

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 841
Judiciary

(Delegate Conway, *et al.*)

Crimes - Sexual Offenses - Children Under the Age of 15

This bill alters the age limit of a victim from 13 years to 15 years for which a person convicted of first or second degree rape or sexual offense is subject to a mandatory minimum sentence.

Fiscal Summary

State Effect: Minimal. The bill's expansion of defendants subject to certain mandatory minimum sentences is not expected to measurably increase State correctional costs.

Local Effect: Minimal. The bill is not expected to measurably increase local correctional costs.

Small Business Effect: None.

Analysis

Current Law: In general, the offenses specified in this bill carry the maximum penalties listed below.

First Degree Rape: A conviction for first degree rape generally carries a maximum penalty of life imprisonment. A conviction for child kidnapping along with first degree rape, when the victim is a child under the age of 16 years, carries a maximum penalty of life imprisonment without the possibility of parole. Certain repeat offenders are also subject to a maximum penalty of life without the possibility of parole. When the victim is under age 13, a defendant at least 18 years old convicted of first degree rape is subject to a mandatory minimum, nonsuspendable, nonparolable 25-year sentence.

Second Degree Rape: A conviction for second degree rape generally carries a maximum penalty of 20 years imprisonment. A 5-year mandatory minimum, nonsuspendable, nonparolable sentence is required for a defendant over the age of 18 years who is convicted of second degree rape involving a victim under age 13.

First Degree Sexual Offense: A conviction for first degree sexual offense generally carries a maximum penalty of life imprisonment. A conviction for child kidnapping along with first degree sexual offense, when the victim is a child under the age of 16, carries a maximum penalty of life imprisonment without the possibility of parole. Certain repeat offenders are also subject to a maximum penalty of life without the possibility of parole. When the victim is under age 13, a defendant at least 18 years old convicted of first degree sexual offense is subject to a mandatory minimum, nonsuspendable, nonparolable 25-year sentence.

Second Degree Sexual Offense: A conviction for second degree sexual offense generally carries a maximum penalty of 20 years imprisonment. A 5-year mandatory minimum, nonsuspendable, nonparolable sentence is required for a defendant over the age of 18 who is convicted of second degree sexual offense involving a victim under age 13.

The State is required to notify the defendant of its intention to seek imposition of a mandatory minimum or greater sentence at least 30 days before trial. Otherwise a mandatory minimum sentence may not be imposed.

Background: Currently, approximately 27,000 persons are serving a prison sentence in State correctional facilities. Division of Correction (DOC) does not track intake or standing population data to reflect the age of the victim. The number of offenders convicted under the circumstances covered by the bill is believed to be few and is expected to remain that way. According to the State Commission on Criminal Sentencing Policy, there have been no convictions for any of the rape and sexual offenses that carry a mandatory minimum sentence when the victim is under the age of 13 since they were adopted during the 2006 special session.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to DOC facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people affected by the bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,750 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new

DOC inmate (including variable medical care and variable operating costs) is \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Legislative Services

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