

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

Senate Bill 800 (Senator Ferguson, *et al.*)

Judicial Proceedings

Judiciary

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**Christopher's Law I - Child Sexual Offenders - Diminution Credits and Parole Eligibility**

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This bill prohibits an inmate from receiving parole or diminution credits if the victim was a child under the age of 16 years and the inmate is convicted of: (1) first degree rape; (2) second degree rape; (3) first degree sexual offense; or (4) second degree sexual offense. The bill's prohibition includes any period of presentence or postsentence confinement at a local correctional facility. However, the prohibition of granting parole does not restrict the authority of the Governor to pardon or remit any part of a sentence. The bill prohibits any deductions from a sentence for any period of presentence or postconviction confinement.

The bill is required to be construed and applied prospectively only.

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**Fiscal Summary**

**State Effect:** General fund expenditures could increase in the long run due to the bill's sentencing provisions.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A person is subject to life without the possibility of parole if the person is found guilty in the same proceeding of kidnapping and: (1) rape in the first degree of a child under the age of 16 years; or (2) sexual offense in the first degree of a child under

the age of 16 years. The maximum penalty for rape in the second degree is imprisonment for 20 years.

Sexual offenses in the first degree and second degree contain all of the elements of rape in the first degree and second degree, respectively, except that the sexual offenses concern engaging in a sexual act (not vaginal intercourse) with another person. The maximum penalty for sexual offense in the second degree is imprisonment for 20 years.

The Maryland Parole Commission has the power to authorize the parole of inmates in the Division of Correction (DOC). Currently, a person sentenced to a term of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

A person convicted of a violent crime is not eligible for parole until that person has served the greater of one-half of the aggregate sentence for violent crimes or one-half of the aggregate total sentence. Currently, a person serving a term for a violent crime may receive an administrative review after that person has served one-fourth of the term of confinement or a period equal to any term in which the inmate is not eligible for parole. Further, a person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years.

For DOC inmates whose terms of confinement include consecutive or concurrent sentences for a crime of violence or a crime involving a controlled dangerous substance, the deduction in the sentence for good conduct is calculated at five days per calendar month. For all other inmates the deduction is calculated at ten days per calendar month. An inmate may also receive deductions calculated at five days per calendar month for work tasks and education and ten days per calendar month for special projects. However, the total deduction may not exceed 20 days per calendar month. An inmate in a local correctional facility may receive deductions of five days per calendar month for: good conduct; industrial, agricultural, or administrative tasks; educational and training courses; work projects; and special programs.

**Background:** According to published newspaper accounts, nine-year-old Christopher Lee Ausherman of Frederick was sexually assaulted and killed November 19, 2000. Elmer Spencer Jr., 46, a homeless man with a history of convictions for sex crimes, and who was released from prison five days before the killing, has been charged. Spencer

was indicted on charges of first-degree murder, first-degree sexual offense, attempted sexual offense, and child abduction.

**State Expenditures:** It is unknown how many such crimes are committed or successfully prosecuted annually. In any case, general fund expenditures could increase as a result of the bill's incarceration penalty due to more people being committed to DOC facilities for longer periods of time. DOC does not track data on the age of victims of crimes. The number of people convicted under this bill's provisions cannot be reliably predicted. Offenders generally serve about 70% of a sentence.

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 \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$300 per month. *For illustrative purposes*, under current law, a person receiving a maximum 20-year sentence for second degree sexual offense would tend to serve a term of about 168 months (14 years), unless released on parole. Under this bill's sentencing provisions, the average time served would be 240 months (the full 20 years). Assuming the medical and variable inmate costs of \$300 per month, State costs could increase by \$21,600 for each person imprisoned under the bill. Because the bill only applies to offenses committed after October 1, 2002, however, any expenditure increase would not be felt until future years. It is assumed that DOC could anticipate and plan for such future increases through normal State budgetary processes.

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### **Additional Information**

**Prior Introductions:** A similar bill, SB 674 of 2001, passed the Senate and received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 11, 2002  
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