

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 800 (Senator Lee, *et al.*)
 Judicial Proceedings

Criminal Law – Sexual Activity With an Animal, Unnatural or Perverted Sexual Practices, and Sodomy

This bill (1) repeals the offenses of sodomy and unnatural or perverted sexual practices and makes corresponding changes; (2) establishes the offense of sexual activity with an animal; (3) applies the new offense of sexual activity with an animal to existing statutory provisions that refer to sodomy and/or unnatural or perverted sexual practices; (4) adds sexual activity with an animal to the list of qualifying offenses for Tier III sex offender registration; and (5) increases the maximum incarceration penalty for felony aggravated cruelty to animals under § 10-606 of the Criminal Law Article from three to five years.

Fiscal Summary

State Effect: General fund expenditures increase by \$84,700 in FY 2019 for one-time programming changes; general fund expenditures also increase minimally beginning in FY 2019 due to the bill’s incarceration penalty provisions. Revenues are not materially affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	84,700	-	-	-	-
Net Effect	(\$84,700)	-	-	-	-

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill can be implemented with existing local resources, including handling any additional sex offender registrations. The bill does not materially affect local revenues.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill establishes the offense of sexual activity with an animal, a misdemeanor punishable by imprisonment for up to 10 years and/or a \$1,000 maximum fine. The bill defines “sexual activity with an animal” as specified acts between a person and an animal, including a dead animal, except for lawful and commonly accepted practices relating to veterinary medicine, animal husbandry, and conformation judging.

The offense prohibits a person from (1) engaging in “sexual activity with an animal,” as defined under the bill; (2) advertising, soliciting, offering, possessing, selling, transferring, accepting, purchasing, or otherwise obtaining an animal with the intent that the animal will be used by any person to engage in sexual activity with an animal; (3) organizing, promoting, conducting, or participating as an observer at an event at which a person engages in sexual activity with an animal; (4) causing, coercing, aiding, or abetting another to engage in sexual activity with an animal; (5) allowing premises owned or controlled by the person to be used by any person to engage in sexual activity with an animal; (6) causing a minor to engage in sexual activity with an animal; or (7) engaging in sexual activity with an animal in the presence of a minor.

A conviction for sexual activity with an animal for prohibited activity involving minors may not merge with a conviction for child abuse or sexual abuse of a minor under §§ 3-601 and 3-602 of the Criminal Law Article, respectively.

As a condition of sentencing, a court may (1) order a defendant convicted of sexual activity with an animal to participate in and pay for psychological counseling; (2) order such a defendant to reimburse any person for costs relating to the care of an animal victimized by the commission of the offense, including costs for impoundment, transportation, medical care, food, routine care, and sheltering; or (3) prohibit a defendant from owning, possessing, or residing with, or coming into contact with, an animal for up to 30 years.

The bill adds references to sexual activity with an animal to various existing statutory provisions that refer to sodomy and/or unnatural or perverted sexual practices, including provisions pertaining to alcoholic beverages licenses, a child in need of assistance, first-degree murder, sexual abuse of a minor, sale or display of an obscene item to a minor, and child abuse and neglect.

Current Law:

Sodomy and Unnatural or Perverted Sexual Practices

Sodomy is a felony, punishable by imprisonment for up to 10 years.

The offense of unnatural or perverted sexual practices prohibits a person from (1) taking the sexual organ of another person or of an animal in the person's mouth; (2) placing the person's sexual organ in the mouth of another person or of an animal; or (3) committing another unnatural or perverted sexual practice with another person or with an animal. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 years and/or a \$1,000 maximum fine. A prosecution for unnatural or perverted sexual practices may be instituted at any time. An indictment for the offense is sufficient if it states that the defendant committed an unnatural and perverted sexual practice with a person or an animal as applicable but need not state the unnatural or perverted sexual practice with which the defendant is charged or manner in which the defendant committed the unnatural or perverted sexual practice.

