

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 664
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 when the person knows or reasonably should know that a minor is within sight or hearing of the crime of violence. 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 five 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 younger than age 18.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Any increase in expenditures is not likely to occur for several years.

Local Effect: 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 establish 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 younger than 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 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 of this proposed crime 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 \$2,920 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 about \$390 per month. Excluding all medical care, the average variable costs total \$170 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 663 of 2011 passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 650 of 2010 passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 258 of 2009 passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Similar legislation was also introduced in the 2006, 2007, and 2008 sessions.

Cross File: None.

Information Source(s): Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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mc/kdm

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