

**Department of Legislative Services**

Maryland General Assembly

2020 Session

**FISCAL AND POLICY NOTE**

**First Reader**

Senate Bill 259

(Senators Bailey and West)

Judicial Proceedings

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**Criminal Law - Crime of Violence - Definition**

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This bill alters the definition of “crime of violence” under § 14-101 of the Criminal Law Article to include involuntary manslaughter and sexual abuse of a minor under specified circumstances where the offender is an adult and the victim is a minor younger than age 18.

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**Fiscal Summary**

**State Effect:** Potential significant increase in cumulative general fund expenditures, beginning in the out-years, due to expanded application of existing sentencing and incarceration-related provisions, as discussed below. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:**

*Manslaughter and Sexual Abuse of a Minor*

As noted below, while manslaughter is a crime of violence, involuntary manslaughter is specifically exempted from that definition. 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.

Sexual abuse of a minor under specified circumstances when the offender is an adult and the *victim is younger than age 13* is a crime of violence. The bill repeals the age limit for the victim under the current definition. “Sexual abuse” is an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not. Sexual abuse includes incest, rape, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices. A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor. A household member or family member is also prohibited from causing sexual abuse to the minor. A violator is guilty of a felony, punishable by imprisonment for up to 25 years.

#### *Crimes of Violence Under § 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:** The Judiciary advises that in fiscal 2019, 5 violations were filed in the District Court and 9 violations were filed in the circuit courts for involuntary manslaughter under § 2-207 of the Criminal Law Article, resulting in 5 convictions in the circuit courts. Additionally, there were 567 violations filed in the District Court and 773 violations filed in the circuit courts for sexual abuse of a minor under § 3-602 of the Criminal Law Article, resulting in 174 convictions in the circuit courts.

According to the Department of Public Safety and Correctional Services (DPSCS), in fiscal 2019, there were five intakes for involuntary manslaughter, with an average sentence of 22 years. Additionally, DPSCS reports that during fiscal 2019, 133 inmates entered Division of Corrections (DOC) facilities after being sentenced for 175 counts of sexual abuse of a minor. The average sentence per count was approximately 20 years.

Data is not available on how many of these convictions were for acts of sexual abuse of a minor that are already considered crimes of violence.

**State Expenditures:** Cumulative general fund expenditures for DPSCS may increase significantly in the out-years due to the bill’s expanded application of sentencing and incarceration-related provisions.

Based on the intake data cited above, the addition of involuntary manslaughter to the definition of a “crime of violence” is unlikely to have a significant impact on State expenditures. However, given the number of intakes in DOC facilities for sexual abuse of a minor and the application of the bill to individuals with prior convictions for sexual abuse of a minor, the bill has the potential to significantly increase out-year incarceration expenditures.

As noted above, information is not available on the ages of the victims and the nature of the acts committed by inmates sentenced to DOC facilities for sexual abuse of a minor. The magnitude of the bill’s impact, which cannot be reliably quantified at this time, depends on (1) the number of individuals sentenced for sexual abuse of a minor who did not commit acts currently included in the definition of a crime of violence; (2) whether these individuals have been sentenced for other crimes currently considered to be crimes of violence; (3) the number of these individuals who commit subsequent crimes of violence; and (4) the overall impact of the bill on additional incarceration time due to reduced diminution credit earnings and parole eligibility. Regardless, any such impact is likely to be experienced in the out-years, as offenders sentenced under the bill spend additional time in DOC facilities.

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 \$3,700 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$1,015 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$191 per month.

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### **Additional Information**

**Prior Introductions:** None.

**Designated 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

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