

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 738  
Judiciary

(Delegate B. Wilson)

Judicial Proceedings

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**Criminal Law - Sex Offenses - Out-of-State Convictions**

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This bill establishes that a prior conviction not arising from the same incident from another state, or in a federal military or Native American tribal court, that if committed in this State would be considered a violation § 3-303 (first-degree rape), § 3-304 (second-degree rape), § 3-305 (first-degree sexual offense), or § 3-306 (second-degree sexual offense) of the Criminal Law Article, may serve as a predicate crime for an additional penalty for repeat sexual offenders.

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**Fiscal Summary**

**State Effect:** Assuming that the additional penalty authorized under § 3-313 of the Criminal Law Article is a rare occurrence, general fund incarceration expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase minimally as a result of the bill. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Upon a conviction of a violation of the State's prohibitions on second-degree rape (§ 3-304), second-degree sexual offense (§ 3-306), third-degree sexual offense (§ 3-307), attempted second-degree rape (§ 3-310), or attempted second-degree sexual offense (§ 3-312) under the Criminal Law Article, a person who has been convicted on a prior occasion not arising from the same incident of any violation of the State's

prohibitions on first-degree rape, second-degree rape, first-degree sexual offense, or second-degree sexual offense under the Criminal Law Article is subject to imprisonment not exceeding life.

If the State intends to proceed against a person under this additional penalty, it must comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

**Background:** DPSCS conducted intake on 48 individuals for second-degree rape, 47 individuals for second-degree sexual offense, and 59 individuals for third-degree sexual offense during fiscal 2016.

Neither DPSCS nor the State's Attorneys' Association have information on the number of individuals sentenced under the additional penalty provision authorized under § 3-313 of the Criminal Law Article. The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) provided information on individuals sentenced in the State's circuit courts during fiscal 2016 for some of the offenses that, upon conviction, are eligible for an additional penalty as a subsequent offender. MSCCSP did not receive information as to whether a subsequent offender petition was filed for any of the affected individuals. However, MSCCSP also advises that information on subsequent offender petitions was missing from the submissions MSCCSP received for most individuals convicted of the selected offenses that are affected by the bill.

**State Expenditures:** Assuming that individuals are rarely sentenced under the additional penalty provision contained in § 3-313 of the Criminal Law Article, general fund expenditures increase minimally as a result of individuals being committed for longer amounts of time due to expanded application of the additional penalty.

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 \$3,600 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 State inmate (including variable health care costs) is about \$800 per month. Excluding all health care, the average variable costs total \$210 per month.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 19, 2017  
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