

**Department of Legislative Services**

Maryland General Assembly

2021 Session

**FISCAL AND POLICY NOTE**

**Third Reader - Revised**

(Senators Bailey and West)

Senate Bill 268

Judicial Proceedings

Judiciary

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**Sexual Abuse of a Minor - Crime of Violence and Lifetime Supervision**

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This bill expands the definition of a “crime of violence” under § 14-101 of the Criminal Law Article to include sexual abuse of a minor under § 3-602 of the Criminal Law Article when the offender is at least age 21 and the victim is a minor younger than age 16 at the time of the offense. Additionally, the bill expands the list of persons subject to lifetime sexual offender supervision to include a person who has been convicted of sexual abuse of a minor under § 3-602 of the Criminal Law Article (1) that involved a child younger than age 13 (instead of the current application to an offense involving a child younger than age 12) and (2) that was committed when the person was at least age 21 against a child younger than age 16. The bill applies prospectively to a conviction on or after the bill’s October 1, 2021 effective date.

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**Fiscal Summary**

**State Effect:** General fund expenditures increase, beginning in the out-years, due to expanded application of existing sentencing, incarceration, and lifetime sexual offender supervision provisions, as discussed below. Revenues are not affected.

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

**Small Business Effect:** None.

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## Analysis

### Current Law:

#### *Sexual Abuse of a Minor*

“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 a minor. A violator is guilty of a felony, punishable by imprisonment for up to 25 years. A sentence imposed for child sexual abuse may be separate from and consecutive to or concurrent with a sentence for any crime based on the act that establishes the sexual abuse violation or an act of child abuse separate from the sexual abuse.

#### *Crimes of Violence*

Sexual abuse of a minor under specified circumstances when the offender is an adult and the *victim is younger than age 13* at the time of the offense is a crime of violence.

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. Individuals sentenced for a “crime of violence” earn diminution credits at a lower rate than other inmates. The following types of inmates may not earn diminution credits:

- an inmate who is serving a sentence for first- or second-degree rape against a victim younger than 16;
- an inmate who is serving a sentence for first- or second-degree sexual offense, as the offenses existed before October 1, 2017, against a victim younger than 16;
- an inmate who is serving a sentence for a subsequent conviction of third-degree sexual offense against a victim younger than 16; and
- an inmate imprisoned for a lifetime sexual offender supervision violation.

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. For additional information on diminution credits, see the [Maryland Diminution Credit System](#) report published by the Department of Legislative Services in December 2020.

### *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.

### *Substance Abuse Evaluation and Commitment*

A court may not order a person serving a sentence for a crime of violence under § 14-101 of the Criminal Law Article from being evaluated for or committed to alcohol or drug abuse treatment with the Maryland Department of Health (MDH) under §§ 8-505 and 8-507 of the Health-General Article, respectively, until the person is eligible for parole. However, these eligibility restrictions do not prohibit such a defendant from participating in any other treatment program or receiving treatment under MDH supervision under any other statutory provision.

### *Lifetime Supervision of a Sexual Offender*

Except where a term of natural life without the possibility of parole is imposed, a sentence must include a term of lifetime sexual offender supervision for the following:

- a sexually violent predator;
- a person convicted of first- or second-degree rape, or first- or (certain circumstances of) second-degree sexual offense as the offenses existed before October 1, 2017;

- a person convicted of attempted first- or second-degree rape, or attempted first- or (certain circumstances of) second-degree sexual offense as the offenses existed before October 1, 2017;
- sexual abuse of a minor *if the violation involved a child younger than age 12*;
- a person required to register with the person's supervising authority because the person was at least age 13 but not older than age 18 at the time of the act; and
- a person convicted more than once arising out of separate incidents of a crime that requires registration.

A court is also authorized to sentence a person convicted of third-degree sexual offense, as specified, to lifetime supervision and require a risk assessment before that sentence is imposed.

The sentencing court or juvenile court must impose special conditions of lifetime sexual offender supervision at the time of sentencing or imposition of the registration requirement in juvenile court and advise the person of the length, conditions, and consecutive nature of that supervision. Special conditions may include global positioning satellite tracking or equivalent technology and participation in a sexual offender treatment program. Before imposing the special conditions, the court must order a presentence investigation. The sentencing court may adjust the special conditions of such lifetime supervision in consultation with the person's sexual offender management team.

