

Department of Legislative Services  
Maryland General Assembly  
2002 Session

FISCAL NOTE

House Bill 933  
Judiciary

(Delegate Burns)

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**Third Degree Sexual Offense - Prior Conviction - Mandatory Minimum Penalty**

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This bill requires the imposition of a mandatory minimum, nonsuspendable sentence of one year for a person who is convicted of a third degree sexual offense involving a minor when the person has previously been convicted of first or second degree rape or first, second, or third degree sexual offense involving a minor.

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**Fiscal Summary**

**State Effect:** Any change in incarceration expenditures resulting from the bill's mandatory minimum penalty provision would not have a significant impact on State finances.

**Local Effect:** Potential minimal decrease in expenditures due to the bill's mandatory minimum penalty provision.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Third degree sexual offense is a felony. A violator is subject to a maximum imprisonment penalty of ten years. The crime of third degree sexual offense provides that a person may not:

- engage in nonconsensual sexual contact with another, and: (1) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon; (2) suffocate, strangle, disfigure, or inflict serious physical

injury on the victim or another in the course of committing the crime; (3) threaten, or place the victim in fear, that the victim, or an individual known to the victim, will be imminently subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or (4) commit the crime while aided and abetted by another person;

- engage in sexual contact if the victim is mentally defective, mentally incapacitated, or is physically helpless, and the person performing the act knows or reasonably should know the victim to have such limitations;
- engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim;
- engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or
- engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

First and second degree rape and first and second degree sexual offenses are defined as crimes of violence which subject subsequent offenders to mandatory minimum penalties, the length depending on the number of prior convictions for crimes of violence.

**State Expenditures:** The Division of Correction (DOC) reports that, for fiscal 2001, the intake of third degree sexual offense was 74 persons. The current data does not reveal how many of those offenders were repeat offenders or how many of the offenses involved a minor. The average sentence received by each such offender was six years. Therefore, the number of violators affected by the provisions of this bill is expected to be minimal.

A mandatory minimum sentence of one year would increase the likelihood that a person convicted of a third degree sexual offense involving a minor would serve his or her sentence in a State correctional facility rather than at a local facility.

To the extent that any offenders are affected by the sentencing provisions of the bill, State costs could both increase and decrease minimally due to more people being committed to DOC facilities, and reduced payments to counties for reimbursement of inmate costs. Any overall increase or decrease in costs for DOC is expected to be small and absorbable within existing budgeted resources.

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.

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 2003 are estimated to range from \$10 to \$61 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.

**Local Expenditures:** Expenditures could decrease minimally as a result of the bill's mandatory minimum sentencing provision. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$20 to \$84 per inmate in fiscal 2003

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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