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Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 780
Judiciary

(Delegate Pippy, *et al.*)

Criminal Law - Crime of Violence - Vulnerable Adult

This bill adds abuse or neglect of a vulnerable adult in the first degree under § 3-604 of the Criminal Law Article to the definitions of “crime of violence” under § 5-101 of the Public Safety Article and § 14-101 of the Criminal Law Article.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not anticipated to materially affect local government finances or operations, as discussed below.

Small Business Effect: None.

Analysis

Current Law:

Abuse or Neglect of a Vulnerable Adult

Section 3-604 of the Criminal Law Article prohibits the abuse or neglect of a vulnerable adult. “Abuse” means the sustaining of physical pain or injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the vulnerable adult’s health or welfare is harmed or threatened. “Abuse” includes the sexual abuse of a vulnerable adult. “Abuse” does not include an accepted medical or behavioral procedure ordered by a health care provider authorized to practice

under the Health Occupations Article or emergency medical personnel acting within the scope of the health care provider's practice.

A caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult that results in death, causes serious physical injury, or involves sexual abuse. The same prohibition applies to a household member or family member.

A violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and subject to maximum penalties of 10 years imprisonment and/or a fine of \$10,000. A sentence imposed for first-degree abuse or neglect of a vulnerable adult must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

Crimes of Violence

Section 5-101 of the Public Safety Article and § 14-101 of the Criminal Law Article have independent definitions of a "crime of violence." Designation of an offense under one of these definitions may subject a person to varying consequences.

§ 5-101 of the Public Safety Article

Section 5-101 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) felony sex trafficking and forced marriage; (18) an attempt to commit offenses (1) through (17); or (19) assault with the intent to commit offenses (1) through (17) or a crime punishable by imprisonment for more than one year.

This definition is cross-referenced in statutes pertaining to reckless endangerment, committing a crime in the presence of a minor, use of a handgun or antique firearm in the commission of a crime, use of an assault weapon or magazine in the commission of a felony or a crime of violence, and possession of a rifle or shotgun by a person previously convicted of specified offenses.

Disqualifying Crime

State law contains several factors which prohibit a person from possessing a regulated firearm, a rifle, or a shotgun, including if the person has been convicted of a disqualifying crime.

“Disqualifying crime” means a crime of violence under § 5-101 of the Public Safety Article, a felony, or a misdemeanor in the State that carries a statutory penalty of imprisonment of more than two years. “Convicted of a disqualifying crime” includes a case in which a person received probation before judgment for a crime of violence and a case in which a person received probation before judgment in a domestically related crime. “Convicted of a disqualifying crime” does not include a case in which a person received a probation before judgment for second-degree assault (unless the crime was a domestically related crime) or a crime which was expunged under Title 10, Subtitle 1 of the Criminal Procedure Article.

In general, a person who violates this prohibition is guilty of a misdemeanor and subject to maximum penalties of 5 years imprisonment and/or \$10,000 fine. However, a person who has previously been convicted of a crime of violence under § 5-101 of the Public Safety Article is guilty of a felony, punishable for at least 5 years and up to 15 years. The 5-year minimum sentence is nonsuspendable and nonparolable. If more than 5 years has elapsed since the defendant completed the sentence for the crime of violence, (1) the imposition of the mandatory minimum sentence is within the discretion of the court and (2) the mandatory minimum sentence may not be imposed unless the State provides notice of its intent to seek the mandatory minimum sentence to the defendant at least 30 days before trial.

§ 14-101 of the Criminal Law Article

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Section 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

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) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Mandatory Sentences for Crimes of Violence

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 2018, and served a term of confinement in a correctional facility for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

Diminution Credits

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Specified sexual offenders are not eligible to earn diminution credits. In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for

concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects or programs. With respect to sentences imposed on or after October 1, 2017, Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 to 30 days per calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence, specified sexual offenses, or specified volume or kingpin drug offenses. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increased from 10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increased for an individual who is serving a sentence in a local correctional facility (for a crime other than a crime of violence or specified volume drug offenses) from 5 to 10 days per month.

Parole and Mandatory Supervision

In general, a State inmate who is serving a sentence of six months or more is not eligible for parole until the inmate has served one-quarter of the inmate's sentence. A sentence for a violent crime does not become parole-eligible until the inmate has served one-half of the sentence. An inmate serving a term of incarceration that includes a mandatory minimum sentence that is not subject to parole by statute is not eligible for parole until the inmate has served that mandatory minimum sentence.

As previously noted, a person convicted for the fourth time of a crime of violence must be sentenced to life imprisonment without the possibility of parole. In general, a sentence for a third crime of violence or a second crime of violence committed on or after October 1, 2018, is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person serving a mandatory sentence for a crime of violence may petition for, and be granted, parole if the person (1) is at least age 60 and (2) has served at least 15 years of the sentence imposed.

Generally, a person convicted of a violent crime committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole.

Background: According to the Maryland Sentencing Guidelines Database, 0 individuals were sentenced to 0 total counts for abuse or neglect of a vulnerable adult under § 3-604 of the Criminal Law Article in the State's circuit courts during fiscal 2019.

The Judiciary advises that in fiscal 2019, there were 14 filings and 1 guilty disposition for abuse or neglect of a vulnerable adult in the first degree.

The Division of Corrections advises that in fiscal 2019, it did not receive any inmates for the following offenses: (1) abuse of a vulnerable adult/family member; and (2) abuse of a vulnerable adult physical injury.

State/Local Fiscal Effect: While classifying an offense as a crime of violence has numerous consequences, given the low number of violations filed and convictions for abuse or neglect of a vulnerable adult in the first degree, the bill is not expected to materially affect State or local finances or operations.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 481 (Senator Lee, *et al.*) - Judicial Proceedings.

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

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