



STATE OF MARYLAND
OFFICE OF THE PUBLIC DEFENDER
QUICK GUIDE

SB 122 Comprehensive Crime Bill of 2018 (3rd Reader)

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Punishments

Firearm and Trafficking Crimes (Fully Adopted Hogan Proposal)

- Pages 14-16
- Criminal Law §5-621
- During and in relation to a felony possession, distribution, manufacture or importation of a CDS under §§5-602 to 5-609 and 5-614, a person may not use, wear, carry, transport or possess a firearm.
- While the offense does include scenarios involving the active use or brandishing of a weapon, it also includes a wide swath of merely possessory scenarios and where the weapon need not be on, within reach or readily accessible to the person.
- For a first-time offender, the penalty is already a felony **5 year mandatory minimum** up to 20 years.
- For a second and subsequent offender, the penalty is already a felony **10 year mandatory minimum** up to 20 years.
- For silencer-equipped or certain assault weapons, the penalty is already a felony **20 year mandatory minimum**.
- Fully adopting the Hogan proposal, the Workgroup **adds 20 years** to the subsequent offender provision, **authorizing up to 40 years incarceration** for a two or more time offender.

Firearm and Crimes of Violence or Felonies (Amended Hogan Proposal)

- Pages 12-13
- Criminal Law §4-204
- Current law includes use of a loaded *or unloaded*, operable *or inoperable* weapon, or *part of a weapon*, used in the commission of a “crime of violence” as defined by Public Safety Article §5-101.
- The current law **already includes** a misdemeanor **5 year mandatory minimum** up to 20 years. This is the only penalty in current law, so second

and subsequent offenders in effect get no less than 5 and up to 20 each time they are subsequently convicted.

- The Hogan proposal added a **new subsequent offender mandatory minimum**. For a second or subsequent offense, the sentence was to be a felony **10 year mandatory minimum up to 40 years**.
- SB 122, as the Administration did in their proposal, creates a 2nd or subsequent offense provision and makes it a **10-year mandatory minimum** up to 40 years: “FOR A SECOND OR SUBSEQUENT OFFENSE, TO IMPRISONMENT FOR **NOT LESS THAN 10 YEARS AND NOT EXCEEDING 40 YEARS,**” and “THE COURT **MAY NOT IMPOSE LESS THAN THE MINIMUM SENTENCE OF 10 YEARS.**”
- But modifies the Administration provision by making **half** the mandatory minimum subject to being suspended by the court: “THE COURT MAY NOT SUSPEND THE FIRST **5 YEARS OF A MANDATORY MINIMUM SENTENCE** IMPOSED UNDER SUBPARAGRAPH(I)(2) OF THIS PARAGRAPH.”

Obstructing Justice (New Provision)

- Pages 16-19
- Criminal Law Article §§ 9-302, 9-303 & 9-305
- For each of the three provisions, **lengthens** from 5 to **10 years** the penalties for obstruction of justice related to inducing false testimony, retaliation for testimony, and intimidating or corrupting a juror in a *misdemeanor* case; **increasing** the criminal fine from \$5,000 to **\$10,000**.
- For each of the three provisions, **lengthens** from 20 to **30 years** the maximum penalty for obstruction of justice related to inducing false testimony, retaliation for testimony, and intimidating or corrupting a juror in a *felony* case.

Wear, Carry or Transport a Handgun (New Provision)

- Pages 9-12
- Criminal Law § 4-203
- This is not a weapon *use* type crime nor a crime of violence, but rather a *misdemeanor possessory offense*. The wearing, carrying or transport of a handgun *does not include any active employment or brandishing* of the weapon. In the case of transportation, the weapon need not be located on, within reach, or readily accessible to the defendant.
- Already mandates a 30-day **minimum** up to 3 years for a first-time offender and a 90-day **minimum** for a violation on public school property.
- For a second-time offender of the section or other gun-related crimes, keeps the existing 1 year mandatory minimum and **extends the maximum** from 10 years to up **to 15 years**.
- For a second-time offender whose current conviction is the public school property subsection, **extends** the already existing 3 year **minimum to 7 years** and the maximum from 10 years to up **to 15 years**.
- For a third-time or more subsequent offender of the section or other gun-related crimes, **extends** the already existing 3 year **minimum to 7 years** and the maximum from 10 years to up **to 15 years**.
- For a third-time or more subsequent offender whose current conviction is the public school property subsection, **extends** the already existing 5 year **minimum to 10 years** and the maximum from 10 years to up **to 15 years**.
- For a third-time or more subsequent offender whose current conviction included a deliberate purpose of injuring or killing, **extends** the already existing 5 year **minimum to 10 years** and the maximum from 10 years to up **to 15 years**. Even in this provision, however, it should be noted that the law only requires a specific mindset, not that any action whatsoever take place for a person to be charged and convicted.

