

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

House Bill 592  
Judiciary

(Delegate Petzold, *et al.*)

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**Criminal Law - Sexual Crimes and Reporting Requirements - 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 or to take advantage of or improperly use a minor for sexual amusement, gratification, pleasure, or interest. The bill establishes that it is a misdemeanor for a person who has reason to believe that a minor has been subjected to a sexual act, sexual contact, or vaginal intercourse by a person in a position of authority, not to report that crime to a local law enforcement agency, except under specified circumstances.

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**Fiscal Summary**

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

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

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** A "person in a position of authority" is defined as a person at least 21 years of age who exercises influence or supervision over a minor due to position or occupational status. This includes a paid or unpaid worker at an educational institution that a minor attends or attended.

A person who violates this provision is guilty of a felony and is subject to imprisonment not exceeding ten years, a fine not exceeding \$10,000, or both. A sentence imposed may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing this violation.

A person who has reason to believe that a minor has been subjected to a sexual crime by a person in position of authority, must notify a local law enforcement unit. A person is not required to report the crime in violation of the attorney-client privilege if the report would disclose matter communicated in confidence by a client to the client's attorney, other information relating to client representation, or in violation of any constitutional right to assistance of counsel.

A minister, clergyman, or priest of an established church of any denomination is not required to report the crime if the report would disclose matter in relation to any communication under the priest-penitent privilege; the communication was made to the minister, clergyman, or priest in a professional character in the course of discipline enjoined by the religious institution; and the minister, clergyman, or priest is bound to maintain the confidentiality of that communication under canon law, church doctrine, or practice.

A person who does not report the crime as required by this bill is guilty of a misdemeanor and is subject to a fine not exceeding \$1,000.

**Current Law:** There is no general prohibition against consensual sex with any person 16 or older. Correctional facility and juvenile facility employees are prohibited from engaging in vaginal intercourse or a sexual act with an inmate. The crime of fourth degree sexual offense prohibits a person from engaging in a sexual act or vaginal intercourse with a victim who is 14 or 15 years old and the defendant is at least four years older than the victim. Consensual sex with a person under the age of 14 is generally prohibited. Depending on the age of the victim and the circumstances of the event, a person unlawfully engaging in sexual acts with a minor could be subject to a charge of second degree rape or second, third, or fourth degree sexual offense. Penalties range from a fine of up to \$1,000 and/or imprisonment for up to one year (for a misdemeanor fourth degree sexual offense) to a maximum imprisonment of 20 years (for the felony of second degree rape).

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 a maximum imprisonment of 15 years. If the child victim dies, the maximum penalty increases to 30 years.

A person is prohibited from engaging in three or more acts in a continuing course of unlawful sexual conduct with a victim under 14 years of age. A violator is guilty of a felony and is subject to imprisonment not exceeding 30 years. A sentence imposed for this violation may be separate from and consecutive to or concurrent with a sentence for child abuse.

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

**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 and increased payments to counties for reimbursement of inmate costs. The number of people convicted of these proposed crimes is expected to be minimal.

Persons serving a sentence longer than 18 months 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 \$350 per month. Excluding medical care, the average variable costs total \$120 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 DOC. 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 2004 are estimated to range from \$14 to \$59 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 from cases heard in the circuit courts.

**Local Expenditures:** Expenditures could increase minimally as a result of the bill's incarceration penalty. 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 \$28 to \$84 per inmate in fiscal 2004.

## **Additional Information**

**Prior Introductions:** A similar bill, SB 342 from the 2002 session, was referred to the Judicial Proceedings Committee, but was withdrawn. SB 211 from the 2002 session, a bill that applied to educators, passed the Senate and was referred to the Judiciary Committee, where it was not reported out. SB 516 of the 2001 session, a bill similar to SB 211, passed the Senate and was referred to the Judiciary Committee, where it received an unfavorable report. Another similar bill, SB 315 of the 2000 session, passed the Senate and received an unfavorable report from the Judiciary Committee.

**Cross File:** None.

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

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