

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 27

(Delegate Boschert)

Judiciary

Criminal Law - Crime Against a Spouse, Child, or Vulnerable Adult - Penalty

This bill establishes the crime of spousal assault in the first degree for a person who causes or attempts to cause serious physical injury to the person's legal spouse. A violator is guilty of a felony and subject to a maximum imprisonment penalty of 30 years. The bill also increases the maximum imprisonment penalties for specified violations of child abuse prohibitions, sexual abuse of a minor, and abuse or neglect of a vulnerable adult in the first degree.

Fiscal Summary

State Effect: Minimal. It is assumed that any increased incarceration costs for the Division of Correction (DOC) stemming from this bill would not be significant. Revenues would not be affected.

Local Effect: Minimal. Any increased caseload for the circuit courts resulting from this bill could be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: Specifically, the bill's increases in the maximum imprisonment penalties for violations of existing offenses are as follows:

First Degree Child Abuse

- from 25 to 30 years;

- if the abuse results in the death of the victim, from 30 to 35 years;

Repeat Child Abuse Offenders

- for subsequent child abuse offenses, from 25 to 30 years; and
- if the subsequent abuse results in the death of the victim, from 30 to 35 years.

Sexual Abuse of a Minor – from 25 to 30 years.

First Degree Abuse or Neglect of a Vulnerable Adult – from 10 years to 30 years, with no change to the current law fine of \$10,000 that also may be imposed.

Current Law: First degree assault is limited to intentionally causing or attempting to cause serious physical injury to another, or committing an assault with a firearm. Violators are guilty of a felony and subject to a maximum penalty of 25 years' imprisonment. An assault on any person that does not involve causing or attempting to cause serious physical injury or the use of a firearm is assault in the second degree. Violators are guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,500 and/or imprisonment for 10 years.

Chapter 167 of 2003 established the crimes of child abuse in the first and second degrees, established terms of imprisonment for those crimes, and increased the maximum term of imprisonment for a person who causes sexual abuse to a minor. The Act 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. A violator is guilty of the felony of child abuse in the first degree and on conviction is subject to imprisonment for up to 25 years or, if the violation results in the death of the victim, imprisonment for up to 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.

Chapter 167 also established that the then existing crime of child abuse is child abuse in the second degree and is subject to a maximum term of imprisonment of 15 years for abuse that does not result in the death of the victim. The Act increased the maximum term of imprisonment for a person who causes sexual abuse to a minor from 15 years to 25 years.

Chapter 217 of 2004 increased, from one to three years, the maximum incarceration penalty for a person convicted of fourth degree sexual offense if the person was previously convicted of a sexual crime or sexual abuse of a minor.

Chapter 524 of 2004 provided 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.

Chapter 285 of 2004 prohibited a person (with intent to commit certain sexual offenses) from knowingly "soliciting" a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under provisions relating to second degree rape or second or third degree sexual offense. For purposes of jurisdiction, a violation is considered to be committed in Maryland if the solicitation originated in Maryland or is received in the State. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$25,000.

Background: The DOC standing population and intake rates for the existing offenses affected by this bill are unknown. The DOC assault and sex offense codes typically do not show the victim's status (*e.g.*, child or vulnerable adult) or whether it was a repeat offender. DOC's generic child abuse code does not differentiate by degree.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty for the new offense of first degree spousal assault due to more people being committed to DOC facilities, and for persons potentially being incarcerated for longer periods of time for convictions of the bill's other affected offenses. The number of people convicted of the new offense 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 \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mp/jr

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