

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 24
Judiciary

(Delegate Smigiel)

Criminal Law - Plea Agreements - Prohibition of Concurrent Sentences for Child Sexual Offenses

This bill prohibits a plea agreement from providing for concurrent sentencing if the agreement is entered into by a defendant charged with multiple counts of specified child sexual offenses. The applicable offenses are: (1) first or second degree rape when the victim is a child younger than the age of 15 years; (2) first, second, third, and fourth degree sexual offenses when the victim is a child younger than the age of 15 years; and (3) sexual abuse of a minor.

Fiscal Summary

State Effect: Minimal. Given that the bill applies to a narrowly defined population, it is not expected to measurably increase State correctional costs. This bill is not expected to materially increase the workloads of the Judiciary, Office of the Public Defender, or State's Attorneys.

Local Effect: Minimal. Given that the bill applies to a narrowly defined population, it is not expected to measurably increase local correctional costs. State's Attorneys and circuit courts can handle the bill's requirements with existing resources.

Small Business Effect: None.

Analysis

Current Law: In general, the offenses specified in this bill carry the maximum penalties listed below.

First Degree Rape: A conviction for first degree rape generally carries a maximum penalty of life imprisonment. A conviction for child kidnapping along with first degree rape, when the victim is a child under the age of 16 years, carries a maximum penalty of life imprisonment without the possibility of parole. Certain repeat offenders are also subject to a maximum penalty of life without the possibility of parole. When the victim is under age 13, a defendant at least 18 years old convicted of first degree rape is subject to a mandatory minimum, nonsuspendable, nonparolable 25-year sentence.

Second Degree Rape: A conviction for second degree rape generally carries a maximum penalty of 20 years imprisonment. A five-year mandatory minimum, nonsuspendable, nonparolable sentence is required for a defendant over the age of 18 years who is convicted of second degree rape involving a victim under age 13.

First Degree Sexual Offense: A conviction for first degree sexual offense generally carries a maximum penalty of life imprisonment. A conviction for child kidnapping along with first degree sexual offense, when the victim is a child under the age of 16 years, carries a maximum penalty of life imprisonment without the possibility of parole. When the victim is under age 13, a defendant at least 18 years old convicted of first degree sexual offense is subject to a mandatory minimum, nonsuspendable, nonparolable 25-year sentence. Certain repeat offenders are subject to a maximum penalty of life without the possibility of parole.

Second Degree Sexual Offense: A conviction for second degree sexual offense generally carries a maximum penalty of 20 years imprisonment. A five-year mandatory minimum, nonsuspendable, nonparolable sentence is required for a defendant over the age of 18 years who is convicted of second degree sexual offense involving a victim under age 13.

Third Degree Sexual Offense: Violators are guilty of a felony, subject to a maximum penalty of 10 years imprisonment.

Fourth Degree Sexual Offense: Violators are guilty of a misdemeanor, subject to maximum penalties of one year imprisonment and/or a \$1,000 fine. Certain repeat offenders are subject to maximum penalties of three years imprisonment and/or a \$1,000 fine.

Sexual Abuse of a Minor: A conviction for sexual abuse of a minor is subject to a maximum penalty of 25 years imprisonment. A sentence imposed for sexual abuse of a minor may be separate from and consecutive to or concurrent with a sentence for (1) any crime based on the act establishing violation of the sexual abuse of a minor statute; or (2) a violation of the child abuse statute involving an act of abuse separate from the sexual abuse.

Among other things, Maryland Rule 4-243 authorizes a defendant and a State's Attorney to submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration. Defense counsel and the State's Attorney must advise the judge of the terms of the agreement when the defendant enters his/her plea. The judge may accept or reject the plea, and if the plea is accepted, may approve the agreement or defer a decision on approval or rejection of the agreement until after presentence proceedings and further investigation. The plea agreement is not binding on the court until the judge to whom the agreement was presented approves it. If the judge approves the agreement, the judge must embody the agreed terms in the judgment or, with the consent of the parties, enter a disposition more favorable to the defendant than that provided for in the agreement.

Background: Currently, approximately 27,000 persons are serving a prison sentence in State correctional facilities. DOC does not track intake or standing population data to reflect the age of the victim. The number of offenders convicted under the circumstances covered by the bill is believed to be few and is expected to remain that way. According to the State Commission on Criminal Sentencing Policy, there have been no convictions for any of the rape and sexual offenses that carry a mandatory minimum sentence when the victim is under the age of 13 years since they were adopted during the 2006 special session.

State Expenditures: General fund expenditures may increase minimally to the extent that the bill's elimination of recommendations for concurrent sentences in plea agreements under certain circumstances causes people to be being committed to Division of Correction (DOC) facilities for longer periods of time and increases payments to counties for reimbursement of inmate costs. The number of people convicted and sentenced for longer periods of time as a result of the bill is expected to be minimal. It should be noted that while the bill prohibits a plea agreement from providing for a concurrent sentence under certain circumstances, it does not prohibit a judge from imposing a concurrent sentence.

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 \$2,750 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 \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for

part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender (OPD) estimates that the bill would necessitate the hiring of six to seven additional assistant public defenders. OPD's estimate is based on the belief that the elimination of concurrent sentences from plea agreements would result in fewer plea agreements and more trials. Last year, OPD handled approximately 1,850 sexual offense cases. The OPD fiscal estimate is based on the assumptions that (1) 25% of these cases will go to trial as a result of the bill; (2) future caseloads will remain consistent with those in prior years. The Department of Legislative Services disagrees with this estimate given that the bill applies to a narrowly defined population of defendants facing multiple counts of specific sexual offenses involving a victim under the age of 15 years.

Local Expenditures: Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: None.

Cross File: SB 617 (Senator Jacobs, *et al.*) - Judicial Proceedings.

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

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