

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

Senate Bill 801

(Senator Ferguson, *et al.*)

Judicial Proceedings

Judiciary

**Crimes - First Degree Rape and Sexual Offense - Subsequent Offenders -
Imprisonment for Life Without the Possibility of Parole**

This bill makes a person subject to incarceration for life without the possibility of parole if the person is found guilty of rape or sexual offense in the first degree after having been previously convicted of one of the same offenses. The bill's provisions are applied to subsequent offenses committed on or after October 1, 2002, regardless of when the previous offense was committed and if the subsequent offense was committed after the conviction date for the prior offense.

Fiscal Summary

State Effect: Potential general fund expenditure increases for the Office of the Public Defender. Additional imprisonment costs associated with lengthier incarcerations would not be felt until future years.

Local Effect: None.

Small Business Effect: None.

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.

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 as repeat offenders. In any case, general fund expenditures could eventually increase as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of people that would be convicted under this bill's provisions is unknown. Under current law sentencing practices, a person sentenced to life without the possibility of parole may earn diminution credits and is expected to serve a term of about 540 months (45 years).

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. Because the bill only applies to offenses committed after the bill's October 1, 2002 effective date, any expenditure increase would not be felt until future years. It is assumed that DOC could anticipate and plan for such future increases through the normal State budgetary processes.

In addition, litigation of cases involving a penalty of life without parole are lengthy because few defendants will plead guilty to an offense carrying such a penalty and because sentencing proceedings frequently include defenses involving lay and expert testimony and other evidence that might mitigate against such a sentence being rendered. The Public Defender estimates the cost of a fully litigated life without parole case at about \$25,000, including the costs of experts, records, and investigation.

Additional Information

Prior Introductions: A similar bill, SB 673 of 2001, passed the Senate, had a hearing before the House Judiciary Committee, and had no further action taken on it.

Cross File: None.

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

Fiscal Note History: First Reader - March 11, 2002
mld/cer Revised - Enrolled Bill - May 1, 2002

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