

SENATE BILL 481

E1, E4

EMERGENCY BILL

0lr2295
CF HB 780

By: **Senators Lee, Elfreth, Kagan, Kramer, Waldstreicher, and Young**

Introduced and read first time: January 29, 2020

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 2, 2020

CHAPTER _____

1 AN ACT concerning

2 ~~Criminal Law~~ **State Commission on Criminal Sentencing Policy – Annual**
3 **Report – Crime Crimes of Violence – Vulnerable Adult**

4 FOR the purpose of ~~altering certain definitions of “crime of violence” to include a certain~~
5 ~~offense of abuse or neglect of a vulnerable adult in the first degree; and generally~~
6 ~~relating to crimes of violence~~ requiring the State Commission on Criminal
7 Sentencing Policy to report certain information annually to the Governor and certain
8 committees of the General Assembly on or before a certain date; requiring the
9 Governor’s Office of Crime Control and Prevention, in consultation with the
10 Commission, to analyze the use of certain pleas in a certain calendar year; requiring
11 the Governor’s Office of Crime Control and Prevention to submit a certain report to
12 the Governor and the General Assembly on or before a certain date; defining certain
13 terms; making this Act an emergency measure; and generally relating to the State
14 Commission on Criminal Sentencing Policy.

15 ~~BY repealing and reenacting, without amendments,~~
16 ~~Article – Criminal Law~~
17 ~~Section 3–604~~
18 ~~Annotated Code of Maryland~~
19 ~~(2012 Replacement Volume and 2019 Supplement)~~

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

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.



(2012 Replacement Volume and 2019 Supplement)

~~BY repealing and reenacting, with amendments,
Article – Public Safety
Section 5–101(e)
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)~~

BY repealing and reenacting, without amendments,
Article – Criminal Procedure
Section 6–201
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

BY adding to
Article – Criminal Procedure
Section 6–209.1
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

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

Article – Criminal Law

~~3–604.~~

~~(a) (1) In this section and §§ 3–605 and 3–606 of this subtitle the following words have the meanings indicated.~~

~~(2) (i) “Abuse” means the sustaining of physical pain or injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the vulnerable adult’s health or welfare is harmed or threatened.~~

~~(ii) “Abuse” includes the sexual abuse of a vulnerable adult.~~

~~(iii) “Abuse” does not include an accepted medical or behavioral procedure ordered by a health care provider authorized to practice under the Health Occupations Article or § 13–516 of the Education Article acting within the scope of the health care provider’s practice.~~

~~(3) “Caregiver” means a person under a duty to care for a vulnerable adult because of a contractual undertaking to provide care.~~

~~(4) “Family member” means a relative of a vulnerable adult by blood, marriage, adoption, or the marriage of a child.~~

~~(5) "Household" means the location:~~

~~(i) in which the vulnerable adult resides;~~

~~(ii) where the abuse or neglect of a vulnerable adult is alleged to have taken place; or~~

~~(iii) where the person suspected of abusing or neglecting a vulnerable adult resides.~~

~~(6) "Household member" means an individual who lives with or is a regular presence in a home of a vulnerable adult at the time of the alleged abuse or neglect.~~

~~(7) (i) "Neglect" means the intentional failure to provide necessary assistance and resources for the physical needs of a vulnerable adult, including:~~

~~1. food;~~

~~2. clothing;~~

~~3. toileting;~~

~~4. essential medical treatment;~~

~~5. shelter; or~~

~~6. supervision.~~

~~(ii) "Neglect" does not include the provision of nonmedical remedial care and treatment for the healing of injury or disease that is:~~

~~1. given with the consent of the vulnerable adult; and~~

~~2. recognized by State law in place of medical treatment.~~

~~(8) "Serious physical injury" means physical injury that:~~

~~(i) creates a substantial risk of death; or~~

~~(ii) causes permanent or protracted serious:~~

~~1. disfigurement;~~

~~2. loss of the function of any bodily member or organ; or~~

~~3. impairment of the function of any bodily member or organ.~~

~~(9) (i) "Sexual abuse" means an act that involves sexual molestation or exploitation of a vulnerable adult.~~

~~(ii) "Sexual abuse" includes:~~

~~1. incest;~~

~~2. rape;~~

~~3. sexual offense in any degree;~~

~~4. sodomy; and~~

~~5. unnatural or perverted sexual practices.~~

~~(10) "Vulnerable adult" means an adult who lacks the physical or mental capacity to provide for the adult's daily needs.~~

~~(b) (1) A caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult that:~~

~~(i) results in the death of the vulnerable adult;~~

~~(ii) causes serious physical injury to the vulnerable adult; or~~

~~(iii) involves sexual abuse of the vulnerable adult.~~

~~(2) A household member or family member may not cause abuse or neglect of a vulnerable adult that:~~

~~(i) results in the death of the vulnerable adult;~~

~~(ii) causes serious physical injury to the vulnerable adult; or~~

~~(iii) involves sexual abuse of the vulnerable adult.~~

~~(c) A person who violates this section is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.~~

~~(d) A sentence imposed under this section shall be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.~~

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

(1) abduction;

(2) arson in the first degree;

(3) kidnapping;

(4) manslaughter, except involuntary manslaughter;

(5) mayhem;

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

(7) murder;

(8) rape;

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

(10) carjacking;

(11) armed carjacking;

