

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 767  
Judiciary

(Delegate Schuh, *et al.*)

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Criminal Law - Sexual Offense in the Second Degree - Penalties

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This bill increases, from 5 to 10 years, the nonsuspendable, nonparolable mandatory minimum sentence for second degree sexual offense applicable to circumstances where the offender is age 18 or older and the victim is younger than age 13.

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Fiscal Summary

**State Effect:** No immediate affect on general fund expenditures. Potential minimal increase in general fund expenditures due to the incarceration penalty after FY 2015. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** A person may not engage in a sexual act with another:

- by force, or the threat of force, without the consent of the other;
- if the victim is a mentally defective or incapacitated individual, or a physically helpless individual, and the person performing the sexual act knows or reasonably should know that the victim is a mentally defective or incapacitated individual, or a physically helpless individual; or
- if the victim is younger than age 14, and the person performing the sexual act is at least 4 years older than the victim.

A violator is guilty of the felony of sexual offense in the second degree and subject to a maximum penalty of 20 years imprisonment.

A person age 18 or older may not violate this prohibition involving a child younger than age 13. A violator is guilty of the felony of sexual offense in the second degree and subject to a mandatory minimum, nonsuspendable, nonparolable sentence of at least 5 years and not more than 20 years. The mandatory minimum sentence may only be imposed if the State complies with notice to the defendant, as specified.

Sexual offenders are required to register with the State's sexual offender registry, every three or six months, with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. Lifetime registration is required for the offense affected under this bill.

**Background:** In fiscal 2008, the Division of Correction (DOC) had an intake of 41 persons convicted of second degree sexual offense with an average sentence of about 14 years. However, a review of the Maryland Sentencing Guidelines database indicates that, in the last three years, there were no convictions for second degree sexual offense with a victim under the age of 13.

**State Expenditures:** Because persons convicted of second degree sexual offense currently draw average sentences of about 14 years, general fund expenditures for correctional costs are not expected to significantly increase as a result of the bill's changes. The extent to which parole releases might be affected cannot be reliably estimated. In any event, in future years, general fund expenditures may increase minimally as a result of the bill's changes due to a minimal number of people being committed to DOC facilities for longer periods of time. This effect may occur after fiscal 2015.

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 \$2,600 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** Although identified as a cross file, SB 427 is not identical.

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

**Fiscal Note History:** First Reader - February 20, 2009  
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Analysis by: Guy G. Cherry

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