

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 985
Judiciary

(Delegate Clippinger, *et al.*)

Judicial Proceedings

Criminal Law - Third Degree Sexual Offense - Burglary

This bill establishes that it is a third degree sexual offense to engage in sexual contact with another person without the other person's consent in connection with a burglary in the first, second, or third degree. To be convicted under the bill, the defendant must also be convicted of the underlying burglary.

A person who conspires to, attempts to, or commits this offense is (1) a Tier I sex offender if the victim is not a minor; (2) a Tier II sex offender if the victim is a minor who is at least 13 years old; or (3) a Tier III sex offender if the victim is a minor who is younger than 13 years old.

The bill applies prospectively to acts committed on or after October 1, 2013.

Fiscal Summary

State Effect: Potential minimal increase in State expenditures due to the bill's application of an enhanced incarceration penalty to these acts and changes in sex offender classifications. Revenues are not affected.

Local Effect: Potential minimal decrease in local revenues from fines imposed in circuit court cases. Expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: Depending on the nature of the offense, engaging in unlawful sexual contact with another person may be classified as a third degree or fourth degree sexual offense.

Under the State's prohibition against third degree sexual offense, a person may not:

- engage in sexual contact with another without the consent of the other and (1) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon; (2) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime; (3) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or (4) commit the crime while aided and abetted by another;
- engage in sexual contact with another if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know of the victim's condition;
- engage in sexual contact with another if the victim is under age 14, and the person performing the sexual contact is at least 4 years older than the victim;
- engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or
- engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

A violator is guilty of the felony of third degree sexual offense and subject to imprisonment for a maximum of 10 years.

Engaging in sexual contact with another without the consent of the other is a sexual offense in the fourth degree, which is a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000. An individual convicted of a sexual offense in the fourth degree who has been previously convicted of specified sexual crimes stemming from a separate incident is subject to a maximum penalty of imprisonment for up to three years and/or a maximum fine of \$1,000.

First Degree Burglary: A person may not break and enter the dwelling of another with the intent to commit theft or a crime of violence. A violator is guilty of first degree burglary, a felony punishable by up to 20 years imprisonment.

Second Degree Burglary: A person may not break and enter the storehouse of another with the intent to commit theft, a crime of violence, or arson in the second degree. A violator is guilty of second degree burglary, a felony punishable by up to 15 years imprisonment.

A person may not break and enter the storehouse of another with the intent to steal, take, or carry away a firearm. A violator is guilty of second degree burglary, a felony punishable by up to 20 years imprisonment and/or a maximum fine of \$10,000.

Third Degree Burglary: A person may not break and enter the dwelling of another with the intent to commit a crime. A violator is guilty of burglary in the third degree, a felony punishable by up to 10 years imprisonment.

Sex Offender Registration: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland.

The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 required all states to register sex offenders, sexually violent predators, and offenders who commit certain crimes against children. The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), required additional enactments by the states.

In 2010, Maryland's sex offender registration laws were substantially revised to comply with SORNA and to increase penalties for certain sex offenses committed against minors. Among the enacted provisions, sexual offenders are now sorted into three separate tiers, replacing the four former categories of sexual offenders. A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life.

An individual convicted of a fourth degree sexual offense is a Tier I sex offender. An individual convicted of a third degree sexual offense is a Tier III sex offender if the conviction was for engaging in sexual contact with a victim who is younger than 14 years old and the defendant was at least 4 years older than the victim. Other acts that qualify as

a third degree sexual offense may result in classification as a Tier II or Tier III sex offender.

Background: During fiscal 2012, the Department of Public Safety and Correctional Services (DPSCS) conducted intake on:

- 107 individuals for third degree sexual offense;
- 19 individuals for fourth degree sexual offense;
- 405 individuals for burglary in the first degree;
- 181 individuals for burglary in the second degree; and
- 100 individuals for burglary in the third degree.

State Revenues: Since offenders subject to the bill's provisions must commit a felony burglary, cases affected by the bill are heard in the circuit courts. As a result, the bill does not affect State revenues from fines imposed in District Court cases.

State Expenditures: Given that an offender subject to the bill's provisions would also be sentenced for a burglary, the bill's fiscal impact exists only to the extent that (1) an offender serves a longer sentence as a result of the reclassification of his/her sexual offense from a fourth degree to a third degree or (2) the bill's provisions result in a defendant being classified as a higher level sex offender than under current law.

The number of people convicted of a third degree sexual offense as a result of the bill is expected to be minimal. Offenders subject to the bill's provisions will likely be housed in State correctional facilities, since the bill requires the sexual offense to be committed during the commission of a burglary and persons serving a sentence longer than 18 months are incarcerated in State correctional facilities.

DPSCS advises that it does not anticipate a fiscal impact from the bill's provisions.

Local Revenues: Revenues may decrease as a result of fewer fines being imposed in cases heard in the circuit courts. While a fourth degree sexual offense may be subject to a maximum fine of \$1,000, there is no monetary penalty associated with a third degree sexual offense.

Local Expenditures: As previously stated, persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Given that the bill's enhanced penalty is predicated on the commission of a burglary in the first, second, or third degree, it is unlikely that offenders subject to the bill's provisions are housed in local detention facilities or will be housed in local detention facilities in the future.

Additional Comments: The bill classifies a person convicted of engaging in sexual contact with another in connection with the commission of specified burglaries as a third degree sexual offense. The bill requires an individual convicted of this offense to register as a *Tier II* sex offender if the victim is a minor who is at least 13 years old. Under current law, sexual contact with a minor who is younger than age 14 by a defendant who is at least four years older is a third degree sexual offense that is eligible for registration as a *Tier III* sex offender, which is a more serious sex offender category. Therefore, in a limited number of cases, the bill may result in a defendant being registered as a lower level sex offender than under current law.

Additional Information

Prior Introductions: SB 642 of 2012, a somewhat similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 351 of 2012, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: SB 722 (Senator Ramirez, *et al.*) - Judicial Proceedings.

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

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