

**Department of Legislative Services**

Maryland General Assembly

2002 Session

**FISCAL NOTE**

**Revised**

House Bill 391

(Delegate Petzold, *et al.*)

Judiciary

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**Crimes - Sex Offenses - Person in Position of Authority**

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This bill establishes that it is a felony for a person in a position of authority to engage in a sexual act, sexual contact, or vaginal intercourse with a minor.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund expenditures due to the bill's incarceration penalty provision. Revenues would not be affected.

**Local Effect:** Potential minimal increase in revenues due to the bill's monetary penalty provision. Expenditures would not be affected.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** This bill establishes that it is a felony for a "person in a position of authority" to engage in a sexual act, sexual contact, or vaginal intercourse with a minor or to take advantage of or improperly use a minor for the person's own sexual pleasure, amusement, gratification, or interest. A violator is guilty of a felony and subject to maximum penalties of incarceration for ten years and/or a fine of \$10,000. The bill makes specified current law provisions relating to rape and sexual offenses involving venue, charging documents, spousal defense, admissibility of evidence, and jury instructions applicable to this offense.

A “person in a position of authority” is defined as a person who is at least 21 years old and who because of position or occupational status exercises supervision over a minor, including a paid or unpaid worker at an educational institution that a minor attends or attended.

**Current Law:** Some conduct prohibited under this bill involving persons over 21 years of age and minors is not now subject to criminal prosecution (see Background).

For purposes of the statutory prohibition against child abuse, “abuse” is defined as: (1) the sustaining of physical injury by a child as a result of cruel or inhumane treatment or as a result of a malicious act by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby; or (2) sexual abuse of a child, whether physical injuries are sustained or not. “Sexual abuse” means any act of sexual molestation or exploitation of a child by a parent, household or family member, or other responsible person. Sexual abuse includes incest, rape, sodomy, an unnatural or perverted sexual practice, or a sexual offense in any degree.

Child abuse is a felony and subjects violators to a maximum incarceration penalty of 15 years. If the violation results in the death of the victim, the maximum penalty is 30 years.

“Child” means any individual under the age of 18 years.

**Background:** This bill criminalizes any sexual conduct with an individual under the age of 18 years by a person in authority. Some of this conduct is currently prohibited under current law and some is not. Acts which currently are not prohibited under current law that would be prohibited under the bill are the following: (1) any sexual conduct with an individual age 16 or 17 years; and (2) sexual contact with an individual age 14 or 15 years.

In general, the age of consent to engage in sexual relations in the State is age 16. Engaging in sexual relations with an individual under the age of 16 subjects the person to various possible criminal penalties, depending on the act involved, the age of the victim, and the age of the person. For persons such as teachers who have a custodial relationship, however, it would be child abuse to have consensual sexual relations with an individual under the age of 18. This would only apply, however, where the custodial relationship exists (e.g., for teachers on school property or while engaged in a school activity.) Current law also seems clear that, in general, an employer does not have a custodial relationship with a minor employee.

In 2001 a bill that would have included “school employees” under provisions prohibiting child sexual abuse failed. It received an unfavorable report from the House Judiciary Committee.

Establishing criminal offenses as felonies generally means: (1) that such cases will be filed in the circuit courts rather than the District Court; and (2) some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions. However, it is not known whether the prospect of a jury trial might spur more plea bargains and affect actual sentencing practices for these offenses.

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill’s incarceration penalty due to more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Generally, 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 \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$300 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 2003 are estimated to range from \$10 to \$61 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 provision since these cases would be heard in the circuit courts.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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