

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 561

(Senator Ready, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law – Crime of Violence Against Pregnant Person – Enhanced Penalty
(Laura and Reid’s Law)

This bill prohibits a person from committing a crime of violence, as defined under § 14-101 of the Criminal Law Article, against another person when the person knows or believes that the other person is pregnant. Violators are guilty of a felony, punishable by imprisonment for up to 10 years in addition to any other penalty imposed for the crime of violence. A sentence imposed for this offense may be imposed separate from and consecutive to or concurrent with a sentence imposed for any crime based on the act establishing the violation of the bill.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill’s penalty provisions. Revenues are not affected.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance;

(13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; and (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

There are no increased penalties under existing statute for a crime committed against a pregnant person. However, with certain exceptions, a person may be prosecuted for the murder or manslaughter of a viable fetus. “Viable” is defined as the stage when, in the best medical judgment of the attending physician based on the particular facts of the case before the physician, there is a reasonable likelihood of the fetus’s sustained survival outside the womb.

To be prosecuted for murder or manslaughter of a fetus, a person must have (1) intended to cause the death of the viable fetus; (2) intended to cause serious physical injury to the viable fetus; or (3) wantonly or recklessly disregarded the likelihood that the person’s actions would cause the death of or serious physical injury to the viable fetus.

These statutory provisions do not (1) apply to or infringe on a woman’s right to terminate a pregnancy under the Health-General Article; (2) subject a physician or other licensed medical professional to liability for fetal death that occurs in the course of administering lawful medical care; (3) apply to an act or failure to act of a pregnant woman with regard to her own fetus; or (4) confer personhood or any rights on the fetus.

First-degree murder is punishable by imprisonment for life, with or without the possibility of parole. Murder that is not in the first degree is considered second-degree murder. Violators are subject to a maximum penalty of imprisonment for 40 years.

Manslaughter is a common law offense. The meanings accorded to involuntary and voluntary manslaughter are judicially determined and based on case law. Manslaughter is distinguished from murder by the absence of malice aforethought, express or implied. The absence of intention to kill or to commit any unlawful act which might reasonably produce death or great bodily harm is generally the distinguishing factor between voluntary and involuntary manslaughter. A person who commits manslaughter is guilty of a felony and subject to maximum penalties of (1) imprisonment for 10 years or (2) imprisonment in a local correctional facility for 2 years and/or a fine of \$500.

Background: The bill is named in part after Laura Wallen, a Howard County teacher who was murdered when she was 14 weeks pregnant. Her boyfriend, Tyler Tessier, was charged with her murder but was not charged with murder of a viable fetus due to the stage of Ms. Wallen’s pregnancy. Mr. Tessier was later found dead in his jail cell of an apparent

suicide on the day his trial was set to begin. Reid was the boy's name Ms. Wallen had chosen.

State Expenditures: General fund expenditures increase minimally as a result of the bill's penalty provisions due to people being committed to State correctional facilities for longer amounts of time. The number of people convicted as a result of the bill is expected to be minimal. Furthermore, individuals who face penalties as a result of the bill may also face other serious charges that carry significant penalties under existing statute.

The Department of Public Safety and Correctional Services (DPSCS) advises that it does not have data on the number of inmates in State correctional facilities who committed crimes of violence against a pregnant victim. DPSCS also notes that there are no specific Criminal Justice Information System codes for murder or manslaughter of a viable fetus.

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. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

Additional Information

Prior Introductions: None.

Cross File: HB 757 (Delegate Kittleman, *et al.*) - Health and Government Operations.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Maryland Association of Counties; 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; National Conference of State Legislatures; WTOP; Fox5DC; *Baltimore Sun*; Department of Legislative Services

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