



TASK FORCE TO STUDY CRIME CLASSIFICATION & PENALTIES

November 12, 2020



House Bill 542: 11 (related) charges



The Task Force Shall:

1. review the penalties for all criminal and civil violations throughout the Maryland Code;
2. study the history and legislative intent of the classification of criminal and civil violations throughout the Maryland Code, including the constitutional implications and collateral consequences that arise as a result of classification;
3. study criminal classifications and penalty schemes in other states and how those classifications and schemes compare to those in the State; and
4. make recommendations regarding the current statutory scheme for criminal and civil violations throughout the Maryland Code, including:
 - i. whether there are violations that should be reclassified as civil offenses, misdemeanors, or felonies;
 - ii. whether there are penalties that should be altered;
 - iii. whether the State would benefit from:
 1. the imposition of standardized crime classifications and penalties;
 2. the codification of a default mental state as an element of criminal liability; and
 3. the codification of affirmative defenses and their elements;
 - iv. whether statutory changes are necessary for provisions of criminal law that lack an explicit *mens rea*; and
 - v. what limitations, if any, should be placed on the ability of administrative boards, agencies, local governments, appointed commissioners, or of other persons or entities to enact rules, regulations, ordinances, or laws providing for criminal penalties.



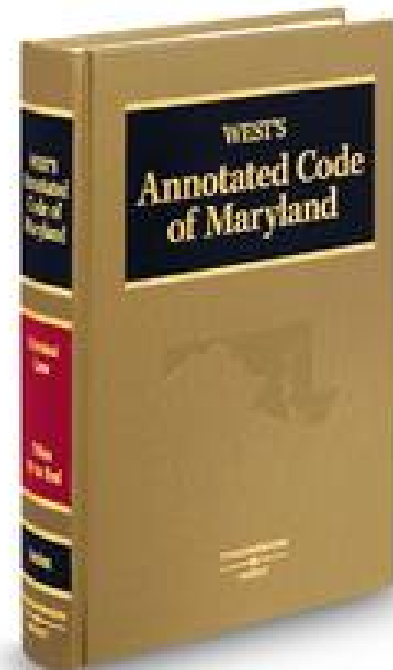
Item 1: Review the penalties for all criminal and civil violations throughout the Maryland Code



- There are approximately 1,491 separate criminal offenses in Maryland*

- Two types of crimes in Maryland: Statutes and Common Law

- Criminal penalties for each crime.
 - E.g. Reckless Endangerment subject to a 5 year maximum
 - Note that the elements of law.
- Criminal penalties for common law only limited by the Eighth Amendment punishment.
 - E.g. Hindering a Police Officer



defined by the statutes that set forth the maximum penalty. Statutes that state that the crime is a misdemeanor in Maryland are still defined by common law. The maximum penalty is prescribed maximum and are against cruel and unusual punishment with a maximum of life.

* Based on the Combined MSCCSP Guidelines Offenses and CJIS District Court Offenses provided to the task force by the Maryland State Commission on Criminal Sentencing Policy.



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Issues to Consider

- an effective review of the penalties for those crimes and violations involves, not only the lawful range of the penalties, but how they are applied in practice.
- in addition to the direct penalty imposed at sentencing, many criminal convictions have collateral consequences which amount to a secondary penalty even if such consequences are not explicitly designed to be “punishment.”
- Growing body of scholarship suggesting the high fiscal costs of long sentences are not balanced by significant public safety benefits.
 - Defendants “age out” of criminal activity
 - Severity of sentences have limited deterrent effect (as opposed to *certainty* of punishment)
 - Resources may be better used in other areas



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Looking forward:

- need to solicit the views of the public, defense attorneys, prosecutors, and judges on Maryland criminal penalties including
 - whether current sentencing ranges and classifications for individual crimes are appropriate;
 - whether Maryland's current penalty structure is a hindrance to the effective administration of justice or to future efforts to conduct criminal justice reform.
 - how crime classifications and penalties impact different Maryland communities
- gather further data on the penalties associated with civil violations



Item 2: Study the history and legislative intent of the classification of criminal and civil violations throughout the Maryland Code, including the constitutional implications and collateral consequences.



