

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 60
Judiciary

(Delegates Smigiel and Dumais)

Judicial Proceedings

Criminal Law - Professional Counselors and Therapists - Conduct (Lynette's Law)

This bill prohibits a “professional counselor or therapist” from engaging in a sexual act, sexual contact, or vaginal intercourse with a person who was receiving therapy or counseling from the professional counselor or therapist at the time of or within the six months preceding the act, contact, or intercourse. Violators are guilty of a fourth degree sexual offense and subject to the current maximum penalties of one year imprisonment and/or a \$1,000 fine for a first-time offender and three years imprisonment and/or a \$1,000 fine for specified repeat offenders. The statute of limitations for this offense is three years.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in the District Court. Potential minimal increase in general fund expenditures due to the bill’s incarceration penalties.

Local Effect: Potential minimal increase in local revenues from fines imposed in circuit court cases. Potential minimal increase in local expenditures due to the bill’s incarceration penalties.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines a “professional counselor or therapist” as a person who is licensed or certified to practice under Title 14 (physicians), Title 17 (professional counselors and therapists), Title 18 (psychologists), or Title 19 (social workers) of the Health Occupations Article.

Current Law: The crime of fourth degree sexual offense prohibits a person from (1) engaging in sexual contact with another without the consent of the other or (2) engaging in a sexual act or vaginal intercourse with a victim who is age 14 or 15 and the defendant is at least four years older than the victim. Chapter 317 of 2006 (HB 353) expanded the offense by specifying that, with certain exceptions, a “person in a position of authority” may not engage in a sexual act, sexual contact, or vaginal intercourse with a minor who, at the time of the act, contact, or intercourse, is a student enrolled at a school where the person is employed. Fourth degree sexual offense is a misdemeanor and carries maximum penalties of imprisonment for one year and/or a fine of \$1,000 for a first-time offender and three years imprisonment and/or a \$1,000 fine for specified repeat offenders. There is a three-year statute of limitations for prosecution of a fourth degree sexual offense involving a person in a position of authority.

A “person of authority” is a person who (1) is at least age 21; (2) is employed as a full-time permanent employee by a public or private preschool, elementary school, or secondary school; and (3) because of the person’s position or occupation, exercises supervision over a minor who attends the school. A “person of authority” includes a principal, vice principal, teacher, or school counselor at a public or private preschool, elementary school, or secondary school.

The occupations covered under the bill have professional regulations regarding inappropriate relationships with patients or clients.

Background: In 2012, the State of New York enacted legislation (Chapter 365 of 2012) that requires investigators for health care licensing boards to report to the appropriate law enforcement official or authority if, during the investigation of a licensee’s professional misconduct, there is a “reasonable belief” that an act that constitutes a sex offense has been committed by a licensee against a client or patient during a treatment session, consultation, interview, or examination. Under New York law, a client or patient of a health care provider or mental health care provider is incapable of consenting to sexual acts. Depending on the nature of the conduct, providers can be charged with various sexual offenses, including statutory rape (rape in the third degree).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Dorchester, Garrett and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; NBC New York, New York State Legislature; Department of Legislative Services

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