

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 530  
Judiciary

(Delegate Haynes, *et al.*)

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**Crimes - Sexual Offense Against Minor Committed on School Grounds or in a  
Recreation Area - Penalties**

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This bill prohibits a person from committing specified sexual offenses against a minor less than 15 years of age in or on elementary or secondary school property or in a recreation area. The covered offenses are first or second degree rape; first, second, or third degree sexual offense; or sexual abuse of a minor. The prohibition applies whether or not school is in session or the school property is being used for other than school purposes at the time of the crime.

A violator is guilty of a felony and subject to the following maximum penalties: (1) for a first offense, imprisonment for 20 years and/or a fine of \$20,000; (2) for each subsequent offense, imprisonment for 40 years (with a mandatory minimum of 5 years, which is nonsuspendable and nonparolable) and/or a fine of \$40,000. A sentence must be consecutive to any other sentence imposed and a conviction under these provisions may not merge with convictions under specified other controlled dangerous substances prohibitions.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund expenditures due to the bill's incarceration penalty provisions. Such effects would not occur for several years.

**Local Effect:** Potential minimal increase in local revenues due to the bill's monetary penalty provisions.

**Small Business Effect:** None.

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## Analysis

**Current Law:** A conviction for first degree rape or first degree sexual offense generally carries a maximum penalty of life imprisonment. A conviction for child kidnapping along with first degree rape or first degree sexual offense, where the victim is a child under the age of 16 years, carries a maximum penalty of life imprisonment without the possibility of parole. A conviction for second degree rape or second degree sexual offense carries a maximum penalty of 20 years imprisonment. A conviction for third degree sexual offense carries a maximum penalty of 10 years imprisonment. A conviction for sexual abuse of a minor by a parent, custodian, or other household or family member carries a maximum penalty of 15 years imprisonment.

By common law, Maryland prohibits the solicitation of sex with a minor. Depending on the age of the victim and the circumstances of the event, a person engaging in sexual acts with a minor could be subject to a charge of second degree rape; second, third, or fourth degree sexual offense; or child sexual abuse. A minor generally means a person under the age of 18 years.

If a person who has a prior conviction from another incident of first or second degree rape or sexual offense is convicted of a subsequent offense of second degree rape or sexual offense, third degree sexual offense, or attempted second degree rape or sexual offense, the person is subject to imprisonment not exceeding life. A person is subject to incarceration for life without the possibility of parole if the person is found guilty of rape or sexual offense in the first degree after having been previously convicted of one of the same offenses.

Chapter 285 of 2004 prohibits 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. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$25,000.

Chapter 460 of 2005 prohibits a court from placing a defendant on probation before judgment for any of the following offenses if the victim is under the age of 16: first or second degree attempted rape; first or second degree attempted sexual offense; continuing rape or sexual abuse of a child; or sexual abuse of a minor.

Generally, a person convicted of a sex crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence.

Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator.

Sexual offenders are required to register with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. The registry is operated by the Sexual Offender Registry unit of the Department of Public Safety and Correctional Services (DPSCS). An offender and a sexually violent offender must register annually. A sexually violent predator must register every 90 days. Under the State's sexual offender registration laws, a State's Attorney may request that a sexual offender be designated a sexually violent predator. Lifetime registration is required for: (1) sexually violent predators; (2) persons convicted of a sexually violent offense; (3) persons convicted of child abuse for commission of a sexual act involving penetration of a child under 12 years old; and (4) recidivist sexual offenders.

Chapter 217 of 2004 increased, from one to three years, the maximum incarceration penalty for a person convicted of a fourth degree sexual offense if the person was previously convicted of a sexual crime or sexual abuse of a minor. Chapter 458 of 2005 authorizes a court to order probation for a time longer than a defendant's sentence for a defendant convicted of sexual abuse of a minor or, when the victim was a minor, of first or second degree rape or first, second, or third degree sexual offense, if the defendant consents in writing. The authorization is limited to 10 years if ordered in a circuit court or 6 years if ordered in the District Court.

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 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.

“Abuse” means a 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. “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 sentence imposed for child 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.

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of people convicted under these provisions is expected to be minimal. The underlying offenses are already crimes and any additional incarceration costs stemming from this bill would not likely occur for several years.

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 \$1,974 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 \$341 per month. Excluding medical care, the average variable costs total \$134 per month.

**Local Revenues:** Revenues could increase minimally as a result of the bill's monetary penalty provisions because these cases would be heard in the circuit courts.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Allegany County, Montgomery County, Talbot County, Judiciary (Administrative Office of the Courts), Baltimore City, Department of Public Safety and Correctional Services, Department of Legislative Services

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