Department of Legislative Services

Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 170 (Senator Stone, *et al.*)
Judicial Proceedings Judiciary

Child Sexual Abuse and Crimes of Violence

This bill adds the crime of sexual abuse of a minor under 13 years of age by an adult (if the offense involved specified acts) and the crime of a continuing course of conduct with a child to the list of crimes of violence for which specified enhanced penalties are applied to offenders.

Fiscal Summary

State Effect: Minimal. While the bill could result in additional incarceration penalty enhancements (mandatory minimums), more time served before parole eligibility, and longer incarceration terms for certain parole revocations, it is not expected to have a significant impact on overall incarceration costs for the Division of Correction (DOC). Any such impact would not occur for several years.

Local Effect: None.

Small Business Effect: None.

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.

Chapter 261 of 2006 added the crime of first degree child abuse to the list of crimes of violence under mandatory sentencing provisions applicable to crimes of violence.

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.

A conviction for sexual abuse of a minor by a parent, custodian, or other household or family member carries a maximum penalty of 25 years imprisonment. The term "sexual abuse" means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not, and includes incest, rape, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices. 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.

A person may not engage in a continuing course of conduct with a child that includes three or more acts that would constitute violations of prohibitions against first or second degree rape, or first, second, or third degree sexual offense over a period of 90 days or more, with a victim who is under 14 years of age at any time during the course of conduct. A violator is guilty of a felony and subject to a maximum imprisonment of 30 years. A sentence imposed under this provision may be separate from and consecutive to or concurrent with a sentence under provisions prohibiting sexual abuse of a minor. In determining whether the required number of acts occurred, the trier of fact must determine only that the required number of acts occurred and need not determine which acts constitute the required number of acts.

"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.

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.

Upon conviction for a fourth time of a crime of violence, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole. Upon conviction for a third time of a crime of violence, a person must be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person: (1) has been convicted of a crime of violence on two prior separate occasions in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion, and for which the convictions do not arise from a single incident; and (2) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

A court may not suspend all or part of the mandatory 25-year sentence required under these provisions. A person sentenced under these provisions is not eligible for parole except in accordance with the provisions applicable to persons at the Patuxent Institution.

Upon conviction for a second time of a crime of violence committed on or after October 1, 1994, a person must be sentenced to a mandatory minimum term of at least 10 years, if the person: (1) has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994; and (2) served a term of confinement in a correctional facility for that conviction. A court may not suspend all or part of this mandatory 10-year sentence.

If the State intends to proceed against a person as a subsequent offender under these provisions, it must comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

A person sentenced under these provisions may petition to be granted parole if the person is at least 65 years old and has served at least 15 years of the sentence imposed under these provisions. These provisions do not apply if a person is sentenced to death.
For purposes of parole eligibility, a violent crime means all of the cited crimes of violence as well as first, second, or third degree burglary. 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.

A person convicted of a violent crime is not eligible for parole until that person has served the greater of one-half of the inmate's aggregate sentence for violent crimes or one-fourth of the inmate's aggregate total sentence. A person serving a term for a violent crime must receive an administrative review after that person has served the greater of one-fourth of the inmate's aggregate sentence or a period equal to any term in which the inmate is not eligible for parole. Further, 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.

If a parole order is revoked, the inmate must serve the remainder of the sentence originally imposed unless, at the parole commissioner's discretion, the inmate is granted credit for time between the parole release and revocation. An inmate may not receive such credit if: (1) the inmate was serving a sentence for a violent crime when the parole was revoked; and (2) the revocation was due to a finding that the inmate committed a violent crime while on parole.

Background: Chapter 300 of 2006 added the crime of sexual abuse of a minor to the list of offenses for which an investigative or law enforcement officer acting in a criminal investigation, or any other person acting under law enforcement direction and supervision, may intercept a wire, oral, or electronic communication ("wiretap") for evidence gathering purposes. The Act also clarified that child abuse in the first or second degree are both eligible offenses.

State Fiscal Effect: Although current DOC data does not show the age of a victim, this bill could affect the actual time served of about 20 inmates per year, serving an average sentence of about 10 years. This bill would add approximately 600 days (or about 20 months) to the actual time served by these inmates. However, it is not known whether classifying the covered offense as a crime of violence would affect prosecutorial or sentencing practices.

Accordingly, general fund expenditures could increase as a result of the bill's provisions due to later potential release dates for persons committed to DOC facilities being released on mandatory supervision. Any such an impact on DOC would be relatively moderate and would not be immediate. Any related impact on the Division of Parole and Probation cannot be reliably estimated and would, in any event, tend to defer rather than alleviate any supervision costs.

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.

For purposes of illustration only, if this bill resulted in additional incarceration time of 20 months for each person cited above, using variable inmate costs, the additional cost to DOC would be $53,600 ($134 x 20 months x 20 persons), and would not begin to be felt until fiscal 2010. By fiscal 2013, any resulting impact on incarceration costs will have been fully realized.

Additional Information

Prior Introductions: A similar bill, HB 706 of 2006, received a hearing before the House Judiciary Committee and had no further action taken on it.

Cross File: HB 213 (Delegate Hecht, *et al.*) – Judiciary.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction, Division of Parole and Probation), Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2007
bfl/jr Revised - Senate Third Reader - March 22, 2007

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