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FISCAL AND POLICY NOTE
First Reader

House Bill 847
Judiciary

(Delegate Rey, *et al.*)

Criminal Procedure - Crime of Violence - Definition

This bill adds the following offenses to the definition of “crime of violence” under § 14-101 of the Criminal Law Article: (1) sexual offense in the third degree; (2) escape in the first degree; (3) home invasion; (4) an attempt to commit crimes (1) through (3); and (5) assault with the intent to commit a sexual offense in the third degree. The bill also replaces references to alternate definitions of “crime of violence” with the bill’s definition of crime of violence under § 14-101 of the Criminal Law Article in several statutes and clarifies that the definition under § 14-101 applies to references to a crime of violence in specified statutes.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in the District Court. Minimal increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) due to altered calculations of diminution credits and parole eligibility resulting from the bill, partially offset by reduced expenditures if individuals are no longer subject to existing incarceration penalties as a result of the bill.

Local Effect: Potential minimal increase in local revenues from fines imposed in circuit court cases. The bill is not expected to materially affect local expenditures.

Small Business Effect: None.

Analysis

Bill Summary: The bill replaces definitions of a “crime of violence” under § 5-101 of the Public Safety Article and § 4-401 of the Criminal Law Article with the bill’s definition of

“crime of violence” under § 14-101 of the Criminal Law Article. The bill specifies that references to a “crime of violence” under the following statutes are to a crime of violence as defined in § 14-101 of the Criminal Law Article: § 3-2011 of the Courts and Judicial Proceedings Article (limits on privilege in collaborative law communications); and § 4-107 of the Criminal Law Article (bulletproof body armor). The bill replaces references to the definition of crime of violence under § 5-101 of the Public Safety Article with references to the definition under § 14-101 of the Criminal Law Article in the following statutes: § 3-204 of the Criminal Law Article (reckless endangerment); § 3-601.1 of the Criminal Law Article (committing a crime in the presence of a minor); § 4-204 of the Criminal Law Article (use of a handgun in the commission of a crime); § 4-306 of the Criminal Law Article (penalties – assault pistols and detachable magazines); and § 5-206 of the Public Safety Article (possession of a rifle or shotgun).

Current Law: “Crime of violence” is defined in multiple locations in the Maryland Code. Each of these definitions is unique and carries its own implications.

§ 14-101 of the Criminal Law Article

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Sections 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) 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 handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

§ 4-401 of the Criminal Law Article

Section 4-401 defines a “crime of violence” as (1) murder in any degree; (2) manslaughter; (3) kidnapping; (4) rape in any degree; (5) assault in the first degree; (6) robbery; (7) burglary in any degree; (8) escape in the first degree; (9) theft; (10) felony home invasion; or (11) an attempt to commit any of these offenses. This definition is applied mainly to the Uniform Machine Gun Act. Under the Act, a person may not use or possess a machine gun in the commission or attempted commission of a crime of violence. Violators are guilty of a felony, punishable by imprisonment for up to 20 years. The Act also prohibits a person from possessing or using a machine gun for an offensive or

aggressive purpose. Possession or use of a machine gun is presumed to be for an offensive or aggressive purpose if, among other things, the machine gun is in the possession of, or used by an unnaturalized foreign-born person or a person who has been convicted of a crime of violence in any state or federal court of the United States. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 years.

§ 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) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) 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.

State Revenues: General fund revenues may increase minimally from fines imposed in the District Court if individuals are subject to violations of the prohibition on misdemeanor reckless endangerment. The prohibition on reckless endangerment involving the discharge of a firearm does not apply to a person acting in defense of a crime of violence under § 5-101 of the Public Safety Article. The bill replaces this reference with a reference to § 14-101 of the Criminal Law Article. Because § 14-101 does not contain all of the offenses contained in § 5-101 (*e.g.*, second-degree assault), some individuals may be subject to fines for misdemeanor reckless endangerment.

State Expenditures: The bill results in a minimal increase in general fund expenditures for DPSCS due to altered calculations of diminution credits and parole eligibility resulting from the bill, partially offset by reduced expenditures if individuals are no longer subject to existing incarceration penalties as a result of the bill.

The bill results in a minimal decrease in general fund expenditures for DPSCS if individuals previously eligible for incarceration penalties due to references to the definition of crime of violence under § 5-101 are no longer eligible for incarceration penalties under the bill. The bill replaces references to § 35-101 with references to § 14-101 of the Criminal

Law Article. Because § 14-101 does not contain all of the offenses contained in § 5-101 (e.g., second-degree assault), individuals previously eligible for incarceration penalties under various statutes affected by the bill (e.g., committing a crime of violence in the presence of a minor, possession of a rifle or shotgun, etc.) may no longer be eligible for these penalties under the bill. General fund expenditures may increase minimally if individuals are eligible for prosecution for reckless endangerment under the bill.

Diminution Credits: Individuals convicted of crimes of violence under § 14-101 earn fewer good conduct diminution credits than other offenders. Thus, individuals convicted of offenses added to this definition under the bill may spend longer amounts of time in incarceration before being released on mandatory supervision.

Subsequent Offenders: Section 14-101 specifies several penalties for individuals convicted of a crime of violence for a second or subsequent time. General fund expenditures may increase minimally to the extent that the added offenses subject individuals to these incarceration penalties.

Parole Eligibility: In general, an inmate is not eligible for parole until the inmate has served one-fourth of the inmate's aggregate sentence in confinement. However, an inmate sentenced to the Division of Correction after being convicted of a violent crime under § 14-101 of the Criminal Law Article is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes or one-fourth of the inmate's total aggregate sentence. Thus, individuals convicted of the offenses added to the definition of a crime of violence under § 14-101 of the Criminal Law Article may have to spend longer amounts of time in incarceration before becoming eligible for parole consideration. This does not apply to home invasion, since that offense is a subset of first-degree burglary, which is already a crime of violence under § 14-101.

DPSCS advises that it received 71 offenders for third-degree sexual offense during fiscal 2015. This was the most serious offense for 52 of these offenders, and their average sentence was 83.6 months. DPSCS received six offenders for escape during fiscal 2015. Escape was the most serious offense for one of these offenders, whose sentence was 60 months.

Due to changes in their parole eligibility under the bill, the 52 offenders for third-degree sexual offense would serve approximately 42 months instead of 21 months before reaching parole eligibility. The single offender for first-degree escape would serve approximately 30 months instead of 15 months before reaching parole eligibility. It should be noted that parole is discretionary, not mandatory. Eligibility for parole consideration is not a guarantee that a person will be granted parole.

This analysis assumes that the bill's impact on the Uniform Machine Gun Act and the geriatric parole provisions under § 14-101 do not materially affect State finances.

Local Revenues: Local revenues may increase minimally from fines imposed in circuit court reckless endangerment cases.

Local Expenditures: Given the incarceration penalties for the offenses added to § 14-101, this analysis assumes that the bill does not materially affect local finances.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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