

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 333

(Senators Bailey and Ready)

Judicial Proceedings

Criminal Procedure - Sexual Offenders - Lifetime Supervision

This bill expands the offenses that subject an offender to lifetime sexual offender supervision by adding all circumstances of (1) second-degree sexual offense as that crime existed before October 1, 2017, and an attempt to commit that crime and (2) sexual abuse of a minor (regardless of the minor's age). The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any conviction before the bill's October 1, 2021 effective date.

Fiscal Summary

State Effect: General fund expenditures may increase in the out-years for the Department of Public Safety and Correctional Services (DPSCS) to manage an increased lifetime sexual offender supervision caseload. The bill does not materially affect the workload of the Judiciary or the Office of the Public Defender (OPD). Revenues are not affected.

Local Effect: The bill is not expected to materially affect the workload of the circuit courts or State's Attorneys' offices. Local revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Second-degree Sexual Offense (Previously Section 3-306 of the Criminal Law Article)

Chapters 161 and 162 of 2017 reclassified criminal conduct previously classified as second-degree sexual offense to second-degree rape. The Acts made no substantive changes to the offense.

A person may not engage in a sexual act with another:

- by force, or the threat of force, without the consent of the other (Criminal Law Article § 3-306(a)(1));
- if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual (Criminal Law Article § 3-306(a)(2)); or
- if the victim is younger than age 14, and the person performing the sexual act is at least 4 years older than the victim (Criminal Law Article § 3-306(a)(1)(3)).

Second-degree sexual offense is a felony and is generally punishable by imprisonment for up to 20 years. However, a person age 18 or older who commits any of the aforementioned prohibited acts with a child younger than age 13 is subject to imprisonment for not less than 15 years and not exceeding life. The 15-year mandatory minimum sentence is nonsuspendable and nonparolable. If a sentence is imposed for a violation of Criminal Law Article § 3-306(a)(1) or (2), it must include a term of lifetime sexual offender supervision, as discussed in greater detail below.

Sexual Abuse of a Minor (Section 3-602 of the Criminal Law Article)

A parent or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor is prohibited from causing sexual abuse to the minor. A household member or family member may not cause sexual abuse to a minor. “Sexual abuse” is defined as an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not. Sexual abuse includes incest, rape, a sexual offense in any degree, and unnatural or perverted sexual practices.

Sexual abuse of a minor is a felony and is generally 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.

Lifetime Supervision Procedures

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 sex 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.

DPSCS is required to adopt regulations necessary to carry out the duties of the department relating to lifetime offender supervision.

State/Local Fiscal Effect: Subjecting additional offenders to lifetime sexual offender supervision will have no immediate impact, as supervision will not commence until offenders are released from incarceration.

The Judiciary reports the following 204 guilty dispositions during fiscal 2019: 40 guilty dispositions under § 3-306 (second-degree sexual offense); 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).

According to fiscal 2019 data provided by DPSCS, the average sentence for a second-degree sexual offense was 12 years; the average sentence for sexual abuse of a minor by a parent or person with custody of the minor was also 12 years. The average sentence for sexual abuse of a minor by a family member was 15 years.

If DPP needs to hire additional agents in the out-years to supervise an increased lifetime sexual offender caseload, and *for illustrative purposes only*, general fund expenditures likely increase by a minimum of \$75,000 annually for each new agent. DPSCS advises that for fiscal 2019, there were 31 agents supervising 143 individuals subject to lifetime sexual offender supervision.

The bill is not anticipated to materially affect the workload of the Judiciary, OPD, the circuit courts, or State's Attorneys' offices.

Additional Information

Prior Introductions: HB 1116 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 320, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: None.

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

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