

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

House Bill 641
 Judiciary

(Delegate Atterbeary, *et al.*)

Judicial Proceedings

Criminal Law – Sexual Contact With an Animal – Aggravated Cruelty to Animals

This bill (1) prohibits a person from engaging in “sexual contact with an animal,” as defined under the bill, and (2) expands the crime of aggravated cruelty to animals under § 10-606 of the Criminal Law Article to include engaging in sexual contact with an animal.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in District Court cases. General fund expenditures increase by \$5,900 in FY 2020 for one-time programming changes; general fund expenditures also increase minimally beginning in FY 2020 due to the bill’s expanded application of an existing incarceration penalty.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	5,900	-	-	-	-
Net Effect	(\$5,900)	(-)	(-)	(-)	(-)

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

Local Effect: Potential minimal increase in local revenues from fines imposed in circuit court cases. Minimal increase in local expenditures for incarcerations and implementation of the bill.

Small Business Effect: None.

Analysis

Bill Summary: “Sexual contact with an animal” means committing any of the following acts for the purpose of sexual arousal, sexual gratification, abuse, or financial gain:

- an act involving a person touching the sex organ or anus of an animal;
- an act involving contact between (1) the sex organ or anus of a person and the mouth, sex organ, or anus of an animal or (2) the sex organ or anus of an animal and the mouth, sex organ, or anus of a person; or
- an act involving insertion of (1) any part of a person’s body into the opening of the vagina or anus of an animal; (2) any part of an animal’s body into the opening of the vagina or anus of a person; or (3) any object into the opening of the vagina or anus of an animal.

An accepted veterinary practice, artificial insemination of an animal for reproductive purposes, accepted animal husbandry practices, and generally accepted practices related to the judging of breed confirmation are excluded from the definition of “sexual contact with an animal.”

Current Law:

Felony Aggravated Animal Cruelty

A person may not intentionally mutilate, torture, cruelly beat, or cruelly 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, the court may (1) order a person convicted of this crime to undergo and pay for psychological counseling and (2) prohibit a defendant from owning, possessing, or residing with an animal for a specified period of time. The District Court has concurrent jurisdiction with the circuit courts over the crime of felony aggravated animal cruelty.

Unnatural or Perverted Sexual Practices

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.

Background: **Exhibit 1** contains information from the Judiciary on the number of violations for 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 Related to the Bill
Fiscal 2017

Offense	District Court Violations	Circuit Court Violations	Individuals Sentenced in the Circuit Courts
Unnatural or Perverted Sexual Practices Criminal Law Article, § 3-322 (includes human/human and human/animal acts)	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

The Division of Correction advises that it conducted intake on three inmates for one or more offenses of aggravated animal cruelty under § 10-606 of the Criminal Law Article during fiscal 2018. Each offense received a sentence of three years. The Division of Parole and Probation advises that it conducted intakes on 45 individuals sentenced to probation for animal cruelty during fiscal 2018.

State Expenditures: General fund expenditures for the Judiciary increase by an estimated \$5,850 in fiscal 2020 only for programming changes to accommodate the bill's changes.

General fund expenditures for the Department of Public Safety and Correctional Services increase minimally due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal. This estimate assumes that the overall effect of the bill is more people being sentenced for committing a crime rather than individuals being sentenced for aggravated animal cruelty (maximum sentence of 3 years) instead of unnatural or perverted sexual practices (maximum sentence of 10 years).

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.

Local Expenditures: Local expenditures increase minimally beginning in fiscal 2020 due to the bill's expanded application of an existing incarceration penalty. 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 \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 355 (Senators Lee and Smith) - Judicial Proceedings.

Information Source(s): Charles, Frederick, and Montgomery counties; City of Havre de Grace; Town of Rising Sun; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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