

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1497
Judiciary

(Delegate Corderman, *et al.*)

Crimes - Transfer of Human Immunodeficiency Virus While Committing Sexual
Crime

This bill prohibits an individual from violating the prohibition on knowingly transferring or attempting to transfer HIV to another individual while also violating the laws on (1) rape in the first degree; (2) rape in the second degree; (3) sexual offense in the third degree; or (4) sexual abuse of a minor. Violators are guilty of a misdemeanor punishable by up to five years imprisonment. A sentence must be separate from and consecutive to a sentence for a crime giving rise to the conviction.

Fiscal Summary

State Effect: General fund expenditures increase, in the out-years, due to the bill's penalty provision, as discussed below. Revenues are not affected.

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

Small Business Effect: None.

Analysis

Current Law: An individual who has HIV is prohibited from knowingly transferring or attempting to transfer the virus to another individual. A violator is guilty of a misdemeanor punishable by a fine of up to \$2,500 and/or imprisonment for up to three years.

The sexual crimes in the Criminal Law Article that enhance the penalty for knowingly transmitting HIV under the bill are all felonies, with maximum terms of imprisonment ranging from 10 years to life, as follows:

- rape in the first degree (§ 3-303): imprisonment not exceeding life (imprisonment for life without the possibility of parole applies to violations involving a child younger than age 16 and subsequent offenders);
- rape in the second degree (§ 3-304): imprisonment for up to 20 years;
- sexual offense in the third degree (§ 3-307): imprisonment for up to 10 years; and
- sexual abuse of a minor (§ 3-602): imprisonment for up to 25 years.

Background: The Judiciary advises that, during fiscal 2019, there were 19 guilty dispositions for a violation of rape in the first degree; 113 guilty dispositions for a violation of rape in the second degree; and 214 guilty dispositions for a violation of sexual offense in the third degree.

The Maryland State Commission on Criminal Sentencing Policy advises that, according to the Maryland Sentencing Guidelines Database, in the Maryland circuit courts during fiscal 2019, 147 individuals were sentenced to 179 total counts of sexual abuse of a minor and 1 individual was sentenced to 1 total count of knowingly transferring or attempting to transfer HIV.

State Expenditures: General fund expenditures increase as a result of the bill's incarceration penalties due to people being committed to State correctional facilities for longer periods of time. Any such effect begins in the out-years, as individuals convicted under the bill finish serving sentences imposed for other crimes.

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. 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.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The

Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

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; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2020
af/jc

Analysis by: Hillary J. Cleckler

Direct Inquiries to:
(410) 946-5510
(301) 970-5510