

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 355 (Senators Lee and Smith)
 Judicial Proceedings

Criminal Law - Sexual Contact With an Animal

This bill (1) prohibits a person from engaging in “sexual contact with an animal,” as defined under the bill; (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; (3) adds aggravated cruelty to animals under § 10-606 of the Criminal Law Article to the definition of a “crime of violence” under § 14-101 of the Criminal Law Article; and (4) requires a person convicted of engaging in sexual contact with an animal to register as a Tier III sex offender.

Fiscal Summary

State Effect: General fund expenditures increase by \$103,600 in FY 2020 for one-time programming changes; general fund expenditures also increase minimally beginning in FY 2020 due to the bill’s effect on incarcerations. Potential minimal increase in general fund revenues from fines imposed in District Court cases.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	103,600	-	-	-	-
Net Effect	(\$103,600)	(-)	(-)	(-)	(-)

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

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

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.

Crimes of Violence Under § 14-101 of the Criminal Law Article

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Section 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; and (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Mandatory Sentences for Crimes of Violence

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 2018, and served a term of confinement in a correctional facility for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior separate occasions of a crime of violence, in which the second or succeeding

crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

Diminution Credits

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Specified sexual offenders are not eligible to earn diminution credits. In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects or programs, as follows:

- *For sentences imposed before October 1, 1992:* Good conduct credits are awarded at a rate of five days per month regardless of the offense.
- *For sentences imposed between October 1, 1992, and October 1, 2017:* Good conduct credits are awarded at the rate of 5 days per month if the inmate's term of confinement includes a sentence for a crime of violence or distribution of controlled dangerous substances. Good conduct credits are awarded at the rate of 10 days per month for all other inmates (except for those inmates who are statutorily prohibited from earning diminution credits). Credits for work tasks and education may be awarded at the rate of up to 5 days per month. Special project credits may be awarded at the rate of up to 10 days per month. Such inmates may not be allowed a total deduction, including good conduct credits, of more than 20 days per month.
- *For sentences imposed on October 1, 2017, or later:* Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 to 30 days per

calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence, specified sexual offenses, or specified volume or kingpin drug offenses. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increased from 10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increased for an individual who is serving a sentence in a local correctional facility (for a crime other than a crime of violence or specified volume drug offenses) from 5 to 10 days per month.

Parole and Mandatory Supervision

In general, a State inmate who is serving a sentence of six months or more is not eligible for parole until the inmate has served one-quarter of the inmate's sentence. A sentence for a violent crime does not become parole-eligible until the inmate has served one-half of the sentence. An inmate serving a term of incarceration that includes a mandatory minimum sentence that is not subject to parole by statute is not eligible for parole until the inmate has served that mandatory minimum sentence.

As previously noted, a person convicted for the fourth time of a crime of violence must be sentenced to life imprisonment without the possibility of parole. In general, a sentence for a third crime of violence or a second crime of violence committed on or after October 1, 2018, is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person serving a mandatory sentence for a crime of violence may petition for, and be granted, parole if the person (1) is at least age 60 and (2) has served at least 15 years of the sentence imposed.

Generally, a person convicted of a violent crime committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole.

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 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 \$103,649 in fiscal 2020 only for programming changes to accommodate the bill's changes. This estimate assumes that approximately 941 hours of programming-related work are required.

General fund expenditures for DPSCS increase minimally beginning in fiscal 2020 due to additional incarcerations, lengthier incarcerations, and increased payments to counties for reimbursement of inmate costs.

Data is not readily available on how many individuals convicted of animal cruelty are repeat offenders for that offense or have prior convictions for crimes classified as crimes of violence. Assuming that this population is small, the number of individuals convicted of sexual contact with an animal is minimal, and the bill's provisions do not significantly change sentencing practices for first-time offenders, then incarceration expenditures for DPSCS increase minimally as a result of the bill's expansion of aggravated animal cruelty and increased incarceration time for these offenders due to reduced eligibility for diminution credits and stricter requirements for parole eligibility. DPSCS advises that the bill has no operational or fiscal impact on its Sex Offender Registry Unit.

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 increased and/or lengthier incarcerations and implementation of the bill’s requirements. 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.

The Department of Legislative Services gleaned the following information from counties contacted regarding the potential fiscal effects of the bill:

- Frederick County advises that it does not anticipate a fiscal impact from the bill;
- the Montgomery County Police Department advises that it maintains a sex offender registry and believes that the bill (1) is applicable to few offenders and (3) does not affect its operations; and
- the Charles County Sheriff’s Office advises that, due to its already high workload in sex crimes, the additional responsibilities of investigating, prosecuting, and tracking offenders under the bill result in the need for one additional investigator, with costs ranging from \$104,736 in fiscal 2020 to \$92,236 in fiscal 2024.

Additional Information

Prior Introductions: None.

Cross File: HB 641 (Delegate Atterbeary, *et al.*) - Judiciary.

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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