Felony Aggravated Animal Cruelty

A person may not intentionally mutilate, torture, cruelly beat, or kill an animal or cause or procure such an act. Except in the case of self-defense, a person may not intentionally inflict bodily harm, permanent disability, or death on an animal owned or used by a law enforcement unit. A person who violates these provisions is guilty of the felony of aggravated cruelty to animals and is subject to maximum penalties of three years imprisonment and/or a \$5,000 fine. As a condition of sentencing, a court may order a defendant to participate in and pay for psychological counseling. As a condition of probation, a court may prohibit a defendant from owning, possessing, or residing with an animal. The District Court has concurrent jurisdiction with the circuit courts for felony aggravated animal cruelty.

Sex Offender Registry

Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment under specified circumstances, 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 registry is maintained by the Department of Public Safety and Correctional Services (DPSCS).

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. If a Tier I sex offender meets specified requirements, the registration term may be reduced to 10 years.

Background: Exhibit 1 contains information from the Judiciary on the number of violations for sodomy, unnatural or perverted sexual practices, and aggravated animal cruelty filed in the District Court and circuit courts during fiscal 2017. A violation is a charge filed in the court. It is not a conviction, and one person may be associated with more than one violation. Exhibit 1 also contains information from the Maryland State Commission on Criminal Sentencing Policy on the number of individuals sentenced in the State’s circuit courts for these offenses during fiscal 2017. Information is not readily available on the number of individuals sentenced for these offenses in the District Court during fiscal 2017.

Exhibit 1
District Court and Circuit Court Violations for Offenses Affected by the Bill
Fiscal 2017

Offense	District Court Violations	Circuit Court Violations	Individuals Sentenced in the Circuit Courts
Sodomy Criminal Law Article, § 3-321	63	48	1
Unnatural or Perverted Sexual Practices Criminal Law Article, § 3-322	170	106	2
Aggravated Animal Cruelty Criminal Law Article, § 10-606(a)(3)	1	1	11
Aggravated Animal Cruelty Criminal Law Article § 10-606(a)(1) and (a)(2)	83	107	

Source: Judiciary; Maryland State Commission on Sentencing Policy; Department of Legislative Services

State Expenditures: General fund expenditures for the Judiciary increase by an estimated \$84,700 in fiscal 2019 only for programming changes to accommodate the bill’s changes. This estimate assumes that approximately 941 hours of programming-related work are required.

In addition, general fund expenditures for DPSCS increase minimally beginning in fiscal 2019 due to the bill's incarceration penalty provisions. The bill repeals the offenses of sodomy and unnatural perverted sexual practices, establishes the new offense of sexual activity with an animal (which prohibits some of the behavior prohibited under the offense of unnatural or perverted sexual practices and is subject to the same penalty as that offense), and increases the maximum incarceration penalty for aggravated animal cruelty from three to five years.

Based on information provided by the Judiciary and the Maryland State Commission on Criminal Sentencing Policy, it appears that relatively few people are convicted/sentenced for sodomy and unnatural or perverted sexual practices and more people are sentenced for aggravated animal cruelty than for those two offenses. Thus, general fund incarceration expenditures increase due to the bill's alteration of that penalty and expanded prohibitions on contact between humans and animals under the offense of sexual activity with an animal. The number of people convicted of sexual activity with an animal or subject to increased penalties as a result of the bill is expected to be minimal.

While unnatural or perverted sexual practices is a misdemeanor, the felony of aggravated animal cruelty is a felony triable in the District Court. However, information is not readily available on the number of individuals convicted of these offenses in the District Court. The District Court and the circuit courts have concurrent jurisdiction over both of these offenses either by statutory authority or because of the penalty involved.

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 \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Small Business Effect: The bill may have a meaningful positive impact on small businesses that care for animals involved in violations of the prohibition on sexual activity with an animal to the extent they are reimbursed for their expenses as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 1134 (Delegate Atterbeary, *et al.*) - Judiciary.

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

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md/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510