

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 1147

(Delegates Hecht and Dembrow)

Judiciary

Judicial Proceedings

Crimes - Subsequent Sexual Offenders - Sentences

This bill provides that if a person who has a prior conviction from another incident of first or second degree rape or sex offense is convicted of a subsequent offense of second degree rape or sexual offense, third degree sexual offense, or attempted second degree rape or sexual offense, the person is subject to imprisonment not exceeding life.

The bill's provisions are applied prospectively only. The prior offense, however, may have occurred before the bill's effective date.

Fiscal Summary

State Effect: The requirements of this bill could be handled with the existing budgeted resources of the Judiciary. However, the Office of the Public Defender could be significantly affected. The extent to which the bill would result in additional life imprisonments is unknown.

Local Effect: The requirements of this bill could be handled with the existing budgeted resources of State's Attorneys' offices.

Small Business Effect: None.

Analysis

Current Law: State law does not now define or have provisions relating to a "sexual predator." A "sexually violent predator" means a person who is convicted of a subsequent sexually violent offense, and has been determined in accordance with certain

provisions to be at risk of committing another sexually violent offense. A sexually violent predator must register with the State every 90 days for life under the State's Megan's law.

If a person is convicted of a subsequent sexually violent offense, a State's Attorney before sentencing may ask the court to determine whether the person is a sexually violent predator. If the State's Attorney makes such a request, the court is required to determine, before or at sentencing, whether the person is a sexually violent predator. In making the determination, the court must consider: (1) evidence that the court considers appropriate to the determination, including the presentencing investigation and the offender's inmate record; (2) evidence introduced by the person convicted; and (3) at the request of the State's Attorney, evidence that a victim of the offense presents. The State's Attorney may not ask a court to make such a determination unless the State's Attorney serves written notice of intent to make the request on the defendant or the defendant's counsel at least 30 days before trial.

First degree rape and first degree sexual offense, and attempts to commit these offenses, subject a violator to a maximum penalty of life imprisonment. The other offenses covered under the bill subject a violator to a maximum 20-year sentence, with the exception of third degree sexual offense, which carries a maximum 10-year term.

Background: Under the current sexual offender registration laws, a State's Attorney may request that a repeat sexual offender be designated a sexually violent predator. However, while such designated persons must register every 90 days for life on release from incarceration, they are generally not subject to life imprisonment for their offenses. The Department of Public Safety and Correctional Services and the Department of Health and Mental Hygiene appointed a task force during the 2001 interim to address criminal and mental health issues related to sexual offenders. The task force recommended, in part, that legislation be enacted to allow a court to sentence a defendant to life imprisonment if the defendant is determined to be a sexually violent predator.

State Expenditures: The Office of the Public Defender (OPD) advises that, since cases emanating from the provisions of this bill would involve the defense of a person subject to life imprisonment, there would be less of a chance that such a case would be disposed of via a plea agreement and would result in a greater number of jury trials. For OPD each such case would involve the hiring of expert witnesses and additional time in case preparation. Without knowing how often prosecutors would seek a life term under the provisions of this bill, OPD was unable to quantify such an impact, but believe that it would be "substantial."

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.

Given the sentencing currently available for persons convicted of the offenses covered under the bill, any additional costs for incarcerations would not likely occur for at least five years. It is assumed that DOC could prepare for such anticipated increases in costs through the normal State budgetary processes. 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. Under current law sentencing practices, a person sentenced to life imprisonment is expected to serve a term of about 360 months (30 years).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, Office of the Public Defender, Office of the State's Attorneys' Coordinator, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510