

SB1137/932819/2

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL 1137
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike lines 2 and 3 in their entirety and substitute “Criminal Law – Prohibitions, Prosecutions, and Corrections”; in line 7, after “records;” insert “adding to the list of programs for which a certain inmate may be allowed a certain deduction from the inmate’s term of confinement for each calendar month during which the inmate manifests satisfactory progress in or completion of the program; adding certain crimes relating to firearms to a certain list of crimes for which certain evidence may be gathered by, and a judge may grant an order authorizing, interception of oral, wire, or electronic communications; making conforming changes; altering the definition of “drug paraphernalia” to exclude equipment used to test or analyze a controlled dangerous substance; altering a certain prohibition on the possession of drug paraphernalia; altering the list of controlled dangerous substances applicable to a certain prohibition against volume dealing in controlled dangerous substances; altering maximum penalties for crimes relating to inducing false testimony or avoidance of a subpoena, retaliation for testimony, and intimidating or corrupting a juror; establishing the Task Force to Study Maryland’s Criminal Gang Statutes; providing for the composition, chair, and staffing of the Task Force; prohibiting a member of the Task Force from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Task Force to study and make recommendations regarding certain matters; requiring the Task Force to report its findings and recommendations to the Governor and the General Assembly on or before a certain date; providing for the termination of the Task Force;”; in the same line, strike “to inmate case records” and substitute “to criminal prohibitions, prosecutions, and corrections”; in line 10, after “3–601” insert “and 3–706”; and after line 12, insert:

“BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings

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Section 10–402(c)(2) and 10–406(a)
Annotated Code of Maryland
(2013 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, without amendments,

Article – Criminal Law
Section 5–101(a)
Annotated Code of Maryland
(2012 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Law
Section 5–101(p), 5–612, 5–619(c) and (d), 9–302, 9–303, and 9–305
Annotated Code of Maryland
(2012 Replacement Volume and 2017 Supplement)”.

AMENDMENT NO. 2

On page 3, after line 15, insert:

“3–706.

(a) In addition to any other deductions allowed under this subtitle, as an incentive to reduce a term of incarceration, an inmate may be allowed a deduction of 5 days from the inmate’s term of confinement for each calendar month during which the inmate manifests satisfactory progress in or completion of:

- (1) vocational courses;
- (2) other educational and training courses;
- (3) workforce development training;

(4) cognitive-behavioral therapy; [or]

(5) substance abuse therapy;

(6) LIFE SKILLS TRAINING; OR

(7) ANTIVIOLENCE THERAPY, INCLUDING ANGER MANAGEMENT AND CONFLICT RESOLUTION.

(b) The deduction described in subsection (a) of this section shall be calculated:

(1) from the first day that the inmate participates in the course; and

(2) on a prorated basis for any portion of the calendar month during which the inmate participates in the course.

Article – Courts and Judicial Proceedings

10-402.

(c) (2) (i) This paragraph applies to an interception in which:

1. The investigative or law enforcement officer or other person is a party to the communication; or

2. One of the parties to the communication has given prior consent to the interception.

(ii) It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation or any other person acting at the

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prior direction and under the supervision of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in order to provide evidence:

1. Of the commission of:
 - A. Murder;
 - B. Kidnapping;
 - C. Rape;
 - D. A sexual offense in the first or second degree;
 - E. Child abuse in the first or second degree;
 - F. Child pornography under § 11–207, § 11–208, or § 11–208.1 of the Criminal Law Article;
 - G. Gambling;
 - H. Robbery under § 3–402 or § 3–403 of the Criminal Law Article;
 - I. A felony under Title 6, Subtitle 1 of the Criminal Law Article;
 - J. Bribery;
 - K. Extortion;
 - L. Dealing in a controlled dangerous substance, including a violation of § 5–617 or § 5–619 of the Criminal Law Article;

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M. A fraudulent insurance act, as defined in Title 27, Subtitle 4 of the Insurance Article;

N. An offense relating to destructive devices under § 4–503 of the Criminal Law Article;

O. A human trafficking offense under § 11–303 of the Criminal Law Article;

P. Sexual solicitation of a minor under § 3–324 of the Criminal Law Article;

Q. An offense relating to obstructing justice under § 9–302, § 9–303, or § 9–305 of the Criminal Law Article;

R. Sexual abuse of a minor under § 3–602 of the Criminal Law Article;

S. A theft scheme or continuing course of conduct under § 7–103(f) of the Criminal Law Article involving an aggregate value of property or services of at least \$10,000;

T. Abuse or neglect of a vulnerable adult under § 3–604 or § 3–605 of the Criminal Law Article;

U. An offense relating to Medicaid fraud under §§ 8–509 through 8–515 of the Criminal Law Article; [or]

V. AN OFFENSE INVOLVING A FIREARM UNDER § 5–134, § 5–136, § 5–138, § 5–140, § 5–141, OR § 5–144 OF THE PUBLIC SAFETY ARTICLE; OR

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W. A conspiracy or solicitation to commit an offense listed in items A through [U] V of this item; or

2. If:

A. A person has created a barricade situation; and

B. Probable cause exists for the investigative or law enforcement officer to believe a hostage or hostages may be involved.

