

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 1075  
Judiciary

(Delegate Clippinger, *et al.*)

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**Criminal Law - Third Degree Sexual Offense - Person in Position of Authority**

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This bill (1) reclassifies specified sexual behavior between a person in a position of authority and a minor from a misdemeanor fourth degree sexual offense to a felony third degree sexual offense; (2) expands the definition of “person in a position of authority”; and (3) expands the behavior for which a person in a position of authority may be prosecuted.

The bill repeals provisions pertaining to a misdemeanor fourth degree sexual offense committed by a person in a position of authority, including the three-year statute of limitations for that crime.

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**Fiscal Summary**

**State Effect:** Minimal decrease in general fund revenues from fines imposed in District Court cases. Minimal increase in general fund expenditures due to the expanded application of existing incarceration penalties.

**Local Effect:** Minimal decrease in local revenues from fines imposed in circuit court cases. Minimal increase in local expenditures due to the expanded application of existing incarceration penalties.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill prohibits a “person in a position of authority” who is at least four years older than the victim from engaging in sexual contact, a sexual act, or vaginal intercourse with a minor (1) while the minor is enrolled or participating in the institution, program, or activity at which the person in a position of authority works or (2) who was

previously enrolled or participating in the institution, program, or activity at the same time the person in a position of authority was working at the institution, program, or activity.

Violators are guilty of felony third degree sexual offense and subject to the current statutory penalty of imprisonment for up to 10 years. A third degree sexual offense committed by a person in a position of authority under the bill (1) does not preclude prosecution for sexual abuse of a minor; and (2) may not be considered a lesser-included offense of another crime unless specifically charged by the State.

The bill defines a “person in a position of authority” as an individual who is at least 21 years old and works at (1) a public or private preschool, elementary school, or secondary school; (2) a child care facility, including an after-school program; (3) a commercial or nonprofit instructional program for music, dance, art, tutoring, academic enrichment, martial arts, or a program with a similar purpose; (4) a sports or recreational facility program; (5) a day or overnight camp; (6) a religious institution; or (7) a unit of local, State, or federal government.

“Person in a position of authority” includes an individual who (1) is a volunteer, an intern, or a paid employee of one of the aforementioned institutions, programs, or activities and who, in that capacity, directs or supervises minors enrolled or participating in the institution, program, or activity or (2) supervises one or more persons in a position of authority within the institution, program, or activity.

**Current Law:** There is no general prohibition against consensual sex with any person age 16 or older. However, depending on the age of the victim and the circumstances of the event, a person unlawfully engaging in sexual acts with a minor could be subject to a charge of second degree rape or second, third, or fourth degree sexual offense. Penalties range from a fine of up to \$1,000 and/or imprisonment for up to one year (for a misdemeanor fourth degree sexual offense) to a maximum imprisonment of 20 years (for the felony of second degree rape).

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. 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.

Among other things, the State’s third degree sexual offense statute prohibits a person from:

- engaging in sexual contact with another if the victim is younger than 14 and the person performing the sexual contact is at least four years older than the victim; or
- engaging in a sexual act or 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.

Third degree sexual offense is a felony punishable by imprisonment for up to 10 years.

Under the State’s prohibition against sexual child abuse (applicable when the victim is younger than 18) by persons with custodial responsibilities or household or family members, a violator is guilty of a felony and subject to a maximum imprisonment term of 25 years.

A person is prohibited from engaging in three or more acts in a continuing course of unlawful sexual conduct with a victim younger than 14. A violator is guilty of a felony and is subject to imprisonment for a maximum of 30 years. A sentence imposed for this violation may be separate from and consecutive to or concurrent with a sentence for child sexual abuse.

**Background:** There were 468 convictions in the District Court for fourth degree sexual offense during fiscal 2011. According to the Maryland State Commission on Criminal Sentencing Policy, there were 85 convictions for fourth degree sexual offense in the circuit courts during fiscal 2012. It is unclear how many of these convictions involved a “person in a position of authority.”

In March 2012, fourth degree sex offense charges were dropped against a Montgomery County teacher and coach accused of having sex with a 16-year-old student he coached on a high school cross country team. Prosecutors commented that despite the fact that the accused was a full-time employee of the county’s school system, the charges had to be dropped because he was only a part-time employee of the school at which he coached the victim.

**State Revenues:** General fund revenues from fines imposed in District Court cases decrease minimally due to the reclassification of specified crimes from a misdemeanor fourth degree sexual offense to a felony third degree sexual offense.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's expanded application of an existing incarceration penalty and the reclassification of specified crimes due to more people being committed to State correctional facilities for convictions in Baltimore City.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues decrease minimally from fines imposed in circuit court cases due to the reclassification of specified crimes from a misdemeanor fourth degree sexual offense to a felony third degree sexual offense.

**Local Expenditures:** Expenditures increase as a result of the bill's expanded application of an existing incarceration penalty and the reclassification of specified crimes. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 657 (Senator King, *et al.*) - Judicial Proceedings.

**Information Source(s):** Garrett County, Department of Juvenile Services, Department of Health and Mental Hygiene, Maryland State Department of Education, Judiciary (Administrative Office of the Courts), Maryland State Commission on Criminal Sentencing Policy, Office of Human Resources, Department of Public Safety and Correctional Services, Office of the Public Defender, WJLA, Department of Legislative Services

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