

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 930

(Delegate Shank, *et al.*)

Judiciary

Judicial Proceedings

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Jessica's Law - Sexual Offenses - Parole Eligibility and Mandatory Minimum Sentences

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This bill provides that a person at least 18 years old convicted of first or second degree rape or sexual offense, where the victim was a child under 13 years old is not eligible for parole while serving the mandatory minimum portion of their sentence.

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**Fiscal Summary**

**State Effect:** Minimal increase in incarceration expenditures, with a corresponding minimal decrease on supervision workloads for the Division of Parole and Probation, 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.

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## Analysis

**Current Law:** Chapter 4 of the 2006 special session requires, when the victim is under age 13, a mandatory minimum, nonsuspendable 25-year sentence for a person at least 18 years old convicted of first degree rape or first degree sexual offense. A similar five-year minimum sentence is required under the same circumstances for second degree rape or second degree sexual offense. The State is required to provide at least 30 days notice when seeking such a mandatory minimum sentence for any of these offenses. The mandatory minimum sentence may not apply if the State fails to do so.

The Maryland Parole Commission has the exclusive power to authorize the parole of an inmate in the Division of Corrections (DOC). The Board of Review of the Patuxent Institution has the exclusive power to recommend an inmate for parole to the Secretary of Public Safety and Correctional Services or the Governor.

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.

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

- abduction;
- first degree arson;
- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- robbery with a dangerous weapon;
- carjacking and armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony;
- first degree child abuse;

- an attempt to commit any of the above crimes;
- first degree assault;
- assault with intent to murder, rape, or rob;
- assault with intent to commit first or second degree sexual offense; and
- first, second, or third degree burglary.

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.

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 intake for DOC and the Division of Parole and Probation for the covered offenses, without consideration of the age of the victim, in fiscal 2006 was as follows:

<u>Offense</u>	<u>Probation Intakes</u>	<u>DOC Intakes</u>
1 <sup>st</sup> Degree Rape	4	19
2 <sup>nd</sup> Degree Rape	19	90
1 <sup>st</sup> Degree Sexual Offense	3	4
2 <sup>nd</sup> Degree Sexual Offense	11	45
<b>Totals</b>	<b>37</b>	<b>158</b>

**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 relatively few in number and are already receiving lengthy sentences. Lengthier sentences resulting from this bill would not be felt until fiscal 2018.

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 \$2,300 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 \$465 per month. Excluding medical care, the average variable costs total \$134 per month.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 413 (Senator Jacobs, *et al.*) – Judicial Proceedings.

**Information Source(s):** Department of Public Safety and Correctional Services, Commission on Criminal Sentencing Policy, Judiciary 9 Administrative Office of the Courts), State's Attorney's Association, Department of Legislative Services

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