

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 258
Judiciary

(Delegate Simmons, *et al.*)

Judicial Proceedings

Crimes - Committing a Crime of Violence in the Presence of a Minor - Penalties

This bill prohibits a person from committing a crime of violence while knowingly in the presence of a minor under age 18 who witnesses the crime in a residence. A violator is guilty of a misdemeanor and, in addition to any other sentence imposed for the crime of violence, is subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000. A sentence imposed under these provisions must be separate from and consecutive to a sentence for a crime based on the act establishing the violation.

For purposes of provisions governing adverse spousal testimony, a violator is guilty of the crime of abuse of a child under age 18.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's incarceration penalty provisions. Such effects do not occur for several years.

Local Effect: Potential minimal increase in local revenues due to the bill's monetary penalty provisions.

Small Business Effect: None.

Analysis

Current Law: Provisions governing adverse spousal testimony provide that the spouse of a person on trial for a crime may not be compelled to testify against that person unless the charge involves the abuse of a child under age 18 or assault in any degree in which the spouse is a victim and certain conditions are met. The adverse spousal testimony

privilege is unavailable when the charge is assault against the spouse under the following circumstances:

- the person on trial was previously charged with assault in any degree or assault and battery of the spouse;
- the spouse was sworn to testify at the previous trial; and
- the spouse refused to testify at the previous trial by asserting the adverse spousal testimony privilege.

If the spouse of the person on trial for assault in any degree against the spouse refuses to testify on the basis of spousal privilege, the clerk of the court must make and maintain a record of the refusal, including the name of the spouse refusing to testify. When an expungement order is presented to the clerk of the court involving assault in any degree against a spouse, the clerk must check the record to determine whether the defendant's spouse refused to testify on the basis of spousal privilege. If the record shows a refusal, the clerk must make and keep a separate record of the refusal, including the defendant's name, the spouse's name, the case file number, a copy of the charging document, and the trial date when the spouse refused to testify. The separate record is not subject to expungement and must be made available only to the court, a State's Attorney's office, and the defendant's attorney.

The adverse spousal testimony privilege only applies if the spouses are married to each other at the time the spouse-witness is called to the stand.

State Revenues: Revenues may increase minimally as a result of the bill's monetary penalty provisions for cases heard in the District Court.

State Expenditures: General fund expenditures may increase minimally as a result of the bill's incarceration penalty due to people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of people convicted under these provisions is expected to be minimal. The underlying offenses are already crimes and any additional incarceration costs stemming from this bill would not likely occur for several years.

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.

Local Revenues: Revenues may increase minimally as a result of the bill's monetary penalty provisions for cases heard in the circuit courts.

Additional Information

Prior Introductions: HB 672 of 2008, HB 368 of 2007, and HB 434 of 2006 each passed the House, received a hearing before the Senate Judicial Proceedings Committee, and had no further action taken.

Cross File: None.

Information Source(s): Judiciary (Maryland District Court), Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2009
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