

Department of Legislative Services  
Maryland General Assembly  
2001 Session

FISCAL NOTE

House Bill 156 (Delegate K. Kelly)  
Judiciary

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**Crimes - Sex Offenses with Minors - Continuing Course of Conduct**

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This bill prohibits a person at least 18 years old from engaging in three or more sexual acts, vaginal intercourse, or sexual contact over a period of not less than three months with an individual under the age of 14 years. A violator committing such a sexual act or vaginal intercourse is guilty of a felony and subject to a maximum imprisonment penalty of 20 years. A violator engaging in such sexual contact is guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,000 and/or imprisonment for two years.

The bill prohibits a person who has been charged and tried under these provisions from being subsequently charged with a "related offense" involving the same victim unless the related offense occurs outside of the time period covered under the previous charge. The bill also provides that, except for cases of criminal child abuse, a sentence under these provisions must merge for sentencing purposes with equal or greater offenses. The bill's provisions are applied prospectively only.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

**Local Effect:** Minimal increase in revenues and expenditures due to the bill's penalty provisions.

**Small Business Effect:** None.

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## Analysis

**Current Law:** Under Maryland law, the following offenses may be charged as single-count felony sexual offenses against minors:

- (1) Second degree rape which includes a prohibition against vaginal intercourse by a person at least four years older than a victim under 14 years of age. Violators are subject to a maximum imprisonment penalty of 20 years.
- (2) Second degree sexual offense which includes a prohibition against sexual acts by a person at least four years older than a victim under 14 years of age. Violators are subject to a maximum imprisonment penalty of 20 years.
- (3) Third degree sexual offense which includes a prohibition against sexual contact by a person at least four years older than a victim under 14 years of age. Violators are subject to a maximum imprisonment penalty of ten years.

Under the State's prohibition against sexual child abuse (applicable when the victim is under 18 years of age) by persons with custodial responsibilities or household or family members, a violator is guilty of a felony and subject to maximum imprisonment of 15 years. If the child victim dies, the maximum penalty increases to 30 years. Sexual child abuse may be charged as a continuous course of conduct.

**Background:** This bill arises from a Court of Appeals decision (*Cooksey v. State*, 2000) in which the circuit court dismissed a four-count indictment that had charged Cooksey with second and third degree sexual offenses and sexual child abuse, on the ground that each of the counts was duplicitous.

At trial, the State alleged that, "in a continuing course of conduct," Cooksey had committed specific acts of second and third degree sexual offense over a one-year period against a child under 14 years of age, as well as child sexual abuse against that victim and another minor victim. However, the State was unable to show precisely when any of the alleged acts occurred.

Cooksey moved to have the charges dismissed, arguing, in part, that each of the four counts of his criminal indictment was "duplicitous." Even after the State amended its bill of particulars, the trial court agreed and dismissed the charges. The Court of Special Appeals reversed that judgment, finding no duplicity with respect to the counts charging sexual child abuse and further finding that dismissal of the other counts on the ground of duplicity was premature.

The Court of Appeals reversed in part and affirmed in part, holding that: (1) a count that charges a person with having committed what, in law, is a single-act sexual offense, on

several occasions over a substantial period of time, effectively charges more than one offense and is dismissible on the ground of duplicity; and (2) sexual child abuse, as charged in this case, is not necessarily a single-act offense. The case was remanded with instructions to affirm the dismissal of counts one and two of the indictment as duplicitous and to reinstate counts three and four.

**State Revenues:** General fund revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) 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.

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,700 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$288 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2002 are estimated to range from \$9 to \$52 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$17 to \$77 per inmate in fiscal 2002.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Legislative Services

**Fiscal Note History:** First Reader – January 25, 2001  
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