Use Of An Assault Weapon
During The Commission Of A
Crime Of Violence, CR, §4-
306(b)(3)

- Misdemeanor
- maximum penalty 20 years

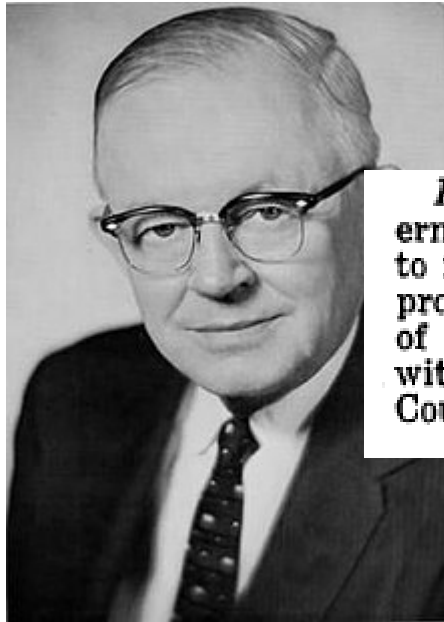


Allow the use of a fowl to fight
with another animal, CR, §10-
608(b)

- Felony
- maximum penalty 3 years



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Governor Tawes

1628 JOINT RESOLUTIONS

Resolved by the General Assembly of Maryland, That the Governor of Maryland is requested to appoint a commission of persons for the purpose of reviewing those aspects of the corporation laws of the State of Maryland cited herein in order to prepare a revision of these laws for submission to the Governor and the General Assembly as soon as practicable; and be it further

Resolved, That the Governor of Maryland is requested to allocate to the Commission from revenues at his control sufficient funds for the Commission to carry out its work; and be it further

Resolved, That copies of this resolution be sent to the Governor of Maryland.

Approved May 4, 1965.

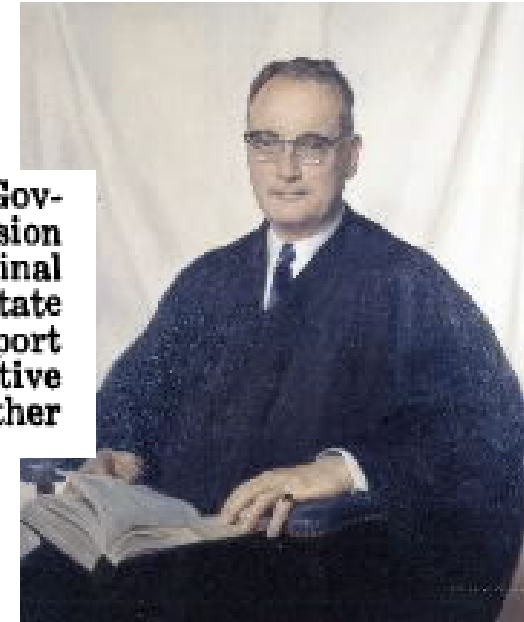
No. 22
(House Joint Resolution 2)

Resolved by the General Assembly of Maryland, That the Governor of Maryland is hereby requested to appoint a Commission to make a comprehensive review of the criminal laws and criminal procedures and the administration of criminal justice in the State of Maryland, and the Commission is requested to make its report with its recommendations to the Governor and the Legislative Council for submission to the General Assembly; and be it further

laws of the State of Maryland and have failed to reach agreement on the subject; and

(d) The Committee on the Criminal Code of the Maryland State Bar Association has recommended that the General Assembly request the Governor to appoint a Commission to study and make recommendations with respect to a Revised Criminal Code for the State of Maryland; and

(e) The General Assembly believes that the Criminal Code as constituted contains many anachronisms, inconsistencies and inadequacies which encumber the administration of the criminal law in this State; and



Judge Brune



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Collateral Consequence:

“a legal penalty, disability or disadvantage, however denominated, that is imposed on a person automatically upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence.”*

- Despite the ABA’s admonition that states should “collect, set out or reference all collateral sanctions in a single chapter or section of the jurisdiction’s criminal code,” the multitude of collateral consequences that can arise from a criminal conviction in Maryland cannot be found in a single source.
- The majority of collateral consequences in Maryland are triggered by both felonies *and* misdemeanors.

