

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 1302

(Delegate Montague, *et al.*)

Judiciary

Judicial Proceedings

Sexual Crimes - Continuing Course of Conduct Against a Child

This bill prohibits a person from engaging in three or more acts in a continuing course of unlawful sexual conduct with a victim under 14 years of age and provides that a violation is a felony. A sentence for the violation may be imposed separate from and consecutive to or concurrent with a sentence for child abuse under certain circumstances. A person may not be charged with a violation of specified sexual offenses involving the same victim in the same proceeding unless the violations occurred outside of the time period related to the continuing course of conduct.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's incarceration penalty provisions.

Local Effect: It is assumed that the bill's requirements could be handled with the existing budgeted resources of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: This bill makes it a felony to engage in three or more acts that would constitute: (1) rape in the first or second degree or sexual offense in the first, second, or third degree; (2) that occur over a period of 90 days or more; and (3) that are with a person who is under 14 years of age at any time during the course of conduct. A violation of the provision is a felony and the violator is subject to imprisonment not

exceeding 30 years. A sentence imposed for the violation in this bill may be separate from and consecutive to or concurrent with a sentence for child abuse.

In considering whether a “continuing course of conduct” occurred, the trier of fact must determine only that the required number of acts occurred and need not determine which acts constitute the required number of acts.

A person may not be charged with a violation of rape in the first or second degree, or sexual offense in the first, second, or third degree if the charge involves the same victim in the same proceeding, unless the violation occurred outside the time period charged for the continuing course of conduct.

If a person is transported with the intent to commit a sexual crime, including the provisions prohibiting a continuing course of conduct as specified in this bill, the defendant may be tried in the county where the transportation was offered, solicited, begun, continued, or ended. In a criminal prosecution involving sexual crimes, including the crime of continuing course of conduct as specified in this bill, the judge is prohibited from issuing certain jury instructions.

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

- (1) *First degree rape*, which includes a prohibition against vaginal intercourse by force or threat of force. Violators are subject to imprisonment not exceeding life. If the person was also convicted of child kidnapping in the same proceeding and the child was under 16 years old, then the penalty is life imprisonment without the possibility of parole.
- (2) *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.
- (3) *First degree sexual offense*, which includes a prohibition against sexual acts by force, the threat of force, the display of a weapon, or the infliction of serious injury, with aid from another, or in connection with a burglary. Violators are subject to imprisonment not exceeding life. If the person was also convicted of child kidnapping in the same proceeding and the child was under 16 years, then the penalty is life imprisonment without the possibility of parole.
- (4) *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.
- (5) *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 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 responds to the decision of the Court of Appeals in *Cooksey v. State*, 359 Md. 1, 752 A.2d 606 (2000). In that case, the defendant was charged with a single count each of third- and fourth-degree sexual offenses involving several acts with one child under 14 over an extended period of time in a continuing course of conduct. The indictment failed to allege specific dates for each of the alleged offenses. The defendant was also charged with child sexual abuse of the same victim for the same acts in a separate count, and child sexual abuse of another victim involving similar conduct in a fourth count.

The defense objected to the method of charging, arguing that each of the charged offenses required a specific act at a specific time, not a continuing series of activities over time. Because the State failed to identify the specific instances of alleged third- or fourth-degree sexual offense or child sexual abuse, so the defense argued, the State's pleadings were duplicitous, in violation of the common law of pleading and Maryland Rules, which require charging of two or more similar offenses in separate counts of the same charging document if the offenses are of the same or similar character.

In *Cooksey*, the court identified several basic rights that are violated by duplicitous pleading: (1) the right of fundamental fairness; (2) the right to reasonable notice of charges, guaranteed under the Sixth Amendment and Article 21 of the Maryland Declaration of Rights; (3) the right to jury unanimity, guaranteed under Article 21; and (4) the right not to be placed in double jeopardy, guaranteed under the Fifth Amendment and Maryland common law. Because of the great amount of evidence to be presented, the court feared the increased danger of a compromise verdict, in which the jury could all agree that the defendant had done something wrong, and so should be found guilty of something, even if not all were convinced that all of the alleged acts occurred. In addition, without identifying the specific dates of the alleged acts, a person could be charged at a later date for some of the same acts, in violation of double jeopardy.

The Court of Appeals held that third- and fourth-degree sexual offenses, as codified in Maryland, are single offenses involving a specific act on each occurrence, rather than crimes of a continuing character that may occur over time. Accordingly, the first two counts, for third- and fourth-degree sexual offenses against the same victim, involving multiple instances of sexual acts and sexual contact occurring over several months but not separately dated or identified, were duplicitous. In essence, the defective pleading

would have allowed a jury to agree that one or more instances of sexual acts or sexual conduct had occurred, but not to agree on which acts they were or when they occurred. However, the court found that child sexual abuse could be a crime of continuing nature, not necessarily involving discrete acts each of which must rise to the level of an offense.

State Expenditures: General fund expenditures could increase minimally 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 convicted of this proposed crime is expected to be minimal.

Generally, 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.

Additional Information

Prior Introductions: Three bills from the 2001 session, HB 156, HB 939, and SB 595 had similar provisions to this bill. HB 156 was withdrawn after a hearing in the Judiciary Committee. HB 939 received an unfavorable report from the Judiciary Committee. SB 595, which was the cross-file to HB 939, received an unfavorable report from the Judicial Proceedings Committee.

Cross File: None.

Information Source(s): State's Attorneys' Association, Department of Public Safety and Correctional Services, Department of Legislative Services

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