

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 822

(Delegate Doory)

(Committee to Revise Article 27 – Crimes and Punishments)

Judiciary

Judicial Proceedings

Crimes - Factual Determinations That Enhance Penalties - Revision

This bill changes the factors a court would use to determine and apply an enhanced penalty for certain criminal convictions from penalty enhancements, per se, to elements of the offense which would be required to be presented to a trier of fact for consideration.

Fiscal Summary

State Effect: None. The bill is not expected to alter eventual penalty determinations for the affected offenses.

Local Effect: None. The bill is not expected to alter eventual penalty determinations for the affected offenses.

Small Business Effect: None.

Analysis

Bill Summary: The bill reestablishes, and clarifies the penalties for, the following offenses:

- first degree rape;
- first degree rape while also kidnapping a child under the age of 16;
- first degree sexual offense;
- first degree sexual offense while also kidnapping a child under the age of 16;

- wearing, carrying, or transporting a handgun while on public school property;
- wearing, carrying, or transporting a handgun with the deliberate purpose of injuring or killing another person;
- volume dealing of certain controlled dangerous substances;
- hate crime offenses that involve a separate crime or result in the death of the victim;
- failure by a driver to remain at the scene of an accident that resulted in bodily injury;
- failure by a driver to remain at the scene of an accident that resulted in a death;
- driving or attempting to drive a vehicle while under the influence of alcohol or drugs (or other controlled dangerous substance), while transporting a minor; and
- eluding a police officer if the violation resulted in bodily injury or death.

The bill also repeals a certain redundant provision relating to hate crime prosecutions and provides that a sentence imposed under Maryland's prohibitions against hate crimes may be separate from and consecutive to or concurrent with a sentence for any crime based on the underlying hate crime violation.

Current Law: Evidence used to make determinations of penalty enhancement for these offenses are made at sentencing before a judge, rather than at trial as elements of the offense charged. While the standard of proof is different at each of these points of a criminal proceeding, this bill does not alter any of the elements that would ultimately lead to a particular penalty.

Background: In 2004, the Supreme Court decided two landmark cases relating to the Sixth Amendment of the U.S. Constitution – the right to trial by jury and the right to confront witnesses. These cases arose out of the State of Washington and could have far-reaching implications for criminal law and procedure throughout the nation. Maryland's law does not appear to be as negatively impacted by these decisions as many other states, but the Committee to Revise Article 27 believes that the court's rulings in these cases may still require a legislative response in order to maintain the constitutionality of certain provisions of Maryland's criminal code. This bill addresses one of those cases.

In June 2004, the Supreme Court held in *Blakely v. Washington*, No. 02-1632 (2004), that a sentencing judge's imposition of an enhanced penalty, based on facts that were not admitted by the defendant or found by a jury, violated the defendant's right to a trial by jury. In its holding, the court applied its earlier decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which generally requires that "other than the fact of a prior conviction,

any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”

The immediate impact of this decision was to throw Washington State’s (and at least 10 other states’ and the federal government’s) mandatory criminal sentencing statutes and procedures into question. Fortunately, Maryland has a largely indeterminate sentencing structure that features, in most instances, only a maximum statutory sentence.

While Maryland does have a sentencing guideline system to try to provide greater uniformity of sentencing for offenses, it is a discretionary system rather than mandatory and is usually not based on a finding of additional facts to determine the length of sentence. However, Maryland does have a handful of statutory crimes that provide for enhanced penalties based on the existence of certain facts beyond the elements of the underlying crime.

The committee has recommended the enactment of legislation during the 2005 legislative session to correct this apparent defect under *Blakely* and *Apprendi* by repealing the factual penalty enhancement in the penalty provisions and to place the factual circumstance that leads to the increased penalty into the factual elements of the underlying offense to be charged as its own, separate, new offense.

The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State’s criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims’ rights representative. In past sessions the committee has successfully sponsored legislation to revise the laws on accessory before and after the fact, arson, assault, benefit of clergy, burglary, destructive devices, disorderly conduct, escape, leased or rented goods, Medicaid fraud, offensive contact, prostitution, robbery, sabotage, trespass, and victims’ rights.

Additional Information

Prior Introductions: None.

Cross File: SB 429 (Senators Giannetti and Stone) (Committee to Revise Article 27 – Crimes and Punishments) – Judicial Proceedings.

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

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