A person subject to lifetime supervision is prohibited from knowingly or willfully violating the conditions of the supervision, with the following penalties:

- for a first offense, the person is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 5 years and/or a fine of \$5,000; for a second or subsequent offense, the person is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000; and
- a person imprisoned for a violation of lifetime supervision is not entitled to diminution credits and continues to be subject to lifetime supervision upon release until discharge from supervision, as specified. A court may remand the person to a correctional facility pending the hearing or a determination on a charge of violation of a condition of lifetime sexual offender supervision.

A person may petition for discharge from lifetime sexual offender supervision after serving at least five years of the extended sexual offender supervision. The sentencing court must hear and adjudicate a petition for discharge from lifetime sexual offender supervision. The court may not deny a petition for discharge without a hearing. Further, the court may not discharge a person unless the court makes a finding on the record that the petitioner is no longer a danger to others. Subject to specified exceptions, the judge who originally imposed

the lifetime sexual offender supervision must hear the petition. If a petition for discharge is denied, the person is prohibited from renewing the petition for a minimum of one year.

Under the supervision of the Division of Parole and Probation (DPP), a sexual offender management team must conduct lifetime sexual offender supervision and the supervision of probation, parole, or mandatory release of a person subject to lifetime sexual offender supervision. A sexual offender management team must submit a progress report on each person under supervision to the sentencing court or juvenile court once every six months. Unless disclosure of a report would be in violation of laws regarding confidentiality of treatment records, a sexual offender management team must also provide copies of each progress report to local law enforcement units of the county in which the offender resides.

The Department of Public Safety and Correctional Services (DPSCS) is required to adopt regulations necessary to carry out the duties of the department relating to lifetime sexual offender supervision.

**State Expenditures:** Cumulative general fund expenditures for DPSCS increase, beginning in the out-years, due to the bill's expanded application of provisions related to lifetime sexual offender supervision, sentencing, and incarceration. The magnitude of this increase cannot be reliably determined at this time, as discussed below.

#### *Sexual Abuse of a Minor – Statistics*

According to the Judiciary, in fiscal 2019, there were 97 guilty dispositions under § 3-602 (b)(1) (sexual abuse of a minor – parent or person in custody) and 67 guilty dispositions under § 3-602 (b)(2) (sexual abuse of a minor – household or family member).

DPSCS reports that during fiscal 2020, 109 inmates entered State correctional facilities after receiving sentences for violations of sexual abuse of a minor. The average sentence for this group of inmates was 10 years.

#### *Effect of the Bill*

Assuming that the data listed above represents typical annual data for the offense of sexual abuse of a minor, a considerable number of individuals are sentenced to State correctional facilities for this offense on an annual basis and may be subject to penalties and procedures applicable to crimes of violence and lifetime sexual offender supervision as a result of the bill. However, information is not readily available on the ages of the victims and the offenders at the time of the offense.

The magnitude of the bill's impact, which cannot be reliably quantified at this time, depends on (1) the number of individuals subject to lifetime sexual offender supervision

*solely* as a result of the bill; (2) the number of individuals who commit a crime of violence *solely* as a result of the bill’s provisions; (3) the number of individuals affected by the bill who commit subsequent crimes of violence; and (4) the overall impact of the bill on incarceration time and lifetime sexual offender supervision caseloads. Regardless, any impact from the bill is likely to be experienced in the out-years, as offenders sentenced under the bill spend additional time in Division of Correction facilities or become subject to lifetime sexual offender supervision.

The extent to which the bill materially affects lifetime sexual offender supervision caseloads is unclear. However, if DPP needs to hire additional agents in the out-years to supervise an increased lifetime sexual offender supervision caseload, and *for illustrative purposes only*, general fund expenditures likely increase by a minimum of \$75,000 annually for each new agent. DPSCS has previously advised that for fiscal 2019, there were 31 agents supervising 143 individuals subject to lifetime sexual offender supervision.

With respect to individuals who may be subject to lengthier incarcerations under the bill’s “crime of violence” provisions, 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 \$3,900 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$1,075 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$222 per month.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 896 (Delegate Mangione) - Judiciary.

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

**Fiscal Note History:** First Reader - February 3, 2021  
rh/aad Third Reader - March 30, 2021  
Revised - Amendment(s) - March 30, 2021

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