

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 709  
Judiciary

(Delegate Burns, *et al.*)

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**Third Degree Sexual Offense – Prior Conviction – Increased Penalty**

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This bill increases, from 10 to 20 years, the maximum incarceration penalty for third degree sexual offense when the current violation involves a minor if the person has previously been convicted of first or second degree rape or first or second degree sexual offense involving a minor.

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**Fiscal Summary**

**State Effect:** Any change in incarceration expenditures for the Division of Correction (DOC) resulting from this bill would not have a significant impact on State finances.

**Local Effect:** None.

**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 10 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 four 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:** DOC reports that there were 65 intakes for third degree sexual offense in fiscal 2003. 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 66 months. Therefore, the number of violators affected by the provisions of this bill 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.

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### **Additional Information**

**Prior Introductions:** In 2003, a similar bill, HB 417, received an unfavorable report from the House Judiciary Committee.

**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

**Fiscal Note History:** First Reader - February 18, 2004  
mam/jr

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