

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 619 (Senator Jacobs, *et al.*)
Judicial Proceedings

Criminal Law - Elimination of Concurrent Sentencing for Child Sexual Offenses

This bill would require a sentence imposed for a violation of specified offenses in which the victim is a minor to be served consecutive to any other sentence imposed for any crime based on the act establishing the violation. The applicable offenses are (1) rape in the first or second degrees; (2) a sexual offense in the first through fourth degrees; (3) attempted first degree rape or sexual offense; (4) attempted second degree rape or sexual offense; (5) sexual conduct between a correctional or Department of Juvenile Services employee and an inmate or confined child; (6) continuing course of conduct with a child; and (7) sexual solicitation of a minor.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Department of Public Safety and Correctional Services to accommodate the requirements of the bill. Any such effect may not be incurred until some undetermined future fiscal year.

Local Effect: Potential minimal decrease in local expenditures if the bill's requirements result in the placement of defendants in State correctional facilities who would otherwise have been placed in local detention facilities.

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 younger than age 16, 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 younger than age 13, a defendant who is at least 18 years old and 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 5-year mandatory minimum, nonsuspendable, nonparolable sentence is required for a defendant older than age 18 who is convicted of second degree rape involving a victim younger than 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 younger than age 16, carries a maximum penalty of life imprisonment without the possibility of parole. When the victim is younger than age 13, a defendant who is at least 18 years old and 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 5-year mandatory minimum, nonsuspendable, nonparolable sentence is required for a defendant older than age 18 who is convicted of second degree sexual offense involving a victim younger than 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.

Attempted First Degree Rape and Attempted First Degree Sexual Offense: Violators are guilty of a felony, punishable by a maximum penalty of life imprisonment.

Attempted Second Degree Rape and Attempted Second Degree Sexual Offense: Violators are guilty of a felony, punishable by a maximum penalty of 20 years imprisonment.

Sexual Conduct Between a Correctional or Department of Juvenile Services Employee and an Inmate or Confined Child: Violators are guilty of a misdemeanor and subject to maximum penalties of three years imprisonment and/or a \$3,000 fine.

Continuing Course of Conduct with a Child: Violators are guilty of a felony, punishable by imprisonment for up to 30 years.

Sexual Solicitation of a Minor: A violator is guilty of a felony and subject to maximum penalties of 10 years imprisonment and/or a \$25,000 fine.

Background: Currently, approximately 27,000 persons are serving a prison sentence in State correctional facilities. The Division of Correction (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 younger than age 13 since the provisions were adopted during the 2006 special session.

However, according to the database, in fiscal 2009 there were (1) 127 convictions for age-specific third degree sexual offense violations; (2) 8 convictions for continuing course of conduct with a child; and (3) 16 convictions for sexual solicitation of a minor. Individuals in each of these categories obtained additional simultaneous convictions at the rate of 30%, 50%, and 44%, respectively.

State Expenditures: Assuming no changes in prosecutorial or sentencing practices, general fund expenditures may increase significantly as a result of the bill's incarceration penalty due to people being committed to DOC facilities for longer periods of time.

Individuals convicted of the offenses affected by this bill are often convicted of other offenses, including weapons offenses, occurring in the same underlying event. The requirement that sentences be served consecutively, rather than concurrently, will likely result in inmates occupying DOC beds for longer periods of time, which, over time, may result in cumulative increases in the average daily population in DOC facilities to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility become necessary. Based on a cost of approximately \$155,000 per bed, the cost of building a new medium security 1,300-bed prison facility is currently estimated at \$202 million. Actual costs would depend on the design, location, and existing infrastructure. When the need for building new facilities might occur cannot be reliably estimated. It is assumed that the Department of Public Safety and Correctional Services will track the growth of average daily populations resulting from this bill and other enactments and respond via normal capital budgeting processes.

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. 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.

The Office of the Public Defender (OPD) advises that the bill would require the hiring of 2.7 additional assistant public defender positions, at an estimated cost of \$193,900 in fiscal 2011. This estimate is based on (1) 10% of the defendants in the 1,850 sex offense cases handled by OPD in 2009 refusing to plea bargain as a result of the bill; (2) an additional 20 hours of additional trial preparation per case; and (3) each public defender spending 1,378 hours per year on case related tasks (pursuant to the Case Weighting Study by the National Center for State Courts). While the bill may result in additional work for OPD, Legislative Services disagrees with this assessment. The bill only affects sex offense cases in which the victim was a minor. Given the current number of convictions that have occurred in this area, Legislative Services advises that any additional workload can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

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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