

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1001
Judiciary

(Delegate Pippy)

Criminal Law – Indecent Exposure With Lascivious or Prurient Intent

This bill prohibits a person from indecently exposing the private parts of the person’s body with lascivious or prurient intent in a public place in the presence of another. Violators are guilty of a misdemeanor and subject to imprisonment for up to three years and/or a fine of up to \$1,000. A person convicted of conspiring to commit, attempting to commit, or committing a violation of this prohibited act is a “Tier I sex offender.”

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for expanded sex offender registration, as discussed below. Revenues are not materially affected.

Local Effect: The bill is not expected to materially affect local finances or operations, as discussed below.

Small Business Effect: None.

Analysis

Current Law: Indecent exposure is a common law offense that is subject to a statutory penalty. Under the English common law, indecent exposure is the willful and intentional exposure of the private parts of one’s body in a public place in the presence of an assembly. The main elements of the offense are the willful exposure, the public place in which it is performed, and the presence of persons who saw it. Violators are guilty of a misdemeanor and subject to imprisonment for up to three years and/or a fine of up to \$1,000.

In *State v. Duran*, 407 Md. 532 (2009), the Court of Appeals held that a defendant who pled guilty to *indecent exposure* based upon three separate incidents in which he exposed himself to various girls of middle school age could not be required to register as a sex offender because indecent exposure is not a statutorily enumerated crime requiring registration and is not a crime “that by its nature is a sexual offense” under applicable provisions of the Criminal Procedure Article.

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. However, for purposes of sex offender registration, a person is “convicted” when the person (1) is found guilty of a crime by a jury or judicial officer; (2) enters a plea of guilty or *nolo contendere*; (3) is granted a probation before judgment after a finding of guilt for a crime if the court, as a condition of probation, orders compliance with the requirements of the sex offender registration statutes; or (4) is found not criminally responsible for a crime.

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.

State Fiscal Effect: The bill subjects a subset of the existing indecent exposure population to a statutory offense that is punishable by the same maximum monetary penalty and incarceration penalty as indecent exposure under existing statute. Thus, the bill does not materially affect State revenues or State incarceration expenditures. However, general fund expenditures for DPSCS increase minimally for expanded sex offender registration under the bill, as discussed below. Given the requirements of the offense established under the bill, the impact of the bill on registry caseloads cannot be readily determined at this time and can only be determined with actual experience under the bill.

The Judiciary advises that in fiscal 2019, there were 709 violations of indecent exposure filed in the District Court, which resulted in 90 convictions; there were an additional 191 violations filed in the circuit courts, resulting in 57 convictions. It is unclear how many

of these individuals would meet the requirements of the offense established under the bill. As noted above, registration commences upon release from prison or release from court if the person did not receive a prison sentence.

DPSCS advises that the agency must pay local supervising authorities a processing fee of \$200 per new registrant, annually. *For illustrative purposes only*, if 70 additional individuals (approximately 50% of the number of individuals convicted of indecent exposure in fiscal 2019) are required to register under the bill each year, then general fund expenditures increase by \$14,000 each year.

DPSCS advises that depending on the impact of the bill on the number of sex offender registrants, the department may require additional personnel. DPSCS anticipates that one additional staff member may be necessary to manage the additional persons subject to supervision. As noted above, the actual impact of the bill on sex offender registration is unclear at this time. However, *for illustrative purposes only*, the costs associated with one additional DPSCS staff member is approximately \$58,000 in fiscal 2022 and increases to \$75,000 by fiscal 2026.

The Office of the Public Defender (OPD) advises that the bill increases the agency's workload and caseloads by an unpredictable amount. The Department of Legislative Services (DLS) advises that the bill is unlikely to increase the agency's workload in amount that would warrant the hiring of additional OPD staff.

Local Fiscal Effect: For the reasons stated above, the bill's monetary and incarceration penalty provisions do not materially affect local finances. As noted above, DPSCS pays local supervising authorities a processing fee of \$200 per new sex offender registrant. However, this processing fee is a reimbursement of local expenditures incurred to process new registrants. Therefore, this analysis assumes that this aspect of the bill's implementation does not have a material net effect on local finances.

The Maryland State's Attorneys' Association advises that the bill has a fiscal and/or operational effect on prosecutors, but did not provide any additional information. DLS advises that the bill is unlikely to increase the workloads of local prosecutors by an amount that would warrant the hiring of additional staff.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, Talbot, and Wicomico counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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