

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 996
Judiciary

(Delegate Conaway, *et al.*)

**Subsequent Sexual Offenders - Reduced Diminution Credits, Parole Elimination,
and Restrictions on Pretrial Release**

This bill eliminates parole eligibility and reduces good conduct diminution credit earnings (from 10 to 5 days per month) 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, 2010. The bill also places specified limitations on bail and pretrial release considerations for such offenders.

Fiscal Summary

State Effect: Because of the limited number of offenders believed to be affected, the bill's provisions can be handled by existing budgeted resources of the Parole Commission, the Division of Parole and Probation, the Division of Correction (DOC), and the courts for the foreseeable future. Any measurable impact on State incarceration or parole costs will not occur until FY 2022.

Local Effect: The number of inmates affected by the bill's limitations to bail and pretrial release in local correctional facilities is expected to be quite small with no immediate measurable impact on local correctional costs. Depending on current operating capacities of local correctional facilities and average daily populations, local government expenditures may eventually increase in some jurisdictions.

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.

The bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with one of the same offenses against a minor if the defendant has been previously convicted of one of those crimes. A judge is authorized to release such a defendant on suitable bail, on any other conditions reasonably assuring that the defendant will not flee or pose a danger to others, or both bail and such other conditions.

The bill also specifies that, under the Maryland Rule governing the review of a commissioner's pretrial release order, when such a defendant is presented to the court, the judge must order a continued detention if the judge determines that bail or other conditions of release would not protect against flight or a danger to others. There is a rebuttable presumption that such a defendant will flee or pose such a danger.

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, the term “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.

For DOC inmates whose terms of confinement include consecutive or concurrent sentences for a crime of violence or a crime involving a controlled dangerous substance, the deduction in the sentence for good conduct is calculated at 5 days per calendar month. For all other inmates the deduction is calculated at 10 days per calendar month. An inmate may also receive deductions calculated at 5 days per calendar month for work

tasks and education and 10 days per calendar month for special projects. However, the total deduction may not exceed 20 days per calendar month.

These credits are awarded as they are earned. When an inmate's total number of diminution credits is equal to the remainder of sentence, including consideration for any losses of credits, the inmate is eligible for mandatory supervision release.

A deduction may not be allowed for a period during which an inmate does not receive credit for service of the inmate's term of confinement, including a period (1) during which the inmate's sentence is stayed; (2) during which the inmate is not in DOC custody because of escape; or (3) for which the Maryland Parole Commission has declined to grant credit after revocation of parole or mandatory supervision.

The circumstances under which a District Court commissioner may not authorize pretrial release include: a defendant charged with escaping from a correctional facility or any other place of confinement in the State; a defendant charged as a drug kingpin; or a defendant charged with a crime of violence if the defendant has been previously convicted of a crime of violence in Maryland or in any other jurisdiction of a crime that would be a crime of violence if committed in Maryland.

Under Maryland Rule 4-216(f), relating to the review of a commissioner's pretrial release order, a defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release pursuant to this rule must be presented immediately to the District Court. The District Court must review the commissioner's pretrial release determination and take appropriate action. If the District Court requires the defendant to remain in custody after the review, the District Court must set forth in writing or on the record the reasons for the continued detention.

Background: Currently, approximately 27,000 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. It is also noted that the offense code for assault of a minor does not necessarily involve any sexual elements to the underlying crime. The number of sexual offenders serving a term in a DOC facility or the Patuxent Institution for one of covered offenses under this bill in 2008 was estimated to be about 2,300 persons. Of that total, about 370 are serving a life

term. It is unknown how many of these offenders are serving a term as a repeat offender or whose crime had a minor victim.

Additional Information

Prior Introductions: HB 1077 of 2009 received a hearing before the House Judiciary Committee and had no further action taken on it.

Cross File: None.

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

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