

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 588

(Delegate O'Donnell)

Judiciary

Judicial Proceedings

Criminal Law - Child Abuse and Child Sexual Abuse - Increased Penalties

This bill establishes the crimes of child abuse in the first and second degrees, establishes terms of imprisonment for those crimes, and increases the maximum term of imprisonment for a person who causes sexual abuse to a minor. The bill also adds a definition of severe physical injury for the purpose of the crime of child abuse in the first degree.

Fiscal Summary

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

Local Effect: Potential minimal increase in expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: This bill provides that a parent or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor may not cause abuse resulting in severe physical injury or death to the minor. Severe physical injury means a brain injury or bleeding within the skull, starvation, or physical injury that creates a substantial risk of death or causes permanent or protracted serious disfigurement or loss or impairment of the function of any bodily member or organ. A person who violates this provision is guilty of the felony of child abuse in the first degree and on conviction is subject to imprisonment not exceeding 25 years or, if the violation results in

the death of the victim, imprisonment not exceeding 30 years. A person who violates the child abuse laws after being convicted of a prior violation of the same provisions is guilty of a felony and is subject to imprisonment for up to 25 years. If the violation results in the death of the victim, the violator is subject to imprisonment for up to 30 years.

The bill establishes that the existing crime of child abuse is child abuse in the second degree is subject to a maximum term of imprisonment of 15 years for abuse that does not result in the death of the victim.

The bill increases the maximum term of imprisonment for a person who causes sexual abuse to a minor from 15 years to 25 years.

Current Law: “Abuse” is defined as the physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate the minor’s health or welfare is harmed or threatened. “Sexual abuse” is defined as an act that involves the sexual molestation or exploitation of a minor. It includes incest, rape, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices.

Family member means a relative of the minor by blood, adoption, or marriage. Household member means a person who lives with or is a regular presence in the home of a minor at the time of the alleged abuse.

A parent, household or family member, or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor may not cause abuse to the minor. A person who violates this provision is guilty of a felony and upon conviction is subject to imprisonment not exceeding 15 years or, if the violation results in the minor’s death, imprisonment not exceeding 30 years.

A parent, household or family member, or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor may not cause sexual abuse to the minor. A person who violates this provision is guilty of a felony and is subject to imprisonment not exceeding 15 years.

A sentence imposed for child abuse or child sexual abuse may be separate from and consecutive to or concurrent with a sentence for any crime based on the act that establishes the abuse violation.

Background: The General Assembly passed legislation during the 2002 session that established the crimes of abuse or neglect of a vulnerable adult in the first and second degrees. Abuse or neglect of a vulnerable adult in the first degree is a felony and involves the death, serious physical injury, or sexual abuse of the vulnerable adult.

“Serious physical injury” is defined as a physical injury that creates a substantial risk of death, causes permanent or protracted serious disfigurement, or the loss of function or impairment of any bodily member or organ. The second degree of this crime is a misdemeanor and involves the abuse or neglect of a vulnerable adult.

State Expenditures: General fund expenditures could increase as a result of the bill’s incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The effect of this bill on actual incarceration expenditures is expected to be minimal.

Persons serving a sentence longer than 18 months 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 \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. 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 2004 are estimated to range from \$14 to \$59 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 increase minimally as a result of the bill’s incarceration penalties. 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 \$28 to \$84 per inmate in fiscal 2004.

Additional Information

Prior Introductions: None.

Cross File: SB 133 (Senator Brochin, *et al.*) – Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services,
Department of Legislative Services

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