10-406.

(a) The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction, and the judge, in accordance with the provisions of § 10-408 of this subtitle, may grant an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of:

(1) Murder;

(2) Kidnapping;

(3) Rape;

(4) A sexual offense in the first or second degree;

(5) Child abuse in the first or second degree;

(6) Child pornography under § 11-207, § 11-208, or § 11-208.1 of the Criminal Law Article;

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- (7) Gambling;
- (8) Robbery under § 3–402 or § 3–403 of the Criminal Law Article;
- (9) A felony under Title 6, Subtitle 1 of the Criminal Law Article;
- (10) Bribery;
- (11) Extortion;
- (12) Dealing in a controlled dangerous substance, including a violation of § 5–617 or § 5–619 of the Criminal Law Article;
- (13) A fraudulent insurance act, as defined in Title 27, Subtitle 4 of the Insurance Article;
- (14) An offense relating to destructive devices under § 4–503 of the Criminal Law Article;
- (15) A human trafficking offense under § 11–303 of the Criminal Law Article;
- (16) Sexual solicitation of a minor under § 3–324 of the Criminal Law Article;
- (17) An offense relating to obstructing justice under § 9–302, § 9–303, or § 9–305 of the Criminal Law Article;
- (18) Sexual abuse of a minor under § 3–602 of the Criminal Law Article;

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(19) A theft scheme or continuing course of conduct under § 7–103(f) of the Criminal Law Article involving an aggregate value of property or services of at least \$10,000;

(20) Abuse or neglect of a vulnerable adult under § 3–604 or § 3–605 of the Criminal Law Article;

(21) An offense relating to Medicaid fraud under §§ 8–509 through 8–515 of the Criminal Law Article; [or]

(22) AN OFFENSE INVOLVING A FIREARM UNDER § 5–134, § 5–136, § 5–138, § 5–140, § 5–141, OR § 5–144 OF THE PUBLIC SAFETY ARTICLE; OR

(23) A conspiracy or solicitation to commit an offense listed in items (1) through [(21)] (22) of this subsection.

Article – Criminal Law

5–101.

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

(p) (1) “Drug paraphernalia” means equipment, a product, or material that is used, intended for use, or designed for use, in:

(i) planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, [testing, analyzing,] packaging, repackaging, storing, containing, or concealing a controlled dangerous substance in violation of this title; or

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(ii) injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled dangerous substance in violation of this title.

(2) “Drug paraphernalia” includes:

(i) a kit used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled dangerous substance or from which a controlled dangerous substance can be derived;

(ii) a kit used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled dangerous substance;

(iii) an isomerization device used, intended for use, or designed for use in increasing the potency of any species of plant that is a controlled dangerous substance;

(iv) testing equipment used, intended for use, or designed for use [in identifying or] in analyzing the strength, effectiveness, or purity of a controlled dangerous substance;

(v) a scale or balance used, intended for use, or designed for use in weighing or measuring a controlled dangerous substance;

(vi) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used, intended for use, or designed for use in cutting a controlled dangerous substance;

(vii) a separation gin or sifter used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

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(viii) a blender, bowl, container, spoon, or mixing device used, intended for use, or designed for use in compounding a controlled dangerous substance;

(ix) a capsule, balloon, envelope, or other container used, intended for use, or designed for use in packaging small quantities of a controlled dangerous substance;

(x) a container or other object used, intended for use, or designed for use in storing or concealing a controlled dangerous substance;

(xi) a hypodermic syringe, needle, or other object used, intended for use, or designed for use in parenterally injecting a controlled dangerous substance into the human body; and

(xii) an object used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body such as:

1. a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without screen, permanent screen, hashish head, or punctured metal bowl;

2. a water pipe;

3. a carburetion tube or device;

4. a smoking or carburetion mask;

5. an object known as a roach clip used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

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6. a miniature spoon used for cocaine and cocaine vials;
7. a chamber pipe;
8. a carburetor pipe;
9. an electric pipe;
10. an air-driven pipe;
11. a chillum;
12. a bong; and
13. an ice pipe or chiller.

5-612.

