

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 507 (Senator Jacobs, *et al.*)
Judicial Proceedings

Criminal Law - Elimination of Concurrent Sentencing for Child Sexual Offenses

This bill requires that a sentence imposed for a violation of specified offenses in which the victim is a minor 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 defendant older than age 18 who is convicted of second degree rape involving a victim younger than age 13 is subject to a 15-year mandatory minimum, nonsuspendable, nonparolable sentence and a maximum sentence of life imprisonment.

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 defendant older than age 18 who is convicted of second degree sexual offense involving a victim younger than age 13 is subject to a 15-year mandatory minimum, nonsuspendable, nonparolable sentence and a maximum sentence of life imprisonment.

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: Approximately 26,000 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 has been one conviction for 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 2010 there were (1) 140 convictions for age-specific third degree sexual offense violations; (2) 6 convictions for continuing course of conduct with a child; and (3) 35 convictions for sexual solicitation of a minor. Individuals in each of these categories obtained additional simultaneous convictions at the rate of 40%, 83%, and 26%, respectively.

State Fiscal Effect: 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 \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Additional Information

Prior Introductions: SB 619 of 2010 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

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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mlm/kdm

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