Prohibitions

Possession of Firearm with Previous Conviction (Fully Adopted Hogan Proposal)

- Pages 39-41
- Public Safety Article §5-133
- Already a felony **5 year mandatory minimum** up to 15 years under current law
- **Adds** violations of 5-621 (Possess, use, wear, carry or transport a "firearm" during and in relation to a drug "trafficking" crime) and 5-622 (Possess, own, carry or transport a firearm with a prior felony conviction) to the list of prior drug-crime convictions.
- While the offense does include scenarios involving the active use or brandishing of a weapon, it also includes a wide swath of merely possessory scenarios and where the weapon need not be on, within reach or readily accessible to the person.
- The law doesn't require that the prior conviction have any relation to the present gun possession. A person could have been convicted of a crime on the predicate list 30 years ago, but then have a gun while doing something entirely unrelated to the prior conviction, and be charged and convicted.

Crime of Violence and Subsequent Offenders (Amended Hogan Proposal)

- Pages 19-21
- Criminal Law § 14-101
- The "crimes of violence" definition includes 25 enumerated, inherently violent crimes.
- Current law already includes for a second time offender a felony **10 year mandatory minimum**, for a third time offender a felony **25 year mandatory minimum**, and for a fourth time offender felony **life without the possibility of parole**.

- The Workgroup adopts Hogan’s proposal in **broadening** the definition of one item on the crime of violence list by including "firearms" instead of "handguns" (in the commission of a felony or other crime of violence).
- Does not adopt the Hogan proposal to add 5-621 (Possess, use, wear, carry or transport a "firearm" during and in relation to a drug "trafficking" crime) to the crime of violence list.

Volume Dealers (New Provision)

- Pages 13-14
- Criminal Law Article §5-612
- **Adds** to the list of controlled dangerous substances what a person may not manufacture, distribute, dispense, or possess, including:
 - 5 grams or more of fentanyl or any structural variation of fentanyl;
 - 28 grams or more of any mixture containing a detectable amount of fentanyl or any structural variation of fentanyl.
- Current punishment remains: a **5 year mandatory minimum** and fine not exceeding \$100,000

Drug Evaluation and Treatment (Fully Adopted Hogan Proposal)

- Pages 24-26
- Health General Article §§ 8-505, 8-506, 8-507
 - 8-505 - Evaluation for Treatment
 - for those who are charged with, convicted of, or serving a sentence for any of the crimes of violence listed under CR 14-101, there will be **no evaluation** until the defendant is eligible for parole;
 - 8-507 - Receipt of Treatment
 - any one charged with, convicted of, or serving a sentence for a crime of violence is **denied treatment** until they are eligible for parole.

Police Powers

Wiretapping (New Provision)

- Pages 4-7
- Senator Zirkin sponsored this measure separately in SB 125;
- Courts and Judicial Proceedings Article §§ 10-402 and 10-406;
- **Expands** the list of crimes for which a judge may authorize police to wiretap for the following gun-related offenses:
 - Public Safety Article §§ 5-134, 5-136, 5-138, 5-140, 5-141, and 5-144.