- (a) A person may not manufacture, distribute, dispense, or possess:
 - (1) 50 pounds or more of marijuana;
 - (2) 448 grams or more of cocaine;
 - (3) 448 grams or more of any mixture containing a detectable amount, AS SCIENTIFICALLY MEASURED USING REPRESENTATIVE SAMPLING METHODOLOGY, of cocaine;
 - (4) 448 grams or more of cocaine base, commonly known as “crack”;
 - (5) 28 grams or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium;

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(6) [any mixture containing] 28 grams or more of ANY MIXTURE CONTAINING A DETECTABLE AMOUNT, AS SCIENTIFICALLY MEASURED USING REPRESENTATIVE SAMPLING METHODOLOGY, OF morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium;

(7) 5 GRAMS OR MORE OF FENTANYL OR ANY STRUCTURAL VARIATION OF FENTANYL THAT IS SCHEDULED BY THE UNITED STATES DRUG ENFORCEMENT ADMINISTRATION;

(8) 28 GRAMS OR MORE OF ANY MIXTURE CONTAINING A DETECTABLE AMOUNT, AS SCIENTIFICALLY MEASURED USING REPRESENTATIVE SAMPLING METHODOLOGY, OF FENTANYL OR ANY STRUCTURAL VARIATION OF FENTANYL THAT IS SCHEDULED BY THE UNITED STATES DRUG ENFORCEMENT ADMINISTRATION;

[(7)] (9) 1,000 dosage units or more of lysergic acid diethylamide;

[(8)] (10) any mixture containing the equivalent of 1,000 dosage units of lysergic acid diethylamide;

[(9)] (11) 16 ounces or more of phencyclidine in liquid form;

[(10)] (12) 448 grams or more of any mixture containing A DETECTABLE AMOUNT, AS SCIENTIFICALLY MEASURED USING REPRESENTATIVE SAMPLING METHODOLOGY, OF phencyclidine;

[(11)] (13) 448 grams or more of methamphetamine; or

[(12)] (14) [any mixture containing] 448 grams or more of ANY MIXTURE CONTAINING A DETECTABLE AMOUNT, AS SCIENTIFICALLY MEASURED USING REPRESENTATIVE SAMPLING METHODOLOGY, OF methamphetamine.

(b) For the purpose of determining the quantity of a controlled dangerous substance involved in individual acts of manufacturing, distributing, dispensing, or possessing under subsection (a) of this section, the acts may be aggregated if each of the acts occurred within a 90-day period.

(c) (1) A person who is convicted of a violation of subsection (a) of this section shall be sentenced to imprisonment for not less than 5 years and is subject to a fine not exceeding \$100,000.

(2) The court may not suspend any part of the mandatory minimum sentence of 5 years.

(3) Except as provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

5-619.

(c) (1) This subsection does not apply to the use or possession of drug paraphernalia involving the use or possession of marijuana.

(2) Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia to:

(i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, [test, analyze,] pack, repack, store, contain, or conceal a controlled dangerous substance; or

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(ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.

(3) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to:

(i) for a first violation, a fine not exceeding \$500; and

(ii) for each subsequent violation, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(4) A person who is convicted of violating this subsection for the first time and who previously has been convicted of violating subsection (d)(4) of this section is subject to the penalty specified under paragraph (3)(ii) of this subsection.

(d) (1) Unless authorized under this title, a person may not deliver or sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that the drug paraphernalia will be used to:

(i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, [test, analyze,] pack, repack, store, contain, or conceal a controlled dangerous substance; or

(ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.

(2) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to:

(i) for a first violation, a fine not exceeding \$500; and

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(ii) for each subsequent violation, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(3) A person who is convicted of violating this subsection for the first time and who previously has been convicted of violating paragraph (4) of this subsection is subject to imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(4) If a person who is at least 18 years old violates paragraph (1) of this subsection by delivering drug paraphernalia to a minor who is at least 3 years younger than the person, the person is guilty of a separate misdemeanor and on conviction is subject to imprisonment not exceeding 8 years or a fine not exceeding \$15,000 or both.

9-302.

(a) A person may not harm another, threaten to harm another, or damage or destroy property with the intent to:

(1) influence a victim or witness to testify falsely or withhold testimony;
or

(2) induce a victim or witness:

(i) to avoid the service of a subpoena or summons to testify;

(ii) to be absent from an official proceeding to which the victim or witness has been subpoenaed or summoned; or

(iii) not to report the existence of facts relating to a crime or delinquent act.

