

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1401
Judiciary

(Delegate O'Donnell, *et al.*)

Jessica's Law

This bill provides for a mandatory minimum nonsuspendable, nonparolable sentence for a person convicted of specified sexual offenses if the victim is under the age of 13.

Fiscal Summary

State Effect: Minimal increase in incarceration expenditures due to the bill's penalty provisions beginning in 2017. Although additional mandatory minimum sentencing provisions generally result in an additional number of contested hearings in the courts, it is assumed that any such increase resulting from this bill could be handled with the existing budgeted resources of the Office of the Public Defender. It is unknown how this bill might affect plea bargain processes or actual sentencing practices.

Local Effect: Although additional mandatory minimum sentencing provisions generally result in an additional number of contested hearings in the courts, it is assumed that any such increase resulting from this bill could be handled with the existing budgeted resources of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: Specifically, the bill requires that, if the victim was under the age of 13, the following sexual offense penalty provisions apply:

Rape

- for first degree rape, a violator is subject to an imprisonment term of not less than 25 years and not more than life without the possibility of parole; and
- for second degree rape, a violator is subject to an imprisonment term of not less than 25 years and not more than life.

Attempted Rape

- for attempted first degree rape, a violator is subject to an imprisonment term of not less than 25 years and not more than life without parole; and
- for attempted second degree rape, a violator is subject to an imprisonment term of not less than 25 years and not more than life.

First and Second Degree Sexual Offense

- for first degree sexual offense, a violator is subject to an imprisonment term of not less than 25 years and not more than life without parole; and
- for second degree sexual offense, a violator is subject to an imprisonment term of not less than 25 years and not more than life.

Attempted First and Second Degree Sexual Offense

- for attempted first degree sexual offense, a violator is subject to an imprisonment term of not less than 25 years and not more than life without parole; and
- for attempted second degree sexual offense, a violator is subject to an imprisonment term of not less than 25 years and not more than life.

In all instances, a court may not suspend the mandatory minimum sentence and the convicted person is not eligible for parole during the mandatory minimum sentence. When a maximum sentence of life without parole is added, the bill requires the State, at least 30 days before trial, to provide written notification to the defendant of the intention to seek that penalty.

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.

An attempt to commit any of these offenses is also a felony. Attempted first degree rape or sexual offense carries a maximum penalty of life imprisonment. Attempted second degree rape or sexual offense carries a maximum penalty of imprisonment for 20 years.

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.

Whenever the State seeks the death penalty or a sentence of life without parole, it must, at least 30 days before trial, provide written notification to the defendant of the intention to seek that penalty.

The Maryland Parole Commission has the power to authorize the parole of an inmate in the Division of Correction (DOC). The Secretary of Public Safety and Correctional Services must also approve each parole.

A person sentenced to a term of incarceration of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

Parole eligibility for persons incarcerated for commission of a violent crime is as follows:

- an inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994 is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes, or one-fourth of the inmate's total aggregate sentence;
- an inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994 and who has been sentenced to more than one term of imprisonment, including a term during which the inmate is eligible for parole and a term during which the inmate is not eligible for parole, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes; one-fourth of the inmate's total aggregate sentence; or a period equal to the term during which the inmate is not eligible for parole;
- an inmate who is serving a term of imprisonment for a violent crime committed on or after October 1, 1994 must receive an administrative review of the inmate's progress in the correctional facility after the inmate has served the greater of one-fourth of the inmate's aggregate sentence; or if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

For purposes of parole eligibility for a violent crime, a crime of violence means:

- abduction;
- first degree arson;
- first or second degree assault;
- first, second, or third degree burglary;
- carjacking and armed carjacking;
- first degree escape;
- kidnapping;
- voluntary manslaughter;
- maiming;
- mayhem;
- first or second degree murder;
- first or second degree rape;
- robbery;
- robbery with a dangerous weapon;
- first, second, or third degree sexual offense;

- an attempt to commit any of the above crimes; or
- assault with intent to commit any of the above crimes or a crime punishable by imprisonment for more than one year.

A person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years. An inmate sentenced to life imprisonment without the possibility of parole is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence. This does not restrict the authority of the Governor to pardon or remit any part of a sentence. If eligible for parole, an inmate serving a life term may only be paroled with the approval of the Governor.

Background: Across the country, cases in which registered sex offenders have gone on to commit heinous sexual crimes have prompted lawmakers in several states to examine the ways of dealing with for these offenders. In Florida in 2005, nine-year-old Jessica Lunsford was abducted, molested, and murdered by a previously convicted child sex offender. Stiffer sentencing for child sexual offenses is under consideration in several states.

The Administrative Office of the Courts reports that there were approximately 1,000 criminal trials scheduled in 2005 relating to crimes involving sexual abuse of a minor.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's increased incarceration penalties due to people being committed to DOC facilities for longer periods of time. Although DOC's automated database does not contain information on a victim's age, it is assumed that persons convicted of the covered offenses when the victim is under 13 are already receiving lengthy sentences. Lengthier sentences resulting from this bill would not be felt until fiscal 2017.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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