

SENATE BILL 337

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4r0159
CF HB 306

By: **The President (By Request – Administration)**

Introduced and read first time: January 17, 2014

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2014

CHAPTER _____

1 AN ACT concerning

2 ~~Criminal Law – Crimes Committed~~ **Crimes – Committing a Crime of Violence**
3 **in the Presence of a Minor – Penalties**

4 FOR the purpose of prohibiting a person from committing a certain crime of violence ~~if~~
5 ~~the crime is a domestically related crime and~~ when the person knows or
6 reasonably should know that a minor of a certain age is present in a residence;
7 establishing certain circumstances under which a minor is present; establishing
8 a certain enhanced penalty for a violation of this Act; authorizing a court to
9 impose an enhanced penalty if the State's Attorney provides certain notice to
10 the defendant in a certain manner and if certain elements have been proven
11 beyond a reasonable doubt; authorizing the State to include a certain notice in a
12 certain indictment or information; providing that a penalty imposed under this
13 Act shall be separate from and consecutive to a sentence for any crime based on
14 the act establishing the violation of this Act; and generally relating to ~~crimes~~
15 ~~committed~~ the commission of crimes of violence in the presence of ~~a minor~~
16 minors.

17 BY repealing and reenacting, without amendments,

18 Article – Courts and Judicial Proceedings

19 Section 9–106(a)

20 Annotated Code of Maryland

21 (2013 Replacement Volume and 2013 Supplement)

22 BY adding to

23 Article – Criminal Law

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 Section 3–601.1
 2 Annotated Code of Maryland
 3 (2012 Replacement Volume and 2013 Supplement)

4 BY repealing and reenacting, without amendments,
 5 Article – Public Safety
 6 Section 5–101(a) and (c)
 7 Annotated Code of Maryland
 8 (2011 Replacement Volume and 2013 Supplement)

9 ~~BY repealing and reenacting, without amendments,~~
 10 ~~Article – Criminal Procedure~~
 11 ~~Section 6–233~~
 12 ~~Annotated Code of Maryland~~
 13 ~~(2008 Replacement Volume and 2013 Supplement)~~

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

16 **Article – Courts and Judicial Proceedings**

17 9–106.

18 (a) The spouse of a person on trial for a crime may not be compelled to testify
 19 as an adverse witness unless the charge involves:

20 (1) The abuse of a child under 18; or

21 (2) Assault in any degree in which the spouse is a victim if:

22 (i) The person on trial was previously charged with assault in
 23 any degree or assault and battery of the spouse;

24 (ii) The spouse was sworn to testify at the previous trial; and

25 (iii) The spouse refused to testify at the previous trial on the
 26 basis of the provisions of this section.

27 **Article – Criminal Law**

28 **3–601.1.**

29 (A) (1) ~~THIS SUBSECTION APPLIES ONLY IF, AT THE TIME THE CRIME~~
 30 ~~WAS COMMITTED, THE DEFENDANT OR THE VICTIM HAD PERMANENT CUSTODY,~~
 31 ~~TEMPORARY CUSTODY, TEMPORARY CARE, OR RESPONSIBILITY FOR THE~~
 32 ~~SUPERVISION OF THE MINOR.~~

1 ~~(2)~~ A PERSON MAY NOT COMMIT A CRIME OF VIOLENCE AS
2 DEFINED IN § 5-101 OF THE PUBLIC SAFETY ARTICLE ~~IF:~~

3 ~~(I) THE CRIME IS A DOMESTICALLY RELATED CRIME AS~~
4 ~~DEFINED IN § 6-233 OF THE CRIMINAL PROCEDURE ARTICLE; AND~~

5 ~~(II)~~ WHEN THE PERSON KNOWS OR REASONABLY SHOULD
6 KNOW THAT A MINOR WHO IS AT LEAST 2 YEARS OLD IS PRESENT IN A
7 RESIDENCE.