(b) A person may not solicit another person to harm another, threaten to harm another, or damage or destroy property with the intent to:

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(1) influence a victim or witness to testify falsely or withhold testimony;
or

(2) induce a victim or witness:

(i) to avoid the service of a subpoena or summons to testify;

(ii) to be absent from an official proceeding to which the victim or witness has been subpoenaed or summoned; or

(iii) not to report the existence of facts relating to a crime or delinquent act.

(c) (1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding [5] 10 years or a fine not exceeding \$5,000 or both.

(2) If the testimony, subpoena, official proceeding, or report involving the victim or witness relates to a felonious violation of Title 5 of this article or the commission of a crime of violence as defined in § 14–101 of this article, or a conspiracy or solicitation to commit such a crime, a person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

(d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

9–303.

(a) A person may not intentionally harm another, threaten to harm another, or damage or destroy property with the intent of retaliating against:

(1) a victim or witness for:

(i) giving testimony in an official proceeding; or

(ii) reporting a crime or delinquent act;

(2) a juror for any reason relating to the performance of the juror's official duties in a pending or completed case in a court of the State or the United States;
or

(3) an officer of the court of the State or the United States for any reason relating to the performance of the officer's official duties in a pending or completed case.

(b) A person may not solicit another person to intentionally harm another, threaten to harm another, or damage or destroy property with the intent of retaliating against:

(1) a victim or witness for:

(i) giving testimony in an official proceeding; or

(ii) reporting a crime or delinquent act;

(2) a juror for any reason relating to the performance of the juror's official duties in a pending or completed case in a court of the State or the United States;
or

(3) an officer of the court of the State or the United States for any reason relating to the performance of the officer's official duties in a pending or completed case.

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(c) (1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding [5] 10 years or a fine not exceeding \$5,000 or both.

(2) If the official proceeding or report described in subsection (a) of this section relates to a felonious violation of Title 5 of this article or the commission of a crime of violence as defined in § 14–101 of this article, or a conspiracy or solicitation to commit such a crime, a person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

(d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

9–305.

(a) A person may not, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of a court of the State or of the United States in the performance of the person’s official duties.

(b) A person may not solicit another person to, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of the court of the State or of the United States in the performance of the person’s official duties.

(c) (1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding [5] 10 years or a fine not exceeding \$5,000 or both.

(2) If an act described in subsection (a) of this section is taken in connection with a proceeding involving a felonious violation of Title 5 of this article or the commission of a crime of violence as defined in § 14–101 of this article, or a

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conspiracy or solicitation to commit such a crime, a person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

(d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That:

- (a) There is a Task Force to Study Maryland's Criminal Gang Statutes.
- (b) The Task Force consists of the following members:
 - (1) two members of the Senate of Maryland, appointed by the President of the Senate;
 - (2) two members of the House of Delegates, appointed by the Speaker of the House;
 - (3) the Secretary of State Police, or the Secretary's designee;
 - (4) the Secretary of Public Safety and Correctional Services, or the Secretary's designee;
 - (5) the Secretary of Juvenile Services, or the Secretary's designee;
 - (6) the Attorney General, or the Attorney General's designee;
 - (7) the Public Defender, or the Public Defender's designee;
 - (8) a representative of the Maryland Judiciary, appointed by the Chief Judge of the Court of Appeals;

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(9) the Executive Director of the Governor's Office of Crime Control and Prevention, or the Executive Director's designee; and

(10) the following members, appointed by the Governor:

(i) one representative of the Maryland State's Attorney's Association;

(ii) one representative of local law enforcement agencies;

(iii) one representative of the Maryland Retailer's Association;

(iv) one representative of the American Civil Liberties Union;

(v) one member of the general public;

(vi) one representative of Out for Justice;

(vii) one academician or researcher with expertise relevant to the work of the Task Force; and

(viii) any other member with expertise relevant to the work of the Task Force.

(c) The Governor shall designate the chair of the Task Force.

(d) The Governor's Office of Crime Control and Prevention shall provide staff for the Task Force.

(e) A member of the Task Force:

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(1) may not receive compensation as a member of the Task Force; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Task Force shall:

(1) study existing State prohibitions on criminal gang-related activity and the efficacy of existing law in being used to obtain criminal convictions against individuals who engage in criminal gang-related activity; and

(2) make recommendations regarding changes to State law to better deter, prosecute, and punish criminal gang-related activity and persons convicted of gang-related offenses.

(g) On or before June 30, 2020, the Task Force shall report its findings and recommendations to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.”.

AMENDMENT NO. 3

On page 3, in line 16, strike “2.” and substitute “3.”; in line 17, strike “October” and substitute “June”; and in the same line, after “2018.” insert “Section 2 of this Act shall remain effective for a period of 2 years and 1 month and, at the end of June 30, 2020, Section 2 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.”.