

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 923
Judiciary

(Delegate Brown, *et al.*)

Judicial Proceedings

Sexual Offenses - Spousal Defense

This bill provides that a person may be prosecuted for first degree rape, second degree rape, or third degree sexual offense against the person's legal spouse if the person in committing the crime uses force or threat of force and the act is without the consent of the spouse.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the application of a current law incarceration penalty provision to an expanded offense, and the elimination of a "spousal defense." Revenues would not be affected.

Local Effect: Minimal increase in expenditures due to the application of a current law incarceration penalty provision to an expanded offense, and the elimination of a "spousal defense." Revenues would not be affected.

Small Business Effect: None.

Analysis

Current Law: First degree rape is a felony punishable by up to life imprisonment. It provides that a person may not, among other things: (1) engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other; and (2) (i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon; (ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime; (iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious

physical injury, or kidnapping; (iv) commit the crime while aided and abetted by another; or (v) commit the crime in connection with a burglary in the first, second, or third degree.

Under the prohibitions against second degree rape, a person may not, among other things, engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other. A violation is a felony punishable by imprisonment for up to 20 years.

Third degree sexual offense is a felony, which provides that a person may not, among other things, engage in sexual contact with another without the consent of the other and:

- employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;
- suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;
- threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or
- commit the crime while aided and abetted by another.

A violator is subject to maximum imprisonment for 10 years.

Background: With respect to the “spousal defense,” the Maryland Court of Appeals has held that, if the parties are either living together or have not been continuously separated pursuant to a limited divorce, they retain the marital “exemption” applicable to fourth degree sexual offenses; and, if the parties are still living together, the exemption is also retained for rape and third degree sexual offenses, unless committed by actual force. [*Lane v. State*, 348 Md. 272, 703 A.2d 180 (1997)]

During fiscal 2003, there were 65 persons serving a sentence for third degree sexual offense, with an average sentence of 64 months.

State Expenditures: General fund expenditures could increase minimally as a result of additional successful prosecutions for first and second degree rape and third degree sexual offense, due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime 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 2005 are estimated to range from \$14 to \$58 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 additional successful prosecutions for third degree sexual offense. 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 \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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