

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 437

(Senator Lee, *et al.*)

Judicial Proceedings

**Criminal Law - Committing a Crime of Violence in the Presence of a Minor -
Repeal of Residence Requirement**

This bill alters the prohibition on committing a crime of violence in the presence of a minor by repealing the requirement that the minor be present in a residence when the crime is committed.

The bill applies prospectively and does not apply to any crime committed before the bill's October 1, 2016 effective date.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's expanded application of an existing incarceration penalty. Revenues are not affected.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: A person may not commit a "crime of violence" when the person knows or reasonably should know that a minor, who is at least age two, is present in a residence within sight or hearing of the crime of violence. A violator is subject to an enhanced penalty of imprisonment for up to five years in addition to any other sentence imposed for the crime of violence. An enhanced penalty imposed under the bill must be separate from and consecutive to any sentence for the crime of violence.

A court may impose this enhanced penalty if (1) the State's Attorney notifies the defendant in writing, at least 30 days before trial in the circuit court and 15 days before trial in the District Court, of the State's intention to seek the enhanced penalty and (2) the elements of this offense have been proven beyond a reasonable doubt. If the defendant is charged by indictment or criminal information, the State may include the required notice in the indictment or information.

Section 5-501 defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) or a crime punishable by imprisonment for more than one year.

Background: The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that it received information on two people sentenced for two counts of committing a crime of violence in the presence of a minor in the State's circuit courts during fiscal 2015.

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of an existing incarceration penalty due to more people being committed to State correctional facilities or people being committed for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted under the bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 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 State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

Additional Comments: According to MSCCSP, there appears to be some confusion as to whether committing a crime of violence in the presence of a minor is a sentencing enhancement or a separate substantive offense. Of the two people for whom MSCCSP received sentencing information, one defendant was charged by the State's Attorney with a separate offense of committing a crime of violence in the presence of a minor while the circuit court in the other defendant's case treated it as a sentencing enhancement.

Additional Information

Prior Introductions: None.

Cross File: HB 1091 (Delegate Morales, *et al.*) - Judiciary.

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

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