8 ~~(3)~~ (2) FOR THE PURPOSES OF PARAGRAPH (1) OF THIS
9 SUBSECTION, A MINOR IS PRESENT IF THE MINOR IS WITHIN SIGHT OR HEARING
10 OF THE CRIME ~~OR IS OTHERWISE ABLE TO PERCEIVE THE CRIME~~ OF VIOLENCE.

11 (B) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO
12 IMPRISONMENT NOT EXCEEDING 5 YEARS IN ADDITION TO ANY OTHER
13 SENTENCE IMPOSED FOR THE CRIME OF VIOLENCE.

14 (C) A COURT MAY IMPOSE AN ENHANCED PENALTY UNDER SUBSECTION
15 (B) OF THIS SECTION IF:

16 (1) AT LEAST 30 DAYS BEFORE TRIAL IN THE CIRCUIT COURT,
17 AND 15 DAYS BEFORE TRIAL IN THE DISTRICT COURT, THE STATE'S ATTORNEY
18 NOTIFIES THE DEFENDANT IN WRITING OF THE STATE'S INTENTION TO SEEK
19 THE ENHANCED PENALTY; AND

20 (2) THE ELEMENTS OF SUBSECTION ~~(A)(2)~~ (A)(1) OF THIS
21 SECTION HAVE BEEN PROVEN BEYOND A REASONABLE DOUBT.

22 (D) IF THE DEFENDANT IS CHARGED BY INDICTMENT OR CRIMINAL
23 INFORMATION, THE STATE MAY INCLUDE THE NOTICE REQUIRED UNDER
24 SUBSECTION (C)(1) OF THIS SECTION IN THE INDICTMENT OR INFORMATION.

25 (E) AN ENHANCED PENALTY IMPOSED UNDER THIS SECTION SHALL BE
26 SEPARATE FROM AND CONSECUTIVE TO A SENTENCE FOR ANY CRIME BASED ON
27 THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

28 Article – Public Safety

29 5-101.

30 (a) In this subtitle the following words have the meanings indicated.

31 (c) “Crime of violence” means:

- 1 (1) abduction;
- 2 (2) arson in the first degree;
- 3 (3) assault in the first or second degree;
- 4 (4) burglary in the first, second, or third degree;
- 5 (5) carjacking and armed carjacking;
- 6 (6) escape in the first degree;
- 7 (7) kidnapping;
- 8 (8) voluntary manslaughter;
- 9 (9) maiming as previously proscribed under former Article 27, § 386 of
10 the Code;
- 11 (10) mayhem as previously proscribed under former Article 27, § 384 of
12 the Code;
- 13 (11) murder in the first or second degree;
- 14 (12) rape in the first or second degree;
- 15 (13) robbery;
- 16 (14) robbery with a dangerous weapon;
- 17 (15) sexual offense in the first, second, or third degree;
- 18 (16) an attempt to commit any of the crimes listed in items (1) through
19 (15) of this subsection; or
- 20 (17) assault with intent to commit any of the crimes listed in items (1)
21 through (15) of this subsection or a crime punishable by imprisonment for more than 1
22 year.

23 ~~Article—Criminal Procedure~~

24 ~~6-233.~~

25 (a) ~~In this section, “domestically related crime” means a crime committed by~~
26 ~~a defendant against a victim who is a person eligible for relief, as defined in § 4-501 of~~
27 ~~the Family Law Article, or who had a sexual relationship with the defendant within 12~~
28 ~~months before the commission of the crime.~~

1 ~~(b) (1) If a defendant is convicted of or receives a probation before~~
2 ~~judgment disposition for a crime, on request of the State's Attorney, the court shall~~
3 ~~make a finding of fact, based on evidence produced at trial, as to whether the crime is~~
4 ~~a domestically related crime.~~

5 ~~(2) The State has the burden of proving by a preponderance of the~~
6 ~~evidence that the crime is a domestically related crime.~~

7 ~~(c) If the court finds that the crime is a domestically related crime under~~
8 ~~subsection (b) of this section, that finding shall become part of the court record for~~
9 ~~purposes of reporting to the Criminal Justice Information System Central Repository~~
10 ~~under § 10-215 of this article.~~

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2014.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.