

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1066
Judiciary

(Delegates Conaway and James)

Subsequent Sexual Offenders - Parole Elimination

This bill eliminates parole eligibility for a repeat sexual offender who is serving an imprisonment term for a violation of any one of specified sexual crimes against a minor, and whose subsequent sexual offense against a minor was committed on or after October 1, 2008.

Fiscal Summary

State Effect: Because of the small number of offenders believed to be affected by this bill, it is assumed that the bill's provisions could be handled by existing budgeted resources of the Parole Commission, the Division of Parole and Probation, and the Division of Correction for the foreseeable future. In any event, any measurable impact on State incarceration or parole costs would not likely be felt until FY 2020, which could be effectively budgeted for via the use of normal budgetary oversight.

Local Effect: The number of affected inmates in local correctional facilities is expected to be quite small with no measurable impact on local correctional costs.

Small Business Effect: None.

Analysis

Bill Summary: The bills provisions are applied to any of the following sexual crimes:

- first or second degree rape;
- attempted first or second degree rape;

- first, second, third, or fourth degree sexual offense;
- attempted first or second degree sexual offense;
- sexual conduct between a correctional or Department of Juvenile Services employee and an inmate or confined child;
- continuing course of conduct with a child;
- sodomy;
- unnatural or perverted sexual practice;
- incest; and
- sexual solicitation of a minor.

Current Law: Penalties for a first offense of the covered offenses range from a maximum penalty of imprisonment for one year and/or a fine of \$1,000 for fourth degree sexual offense to a term of life without the possibility of parole for first degree rape.

When the victim is under age 13, a mandatory minimum, nonsuspendable and nonparoleable 25-year sentence applies to a person at least age 18 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.

On conviction of a violation of second degree rape, second or third degree sexual offense, or attempted second degree rape or sexual offense, a person who has been convicted on a prior occasion not arising from the same incident of first or second degree rape, or first or second degree sexual offense, is subject to a term of life imprisonment.

The Maryland Parole Commission has the exclusive power to authorize the parole of an inmate in 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;
- sexual abuse of a minor (under specified circumstances);
- an attempt to commit any of the above crimes;
- continuing course of conduct with a child;
- 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: Currently, approximately 26,000 persons are serving a prison sentence in State correctional facilities.

DOC tracks data on inmate populations by "unique offense" and "most serious offense" for each person remanded to its custody. Conviction information within this tracking system is collected at intake and maintained over time so as to reflect the standing population at any given time. Within each of these offense categorizations, the division has assigned a specific offense coding number, known as the Offender Based State Correctional Information System Code.

DOC does not track intake or standing population data to reflect the age of the victim. In addition, the division only began tracking intake data for a limited number of sexual crimes involving minors in fiscal 2007 (such as sexual solicitation of a minor). It is also noted that the offense code for assault of a minor does not necessarily involve any sexual elements to the underlying crime.

In any case, as of February 1, 2008, the number of sexual offenders serving a term in a DOC facility or the Patuxent Institution for one of covered offenses under this bill was estimated to be 2,275 persons. Of that total, 364 are serving a life term. It is unknown how many of these offenders are serving a term as a repeat offender.

Additional Information

Prior Introductions: HB 115 of 2007 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 13, 2008
mll/jr

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510