Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 147 (Delegate Crutchfield, *et al.*)
Judiciary Judicial Proceedings

Criminal Law – Sexual Crimes – Repeal of Spousal Defense (Love Is No Defense to Sexual Crimes)

This bill repeals an exemption from prosecution for specified sexual crimes if, at the time of the alleged rape or sexual offense, the person was the victim's legal spouse.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's expanded application of existing penalty provisions. The bill does not materially affect State revenues.

Local Effect: Minimal increase in incarceration expenditures due to the bill's expanded application of existing penalty provisions. Revenues are not materially affected.

Small Business Effect: None.

Analysis

Current Law: In general, a person may not be prosecuted under § 3-303 (rape in the first degree), § 3-304 (rape in the second degree), § 3-307 (sexual offense in the third degree), or § 3-308 (sexual offense in the fourth degree) of the Criminal Law Article for a crime against a victim who was the person's legal spouse at the time of the alleged rape or sexual offense.

However, a person may be prosecuted under § 3-303 (a) (rape in the first degree – in general), § 3-304 (a)(1) (rape in the second degree – vaginal intercourse or sexual act with another by force or threat of force without the consent of the other), or

§ 3-307 (a)(1) (sexual offense in the third degree – engaging in nonconsensual sexual contact while meeting other specified criteria related to weapons, infliction of serious physical injury, threats, and being aided or abetted by another) if:

- at the time of the alleged crime, the person and the person's legal spouse have lived apart, without cohabitation and without interruption (1) under a written separation agreement executed by the person and the spouse or (2) for at least three months immediately before the alleged rape or sexual offense; or
- the person, in committing the crime, uses force or threat of force and the act is without the consent of the spouse.

A person may be prosecuted for the commission of first-degree rape, second-degree rape, third-degree sexual offense, or fourth-degree sexual offense against the person's legal spouse if at the time of the alleged crime the person and the spouse lived apart, without cohabitation and without interruption, under a decree of limited divorce.

The applicable penalties for the sexual crimes mentioned above are:

- § 3-303 (rape in the first degree): felony, imprisonment not exceeding life (imprisonment for life without the possibility of parole applies to violations involving a child younger than age 16 and subsequent offenders);
- § 3-304 (rape in the second degree): felony, imprisonment for up to 20 years;
- § 3-307 (sexual offense in the third degree): felony, imprisonment for up to 10 years; and
- § 3-308 (sexual offense in the fourth degree): misdemeanor, imprisonment for up to 1 year and/or $1,000 maximum fine (3 years and/or $1,000 for subsequent offenders).

State Expenditures: Information is not available on the number of cases that were not prosecuted as a result of the provisions repealed by the bill. Assuming that the spousal exemption under § 3-318 of the Criminal Law Article applies to a small number of cases, general fund expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties due to more people being committed to State correctional facilities. The number of people convicted as a result of the bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at $3,900 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the

sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender (OPD) advises that the bill increases agency caseloads and that it may need to hire additional staff to manage its caseloads. However, OPD provided no information on the bill's anticipated effect on the agency's caseloads and noted that it cannot calculate the bill's impact on its expenditures. The Department of Legislative Services advises that the bill is unlikely to generate enough additional cases to warrant the hiring of additional attorneys.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately $40 to $170 per inmate in recent years.

The Maryland State's Attorneys' Association advises that the bill has no fiscal or operational effect on prosecutors.

Additional Information

Prior Introductions: HB 590 of 2020, an identical bill, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 230, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 958 of 2019 received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: SB 250 (Senators Lee and Waldstreicher) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Office of the Public Defender; Maryland State's

Attorneys' Association; Maryland State Commission on Criminal Sentencing Policy; Caroline and Prince George's counties; Department of Legislative Services

Fiscal Note History: First Reader - January 12, 2021
rh/aad Third Reader - February 16, 2021

Analysis by: Donavan A. Ham

Direct Inquiries to:
(410) 946-5510
(301) 970-5510