Appeal Rights for State's Attorneys (New Provision)

- Pages 7-9
- Senator Zirkin sponsored this separately as SB 126;
- Criminal Procedure Section 12-302;
- **Expands** the list of cases in which the State can appeal a trial court's decision that police acted in violation of the constitution in either:
 - obtaining evidence unconstitutionally, thus excluding it from being admitted in court; or
 - seizing and keeping evidence unconstitutionally, thus requiring its return to the defendant.
- The **expanded** list of offenses includes Public Safety Article sections:
 - 5-133: Restrictions on Regulated Firearms
 - 5-205: Disqualification for Possession
 - 5-206: Possession of Rifle or Shotgun Prohibited;
- When the defense files and argues successfully a motion to exclude evidence based on a violation of the Fourth Amendment protection against *unreasonable* search and seizures, the State will now be permitted to appeal these cases and/or argue against the return of the seized property.

Programs

U-Visa (New Provision)

- Pages 21-24
- Criminal Procedure Article § 11-930
- The U-visa is a special visa given to persons considered helpful in investigating certain criminal activity.
- The original legislation is HB 461.
- There are two major changes to the original bill language:
 - Changes the definition of helpfulness to require more affirmative action on the part of the victim
 - Allows the certifying agency to disclose immigration status in more circumstances.

The Tyrone Ray Violence Intervention and Prevention Fund (New Provision)

- Pages 26-35
- Public Safety Article §§ 4-301 and 4-302
- Establishes the fund and appoints the Governor's Office of Crime Control and Prevention (GOCAP) Executive Director (ED), together with an advisory council, to provide grants to local governments & nonprofits for "evidence-based health programs or evidence-informed health programs, including support for pretrial release programs."
- Such programs are to be directed to reducing gun violence and to influence factors determined to affect gun violence.
- Preference to local governments or nonprofits in jurisdictions that are "disproportionately affected by violence."
- Funding is \$5M for FY 2020 through 2023, for a total of \$20M over a four-year period; the fund is a special, "non-lapsing" fund. The fund is to be used in three areas:

- Support effective violence reduction strategies through competitive grants to local government and nonprofits;
- In an amount not greater than 5%, evaluate the efficacy of grants awarded;
- Pretrial release services programs.
- Funding amounts shall be “commensurate with the levels of gun violence in the jurisdiction” and the fund cannot be used to support “suppression activities by law enforcement.”
- On or before the end of each grant cycle, GOCCP shall place on its website data collected under the fund and pertaining to collaborative efforts and progress made in achieving the objectives of the award.

Miscellaneous Grant Programs (New Provision)

- Pages 35-39
- \$3.6M/year for four years totaling \$14.4M to **Baltimore City Safe Streets Initiatives** (§4-801)
 - Grants may not exceed \$300K per initiative
 - For community-based organizations operating a violence prevention or intervention program in a neighborhood disproportionately affected by violent crime.
- **Law Enforcement Assisted Diversion Program in Baltimore City** (§4-802)
 - \$425K/year for four years totaling \$1.7M
 - Program appears to be focused on minor drug offenses and prostitution.
- **Baltimore City State’s Attorney’s Office** for the relocation of witnesses and victims (§4-803)
 - \$360K/year for four years totaling \$1.4M
- Department of **State Police & Attorney General** – creating a **gun task force**, a designated unit of law enforcement officers selected, trained, and equipped to investigate (§4-804):
 - firearm trafficking,
 - straw purchases,
 - the movement of illegal firearms, and

- any offense related to an offense in the above items.
 - \$466K/year for four years totaling \$1.9M
 - **Baltimore Chesapeake Bay Outward Bound School** in Baltimore City (§4-805)
 - \$300K/year for four years totaling \$1.2M
 - **Strategic Decision Support Center** (§4-806)
 - Facilities with technology and systems that function as intelligence centers for law enforcement to collect data, study trends, and develop predicative/tech-based approaches to detecting/investigating criminal activity.
 - \$100K/year for four years totaling \$400K
 - **General Requirement for GOCCP and Grantees:**
 - All non-profits receiving funds may only use the funding according to the subtitle and shall follow data collecting and sharing procedures and requirements.
 - On or before October 1, 2020, GOCCP shall place on its website filterable data collected under the fund and pertaining to outcome-based performance measures.
 - Annual update required.

Gang Task Force (New Provision)

- Pages 41-43
- The Workgroup creates a Task Force to study Maryland's criminal gang statutes.
- The Task Force shall report its findings and recommendations on or before December 31, 2018