

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 211 (Senator Ferguson, *et al.*)

Judicial Proceedings

Judiciary

Crimes - Fourth Degree Sexual Offense - Educator and Student

This bill prohibits an “educator” from engaging in a sexual act or vaginal intercourse with a minor who, at the time of the act, is a student enrolled at the school that employs the educator. Violators are guilty of the current law misdemeanor of fourth degree sexual offense and subject to maximum penalties of a fine of \$1,000 and/or imprisonment for one year.

The prohibitions under the bill do not apply in specified situations where another type of sexual offense has been committed. An educator is defined as a principal, vice principal, teacher, or school counselor at a public or private preschool, elementary school, or secondary school.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the applicable current law penalty provisions.

Local Effect: Potential minimal increase in expenditures due to the applicable incarceration penalty provision. Revenues should not be affected.

Small Business Effect: None.

Analysis

Current Law: A person is guilty of fourth degree sexual offense if the person engages: (1) in sexual contact with another person without the consent of the other person; or (2)

except as provided under certain provisions applicable to third degree sexual offense, in a sexual act or vaginal intercourse with another person who is 14 or 15 years of age and the person performing the sexual act is four or more years older than the other person. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$1,000 and/or imprisonment for one year.

When the person committing the offense is 21 or older and the victim is 14 or 15 years of age, the violation is a third degree sexual offense, which is a felony, and subjects the violator to a maximum imprisonment of ten years.

There is generally no prohibition against a person engaging in consensual sexual activity with a person who is 16 years old or older. Under existing law, a person with care, custody, or responsibility for a child under 18 is prohibited from sexually abusing the child, which is an act that involves sexual molestation or exploitation and includes incest, rape, sodomy, an unnatural or perverted sexual practice, or a sexual offense in any degree. A violator is guilty of a felony and subject to a maximum term of imprisonment of 15 years. In some instances, it is unclear if and when an educator is responsible for a child, or if a consensual act constitutes sexual abuse.

State Revenues: General fund revenues could increase minimally as a result of the applicable monetary penalty provisions since these cases would generally be heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the applicable incarceration penalty due to increased payments to counties for reimbursement of inmate costs and 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 of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. 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 a DOC facility. Currently, DOC 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.

Local Expenditures: Expenditures could increase as a result of the applicable incarceration penalty. Counties pay the full cost of incarceration 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 \$20 to \$84 per inmate in fiscal 2003.

Additional Information

Prior Introductions: A similar bill, SB 516, was introduced during the 2001 session. That bill passed the Senate, but received an unfavorable response from the House Judiciary Committee.

Cross File: None.

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

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