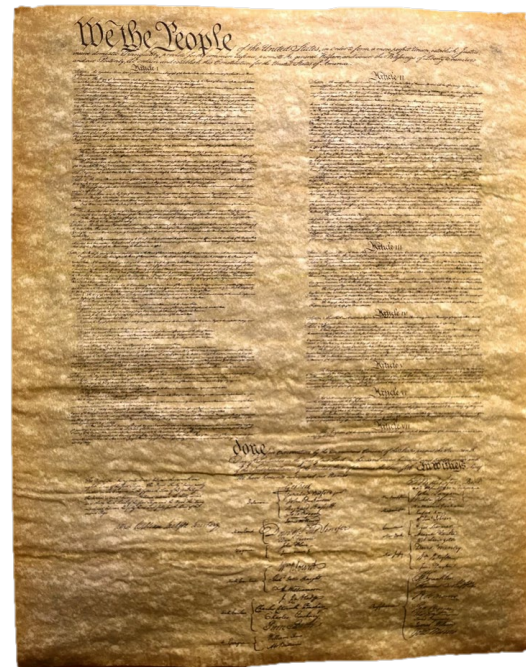
* As defined by the American Bar Association.



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Constitutional issues





Item 3: Study criminal classifications and penalty schemes in other states & how those classifications and schemes compare to those in the State



We examined all 50 states (and DC) to determine the following:

- (1) how each state organized their criminal code and classified crimes;
- (2) which states define “felony” and “misdemeanor” and what those definitions are;
- (3) which state codes use “near” (and how);
- (4) which state codes use “strict liability”;
- (5) which state codes adopted by the Model Penal Code; and
- (6) each state code’s criminal penalties for some example crimes, including petty larceny, grand larceny, assault, burglary, and murder. (With particular attention to misdemeanor assault).





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(1) How does each state organize their criminal code and classify crimes?

- 35 states use a graded classification system
 - (Maryland is not among them)
- The number of felony classifications range between 3-6 levels.
- Criminal penalties are based on the grade of crime. (Such penalties may still be subject to additional enhancements and shaped by sentencing guidelines.)



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(2) Which states define the terms “felony” and “misdemeanor” and how are they defined?

- 38 states have a statutory definition for felony and misdemeanor
- 35 of those states define a misdemeanor (directly or indirectly) as less than a year of incarceration.



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(3) Which state codes include a default mens rea?

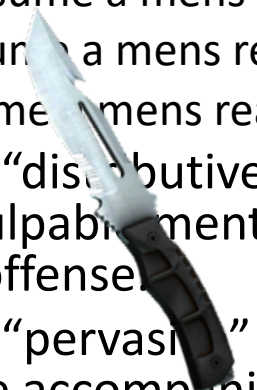
- There are different types of default mens rea statutes (that may overlap)
 - 19 states have statutes designating a default mens rea for statutes that fail to designate a requisite mental state

“It is a crime to possess a knife longer than two inches inside a state park.”

- 4 states presume a mens rea requirement of “negligently” and above
- 11 states presume a mens rea requirement of “recklessly” and above
- 3 states presume a mens rea requirement of “knowingly” and above
- 1 state presumes a mens rea requirement of “intentionally” and above

- 15 states have a “distributive” default mens rea which holds that when a statute does specify a culpable mental state, the mens rea specified in the statute applies to every material element of the offense.

- 15 states have a “pervasive” default mens rea which requires that every material element must be accompanied by a mens rea, but not necessarily the mental state specified in the statute (11 had distributive rules as well, and all but one had a default mens rea for when no mental state was designated.)





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(4) Which state codes includes mens rea definitions?

- 34 state codes include definitions for the mens rea terms
- The majority of states follow the use “intentionally,” “knowingly,” “recklessly,” and “negligently.” 3 states also use willfully and 5 states use purposively.
- The Model Penal Code explicitly defines four mental states purposely, knowingly, recklessly, and negligently. See Model Penal Code § 2.02.



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(5) Which state codes include a presumption against strict liability?

- 14 states have a provision creating a presumption against strict liability



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- (6) How many state codes were directly influenced by the Model Penal Code?
- Based on 2007 U. Penn. Study, 34 state codes were directly influence by the MPC
 - (But pretty much every criminal code has been influenced by the MPC.)



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(7) How do Maryland criminal penalties compare to other states?

- Complex analysis that is not completed yet.
- Misdemeanor Assault in Maryland (§ 3-203) is a glaring outlier.
 - Maximum penalty 10 years
 - Second most punitive misdemeanor assault sentence (Massachusetts) is 7.5 years *less*.
 - Vast majority of states have a sentence of a year or less.

On deck...

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