering the classification of certain crimes involving firearms; establishing that for certain offenses the use of a firearm does not include mere possession; establishing the felony of theft of a handgun;”; after line 7, insert:

“BY repealing and reenacting, with amendments,

Article – Courts and Judicial Proceedings

Section 12–302(c)(4)

Annotated Code of Maryland

(2020 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 4–204, 4–306(b), 7–104, and 14–101(a)

Annotated Code of Maryland

(2021 Replacement Volume and 2021 Supplement)”;

and in line 10, strike “5–704” and substitute “5–705”.

AMENDMENT NO. 2

On pages 1 and 2, strike in their entirety the lines beginning with line 14 on page 1 through line 14 on page 2, inclusive.

(Over)

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On page 4, after line 24, insert:

“5-705.

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

AMENDMENT NO. 3

On page 2, after line 16, insert:

“Article – Courts and Judicial Proceedings

12-302.

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

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

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

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

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

(II) FOR CASES LISTED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been

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seized in violation of the Constitution of the United States, the Maryland Constitution, or the Maryland Declaration of Rights.

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

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

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

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

2. A. Pending the prosecution and determination of an appeal taken under this paragraph or paragraph (2) of this subsection, in a case in which the defendant is charged with a crime of violence, as defined in § 14–101 of the Criminal Law Article, OR A FIREARM–RELATED CRIME LISTED IN SUBPARAGRAPH (I)3 OR 4 OF THIS PARAGRAPH, the court may release the defendant on any terms and

conditions that the court considers appropriate or may order the defendant remanded to custody pending the outcome of the appeal.

B. The determination and enforcement of any terms and conditions of release shall be in accordance with the provisions of Title 5 of the Criminal Procedure Article.

[(vi)] (VII) If the State loses the appeal, the jurisdiction shall pay all the costs related to the appeal, including reasonable attorney's fees incurred by the defendant as a result of the appeal.

Article – Criminal Law

4-204.

(a) (1) [In this section, “firearm”] IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “FIREARM” means:

[(i)] 1. a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or

[(ii)] 2. the frame or receiver of such a weapon.

[(2)] (II) “Firearm” includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

(3) “USE A FIREARM” DOES NOT INCLUDE THE MERE POSSESSION OF A FIREARM.

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(b) A person may not use a firearm in the commission of a crime of violence, as defined in § 5–101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime.

(c) (1) (i) A person who violates this section is guilty of a [misdemeanor] FELONY and, in addition to any other penalty imposed for the crime of violence or felony, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

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

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

4–306.

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

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

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

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

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

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

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

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

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

7-104.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(1) by deception; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) is subject to:

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

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

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

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

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

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

[(4)] (5) Subject to paragraph [(5)] (6) of this subsection, a person who has four or more prior convictions under this subtitle and who is convicted of theft of property or services with a value of less than \$1,500 under paragraph [(2)] (3) of this

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subsection is guilty of a misdemeanor and:

(i) is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both; and

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

[(5)] (6) The court may not impose the penalties under paragraph [(4)] (5) of this subsection unless the State's Attorney serves notice on the defendant or the defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial that:

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

(ii) lists the alleged prior convictions.

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

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

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

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

(2) The Chief Judge of the District Court and the Administrative Office

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of the Courts, in conjunction with the Motor Vehicle Administration, shall establish uniform procedures for reporting a violation under this subsection.

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

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

14-101.

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

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

(2) “CRIME OF VIOLENCE” MEANS:

(I) abduction;

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

[(3)] (III) kidnapping;

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

[(5)] (V) mayhem;

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

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[(7)] (VII) murder;

[(8)] (VIII) rape;

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

[(10)] (X) carjacking;

[(11)] (XI) armed carjacking;

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

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

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

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

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

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

[(ii)] 2. the offense involved:

[1.] A. vaginal intercourse, as defined in § 3–301 of this article;

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[2.] B. a sexual act, as defined in § 3–301 of this article;

[3.] C. an act in which a part of the offender’s body penetrates, however slightly, into the victim’s genital opening or anus; or

[4.] D. the intentional touching of the victim’s or the offender’s genital, anal, or other intimate area for sexual arousal, gratification, or abuse;

[(17)] (XVII) home invasion under § 6–202(b) of this article;

[(18)] (XVIII) a felony offense under Title 3, Subtitle 11 of this article;

[(19)] (XIX) an attempt to commit any of the crimes described in items [(1) through (18)] (I) THROUGH (XVIII) of this [subsection] PARAGRAPH;

[(20)] (XX) continuing course of conduct with a child under § 3–315 of this article;

[(21)] (XXI) assault in the first degree;

[(22)] (XXII) assault with intent to murder;

[(23)] (XXIII) assault with intent to rape;

[(24)] (XXIV) assault with intent to rob;

[(25)] (XXV) assault with intent to commit a sexual offense in the first degree; and

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[(26)] (XXVI) assault with intent to commit a sexual offense in
the second degree.

(3) “USE OF A FIREARM” DOES NOT INCLUDE MERE POSSESSION
OF A FIREARM.”