

Department of Legislative Services

Maryland General Assembly

2021 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 896

(Delegate Mangione)

Judiciary

Criminal Law - Crime of Violence - Definition

This bill alters the definition of “crime of violence” under § 14-101 of the Criminal Law Article to include sexual abuse of a minor under specified circumstances when the offender is an adult and the victim is a minor *younger than age 16* at the time of the offense.

Fiscal Summary

State Effect: Potential increase in cumulative general fund expenditures, beginning in the out-years, due to expanded application of existing sentencing and incarceration-related provisions, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Sexual Abuse of a Minor

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

family member is also prohibited from causing sexual abuse to a minor. A violator is guilty of a felony, 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.

Crimes of Violence

Sexual abuse of a minor under specified circumstances when the offender is an adult and the *victim is younger than age 13* at the time of the offense is a crime of violence. The bill increases the age limit of the victim to *younger than age 16*.

Section 14-101(a) of the Criminal Law Article 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 firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor *younger than age 13* under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Mandatory Sentences for Crimes of Violence

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 2018, and served a term of confinement in a correctional facility for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

Diminution Credits

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. The following types of inmates may not earn diminution credits:

- an inmate who is serving a sentence for first- or second-degree rape against a victim younger than 16;
- an inmate who is serving a sentence for first- or second-degree sexual offense, as the offenses existed before October 1, 2017, against a victim younger than 16;
- an inmate who is serving a sentence for a subsequent conviction of third-degree sexual offense against a victim younger than 16; and
- an inmate imprisoned for a lifetime sexual offender supervision violation.

Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects or programs. For additional information on diminution credits, see the [Maryland Diminution Credit System](#) report published by the Department of Legislative Services in December 2020.

Parole and Mandatory Supervision

In general, a State inmate who is serving a sentence of six months or more is not eligible for parole until the inmate has served one-quarter of the inmate's sentence. A sentence for a violent crime does not become parole-eligible until the inmate has served one-half of the sentence. An inmate serving a term of incarceration that includes a mandatory minimum sentence that is not subject to parole by statute is not eligible for parole until the inmate has served that mandatory minimum sentence.

As previously noted, a person convicted for the fourth time of a crime of violence must be sentenced to life imprisonment without the possibility of parole. In general, a sentence for a third crime of violence or a second crime of violence committed on or after

October 1, 2018, is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person serving a mandatory sentence for a crime of violence may petition for, and be granted, parole if the person (1) is at least age 60 and (2) has served at least 15 years of the sentence imposed.

Generally, a person convicted of a violent crime committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole.

Substance Abuse Evaluation and Commitment

A court may not order a person serving a sentence for a crime of violence under § 14-101 of the Criminal Law Article from being evaluated for or committed to alcohol or drug abuse treatment with the Maryland Department of Health (MDH) under §§ 8-505 and 8-507 of the Health-General Article, respectively, until the person is eligible for parole. However, these eligibility restrictions do not prohibit such a defendant from participating in any other treatment program or receiving treatment under MDH supervision under any other statutory provision.

State Expenditures: Cumulative general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase, beginning in the out-years, due to the bill's expanded application of sentencing and incarceration-related provisions. The magnitude of this increase cannot be reliably determined at this time, as discussed below.

DPSCS reports that during fiscal 2020, 109 inmates entered correctional facilities after receiving sentences for violations of sexual abuse of a minor. The average sentence for this group of inmates was 10 years.

Assuming this represents the typical number of DPSCS intakes for sexual abuse of a minor each year, a considerable number of individuals are sentenced to State correctional facilities for this offense on an annual basis. However, information is not available on (1) the ages of the victims (especially the number of victims who were at least age 13 but younger than age 16 at the time of the offense) and (2) the nature of the acts committed by the offenders.

The magnitude of the bill's impact, which cannot be reliably quantified at this time, depends on (1) the number of individuals sentenced for sexual abuse of a minor who commit a crime of violence as a result of bill; (2) whether these individuals have been sentenced for other crimes currently considered to be crimes of violence; (3) the number of individuals with prior convictions that are considered a crime of violence as a result of the bill; (4) the number of individuals affected by the bill who commit subsequent crimes of violence; and (5) the overall impact of the bill on incarceration time. Regardless, any

impact from the bill is likely to be experienced in the out-years, as offenders sentenced under the bill spend additional time in Division of Correction facilities.

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 \$3,900 per month. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$1,075 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$222 per month.

Additional Information

Prior Introductions: SB 259 of 2020, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: SB 268 (Senators Bailey and West) - Judicial Proceedings.

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

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