

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 939 (Delegate Grosfeld)
Judiciary

Crimes - Sexual Offenses - Continuous Course of Conduct

This bill makes it a felony to engage in three or more acts that: (1) would constitute rape in the second degree, a sexual offense in the second degree, or a sexual offense in the third degree; (2) occur over a period of 90 days or more; and (3) are with a person who is under 14 years of age at any time during the course of conduct. Violators are subject to maximum imprisonment for 30 years.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's incarceration penalty provisions. It is assumed that the bill's requirements relating to information that must be contained in specified court instruments could be handled with the existing budgeted resources of the Administrative Office of the Courts.

Local Effect: It is assumed that the bill's requirements relating information that must be contained in specified court instruments could be handled with the existing budgeted resources of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that a defendant charged with this felony may not be charged in the same proceeding with another crime that involves the same victim and that is rape in the second degree, a sexual offense in the second degree, or a sexual offense in

the third degree, unless the crime occurred outside of the time period of felony charge at issue.

The trier of fact need not determine which acts constitute the requisite number of acts in determining whether the requisite number occurred to constitute this felony. A sentence imposed for this offense may be imposed separate from and consecutive to or concurrent with any other sentence imposed under the State's child abuse prohibitions.

The bill also specifies the detail that must be substantially included in an order for an indictment, information, or warrant charging a violation of this offense for it to be sufficient.

Current Law: The following offenses may be charged as single-count felony sexual offenses against minors:

- (1) Second degree rape which includes a prohibition against vaginal intercourse by a person at least four years older than a victim under 14 years of age. Violators are subject to a maximum imprisonment penalty of 20 years.
- (2) Second degree sexual offense which includes a prohibition against sexual acts by a person at least four years older than a victim under 14 years of age. Violators are subject to a maximum imprisonment penalty of 20 years.
- (3) Third degree sexual offense which includes a prohibition against sexual contact by a person at least four years older than a victim under 14 years of age. Violators are subject to a maximum imprisonment penalty of ten years.

Under the State's prohibition against sexual child abuse (applicable when the victim is under 18 years of age) by persons with custodial responsibilities or household or family members, a violator is guilty of a felony and subject to maximum imprisonment of 15 years. If the child victim dies, the maximum penalty increases to 30 years. Sexual child abuse may be charged as a continuous course of conduct.

Background: This bill arises from a Court of Appeals decision (*Cooksey v. State*, 2000) in which the circuit court dismissed a four-count indictment that had charged Cooksey with second and third degree sexual offenses and sexual child abuse, on the ground that each of the counts was duplicious.

At trial, the State alleged that, "in a continuing course of conduct," Cooksey had committed specific acts of second and third degree sexual offense over a one-year period against a child under 14 years of age, as well as child sexual abuse against that victim and another minor victim. However, the State was unable to show precisely when any of the alleged acts occurred.

Cooksey moved to have the charges dismissed, arguing, in part, that each of the four counts of his criminal indictment was “duplicitous.” Even after the State amended its bill of particulars, the trial court agreed and dismissed the charges. The Court of Special Appeals reversed that judgment, finding no duplicity with respect to the counts charging sexual child abuse and further finding that dismissal of the other counts on the ground of duplicity was premature.

The Court of Appeals reversed in part and affirmed in part, holding that: (1) a count that charges a person with having committed what, in law, is a single-act sexual offense, on several occasions over a substantial period of time, effectively charges more than one offense and is dismissible on the ground of duplicity; and (2) sexual child abuse, as charged in this case, is not necessarily a single-act offense. The case was remanded with instructions to affirm the dismissal of counts one and two of the indictment as duplicitous and to reinstate counts three and four.

State Expenditures: General fund expenditures could increase minimally as a result of the bill’s incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,700 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$288 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2002 are estimated to range from \$9 to \$52 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Additional Information

Prior Introductions: None.

Cross File: SB 595 (Senator Jimeno) – Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services
(Division of Correction), Department of Legislative Services

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