(12) sexual offense in the first degree;

(13) sexual offense in the second degree;

(14) 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) child abuse in the first degree under § 3–601 of this article;

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

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

(ii) the offense involved:

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

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

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

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

(17) home invasion under § 6-202(b) of this article;

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

~~(19) ABUSE OR NEGLECT OF A VULNERABLE ADULT IN THE FIRST DEGREE UNDER § 3-604 OF THIS ARTICLE;~~

~~(20)~~ an attempt to commit any of the crimes described in items (1) through ~~[(18)] (19)~~ of this subsection;

~~[(20)] (21)~~ continuing course of conduct with a child under § 3-315 of this article;

~~[(21)] (22)~~ assault in the first degree;

~~[(22)] (23)~~ assault with intent to murder;

~~[(23)] (24)~~ assault with intent to rape;

~~[(24)] (25)~~ assault with intent to rob;

~~[(25)] (26)~~ assault with intent to commit a sexual offense in the first degree;

and

~~[(26)] (27)~~ assault with intent to commit a sexual offense in the second degree.

~~Article—Public Safety~~

~~5-101.~~

~~(e) "Crime of violence" means:~~

~~(1) abduction;~~

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

~~(3) assault in the first or second degree;~~

~~(4) burglary in the first, second, or third degree;~~

~~(5) earjacking and armed earjacking;~~

~~(6) escape in the first degree;~~

~~(7) kidnapping;~~

~~(8) voluntary manslaughter;~~

~~(9) maiming as previously proscribed under former Article 27, § 386 of the Code;~~

~~(10) mayhem as previously proscribed under former Article 27, § 384 of the Code;~~

~~(11) murder in the first or second degree;~~

~~(12) rape in the first or second degree;~~

~~(13) robbery;~~

~~(14) robbery with a dangerous weapon;~~

~~(15) sexual offense in the first, second, or third degree;~~

~~(16) home invasion under § 6-202(b) of the Criminal Law Article;~~

~~(17) a felony offense under Title 3, Subtitle 11 of the Criminal Law Article;~~

~~(18) ABUSE OR NEGLECT OF A VULNERABLE ADULT IN THE FIRST DEGREE UNDER § 3-604 OF THE CRIMINAL LAW ARTICLE;~~

~~(19) an attempt to commit any of the crimes listed in items (1) through [(17)] (18) of this subsection; or~~

~~[(19)] (20) assault with intent to commit any of the crimes listed in items (1) through [(17)] (18) of this subsection or a crime punishable by imprisonment for more than 1 year.~~

Article – Criminal Procedure

6-201.

In this part, “Commission” means the State Commission on Criminal Sentencing Policy.

6-209.1.

(A) IN THIS SECTION, “AMERICAN BAR ASSOCIATION PLEA” MEANS A PLEA AGREEMENT THAT:

(1) A COURT HAS APPROVED RELATING TO A PARTICULAR SENTENCE, DISPOSITION, OR OTHER JUDICIAL ACTION; AND

(2) IS BINDING ON THE COURT UNDER MARYLAND RULE 4-243(C).

(B) ON OR BEFORE DECEMBER 1, 2021, AND EACH DECEMBER 1 THEREAFTER, THE COMMISSION SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE HOUSE JUDICIARY COMMITTEE AND THE SENATE JUDICIAL PROCEEDINGS COMMITTEE THE FOLLOWING INFORMATION FOR THE PRECEDING CALENDAR YEAR FOR CASES INVOLVING A CRIME OF VIOLENCE, AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE, DISAGGREGATED BY JUDICIAL CIRCUIT:

(1) DISAGGREGATED BY TYPE OF OFFENSE:

(I) THE NUMBER OF AMERICAN BAR ASSOCIATION PLEAS;

(II) THE NUMBER OF NON-AMERICAN BAR ASSOCIATION PLEAS;

(III) THE NUMBER OF SUSPENDED SENTENCES; AND

(IV) FOR CONVICTIONS IN WHICH A PORTION OF THE SENTENCE WAS SUSPENDED, THE AVERAGE PERCENTAGE OF THE TOTAL SENTENCE SUSPENDED; AND

(2) FOR SENTENCING EVENTS THAT RESULTED IN A DEPARTURE FROM THE SENTENCING GUIDELINES, THE DEPARTURE REASONS CITED AND THE PERCENTAGE OF EVENTS IN WHICH EACH REASON WAS CITED.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) In this section, “American Bar Association plea” means a plea agreement that:

(1) a court has approved relating to a particular sentence, disposition, or other judicial action; and

(2) is binding on the court under Maryland Rule 4-243(c).

(b) (1) The Governor's Office of Crime Control and Prevention, in consultation with and with assistance from the Maryland Commission on Criminal Sentencing Policy, shall analyze the use of American Bar Association pleas in calendar year 2019 based on information submitted to the Maryland Commission on Criminal Sentencing Policy.

(2) (i) On or before December 31, 2020, the Governor's Office of Crime Control and Prevention shall report to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly on the results of the analysis required under paragraph (1) of this subsection.

(ii) The report required under this paragraph shall include data showing:

1. the use of American Bar Association pleas by judicial circuit; and

2. the percentage of sentences under the American Bar Association pleas that would have been guidelines-compliant if the sentence had been imposed under another type of disposition.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect October 1, 2020~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.