

Department of Legislative Services  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 316

(Senator Lee)

Judicial Proceedings

Judiciary

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**Criminal Law - Continuing Course of Conduct With a Child - Unit of  
Prosecution**

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This bill establishes that a unit of prosecution for a continuing course of unlawful sexual conduct with a victim younger than the age of 14 includes three acts that constitute violations of specified criminal statutes over a period of 90 days or more. Under current law, a unit of prosecution is three *or more* of these acts during this time period. For purposes of prosecution, violations that occur in separate periods of 90 days or more must be considered separate violations.

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**Fiscal Summary**

**State Effect:** General fund expenditures are not affected in the short term but likely increase minimally in the out-years due to the bill's impact on duration of incarceration, as discussed below. Revenues are not affected.

**Local Effect:** The bill does not materially affect local government finances or operations.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A person may not engage in a continuing course of conduct which includes three or more acts that constitute violations of § 3-303 (rape in the first degree), § 3-304 (rape in the second degree), or § 3-307 (sexual offense in the third degree) of the Criminal Law Article, or violations of § 3-305 (first-degree sexual offense) or § 3-306 (second-degree sexual offense) of the Criminal Law Article as the sections existed before October 1, 2017, over a period of 90 days or more, with a victim who is younger than the

age of 14 at any time during the course of conduct. A violator is guilty of a felony, punishable by imprisonment for up to 30 years. A sentence imposed for this violation may be separate from and consecutive to or concurrent with a sentence under § 3-602 (sexual abuse of a minor) of the Criminal Law Article.

In determining whether the required number of acts occurred, the trier of fact (1) must determine only that the required number of acts occurred and (2) need not determine which acts constitute the required number of acts.

A person may not be charged with a violation of § 3-303, § 3-304, or § 3-307 involving the same victim in the same proceeding as a violation for a continuing course of conduct unless the other violation charged occurred outside the time period that was charged for the continuing course of conduct violation. A person may not be charged with a violation of § 3-303, § 3-304, or § 3-307 involving the same victim unless the violation charged occurred outside the time period charged for the continuing course of conduct violation.

**Background:** In *State v. Bey*, 452 Md. 255 (2017), the Maryland Court of Appeals held that § 3-315 of the Criminal Law Article is ambiguous as to whether separate convictions and sentences could be obtained for multiple uninterrupted 90-day intervals of a continuing course of conduct, as contradictory reasonable interpretations subsist with equal force even after the tools of statutory construction are exhausted. Thus, the rule of lenity mandates that the statute be construed as not to provide multiple punishments for the criminal defendant.

According to the Maryland State Commission on Criminal Sentencing Policy (MSCCSP), a review of the Maryland State Sentencing Guidelines Database indicates that MSCCSP received information on five individuals sentenced in the State's circuit courts during fiscal 2017 for continuing course of conduct. The Department of Public Safety and Correctional Services advises that, in fiscal 2017, it conducted intake on five inmates sentenced for continuing course of conduct. Two of the inmates carried two offenses each, with the second sentence being concurrent. The average length of sentence was 18 years. The Division of Parole and Probation has no data showing probation intakes in fiscal 2017 for continuing course of conduct.

**State Expenditures:** General fund expenditures increase minimally in the out-years as a result of the bill's impact on incarceration penalties due to people being committed to State correctional facilities for longer periods of time. The bill has the potential to significantly increase the overall length of sentence for an individual convicted of continuing course of conduct. Any such impact depends on (1) the frequency with which individuals face additional charges and are convicted of additional counts of continuing course of conduct as a result of the bill; (2) the lengths of the sentences imposed; and (3) judicial discretion as to whether sentences should be served consecutively or concurrently. However, given

the number of individuals convicted each year of this offense, the maximum sentence under existing statute of 30 years, and the fiscal 2017 average sentence of 18 years, the overall impact of the bill on State incarceration expenditures is expected to be minimal and deferred to future years.

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 \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 5, 2018  
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