

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 434
Judiciary

(Delegate Simmons, *et al.*)

Judicial Proceedings

Crimes - Committing Crime of Violence in Presence of Minor - Penalties

This bill prohibits a person from committing a crime of violence while knowingly in the presence of a minor under the age of 16 who witnesses the crime. A violator is guilty of a misdemeanor and, in addition to any other sentence imposed for the crime of violence, is subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000. A sentence imposed under these provisions must be separate from and consecutive to a sentence for a crime based on the act establishing the violation.

For purposes of provisions governing adverse spousal testimony, a violator is guilty of the crime of abuse of a child under 18. A court must grant a motion to separate the trial of a violation under the provisions of this bill from the trial of a crime of violence in which the spousal privilege is properly invoked.

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.

Analysis

Current Law: 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.

Provisions governing adverse spousal testimony provide that the spouse of a person on trial for a crime may not be compelled to testify against that person unless the charge involves the abuse of a child under 18 or assault in any degree in which the spouse is a victim and certain conditions are met. The adverse spousal testimony privilege is unavailable when the charge is assault against the spouse under the following circumstances:

- the person on trial was previously charged with assault in any degree or assault and battery of the spouse;
- the spouse was sworn to testify at the previous trial; and
- the spouse refused to testify at the previous trial by asserting adverse spousal testimony privilege.

If the spouse of the person on trial for assault in any degree against the spouse refuses to testify on the basis of spousal privilege, the clerk of the court must make and maintain a record of the refusal, including the name of the spouse refusing to testify. When an expungement order is presented to the clerk of the court involving assault in any degree against a spouse, the clerk must check the record to determine whether the defendant’s spouse refused to testify on the basis of spousal privilege. If the record shows a refusal, the clerk must make and keep a separate record of the refusal, including the defendant’s

name, the spouse's name, the case file number, a copy of the charging document, and the trial date when the spouse refused to testify. The separate record is not subject to expungement and must be made available only to the court, a State's Attorney's office, and the defendant's attorney.

The adverse spousal testimony privilege only applies if the spouses are married to each other at the time the spouse-witness is called to the stand.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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