

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 16

(Senator Simonaire, *et al.*)

Judicial Proceedings

Judiciary

Crimes - Sexual Offenders - Sentencing

This bill specifies that an adult who has been convicted for a second time of first degree rape or first degree sexual offense involving a victim under age 13 is subject to the 25-year mandatory minimum sentence provided for each offense.

Fiscal Summary

State Effect: None. The bill clarifies rather than alters current law.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: First degree rape and first degree sexual offense subject a violator to a maximum term of life imprisonment.

Upon a conviction for first degree rape, first degree sexual offense, or attempted first degree rape or sexual offense, a person who has a prior conviction not arising from the same incident for first degree rape or first degree sexual offense is subject to a maximum penalty of life imprisonment without the possibility of parole. If the State intends to proceed against a person under this provision, it must comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

When the victim is under age 13, a mandatory minimum, nonsuspendable and nonparolable 25-year sentence is required for a person at least age 18 convicted of first degree rape or first 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.

For a 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, nonsuspendable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994, and served a correctional facility confinement term for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum term of 25 years, if the person has been convicted on two separate occasions of a crime of violence, 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 has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, 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.

Background: The U.S. Supreme Court has held, under the Rule of Lenity, that “a criminal statute subject to two plausible constructions, one harsher than the other, must be resolved in favor of lenity. Congress has legislated against the backdrop of the rule of lenity for generations, aware that when it intends to make previously innocent conduct criminal, or increase the penalty for previously illegal conduct, it must make that intention plain. Strict application of the rule of lenity is especially appropriate in the context of mandatory minimum sentencing, which alters the traditional allocation of sentencing authority among the branches and where a mistaken interpretation can result in particularly severe consequences that may be, as a practical matter, difficult for Congress to correct. On the other hand, there is every reason to believe that Congress stands at the ready to revise an unduly lenient construction, as the history of this sentencing provision illustrates.” [*Burgess v. United States*, No. 06-11429]

In Maryland, the Rule of Lenity requires that in cases where statutory interpretation is ambiguous, doubts are resolved in favor of the criminal defendant. [*Gargliano v. State*, 334 Md. 428 437 (1994)]

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Guy G. Cherry

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