

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 799 (Senator Ferguson, *et al.*)

Judicial Proceedings

Judiciary

Christopher's Law III - Child Sexual Offenders - Plea Bargaining and Diminution Credits

This bill prohibits an inmate from receiving diminution credits if the victim was a child under the age of 16 years and the inmate is convicted of: (1) first or second degree rape; (2) first, second, or third degree sexual offense; or (3) attempted first or second degree rape or sexual offense. This bill prohibits any deductions from a sentence for any period of presentence or postconviction confinement.

The bill also prohibits a State's Attorney from entering into a plea bargain agreement if the defendant is charged with a violation of any of the listed sexual offenses, the alleged victim was under the age of 16 years, and the plea bargain would result in a nolle prosequi or placement of the charge on the stet docket.

The bill defines a plea bargain agreement as an agreement between the defendant and the State's Attorney that the defendant will plead guilty in return for: (1) recommendations of a lesser penalty; (2) a promise to make no recommendations to the court; (3) a promise to enter a nolle prosequi to a charge with greater statutory penalties; or (4) a promise to place a charge with greater statutory penalties on the stet docket. The bill does not prohibit a defendant from pleading guilty to a criminal charge provided there is no plea bargain agreement.

Fiscal Summary

State Effect: General fund expenditures could increase in the long run due to the bill's sentencing provisions. Revenues would not be affected.

Local Effect: Minimal.

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.

For Division of Correction (DOC) inmates whose terms of confinement include consecutive or concurrent sentences for a crime of violence or a crime involving a controlled dangerous substance as defined in the law, 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. The total deduction, however, 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.

Maryland Rule 4-243 allows a defendant to enter into a plea bargain agreement with the State's Attorney. If the defendant pleads guilty or *nolo contendere*, the State's Attorney may amend the charging document, enter a *nolle prosequi* or stet, agree to acquittal on certain charges, agree not to charge the defendant with certain charges, recommend or agree to make no comment to the court regarding a sentence, or submit a plea agreement proposing a certain sentence to the judge for consideration. There is no limitation under the rule that prohibits a plea bargain agreement where a defendant is charged with certain offenses.

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.

The use of diminution credits to reduce an inmate's term of incarceration is a means of recognizing an inmate's good behavior. Inmates are allowed a deduction in advance from the term of confinement. If an inmate violates a rule of discipline, however, diminution credits may be revoked.

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 Division of Correction (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 the normal State budgetary processes.

Approximately 90% of all felony indictments in the circuit courts are disposed of through plea negotiations. The number of plea bargains that would be eliminated by this bill annually is unknown. In any event, the Office of the Public Defender advises that the provisions of this bill could be handled with existing budgeted resources.

Local Expenditures: Approximately 90% of all felony indictments in the circuit courts are disposed of through plea negotiations. The number of plea bargains that would be eliminated by this bill annually is unknown. In any event, the Office of State's

Attorneys' Coordinator advises that the provisions of this bill could be handled with existing budgeted resources of the various State's Attorney offices.

Additional Information

Prior Introductions: A similar bill, SB 678 of 2001, passed the Senate and received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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