

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 185 (Chairman, Judicial Proceedings Committee)
(By Request – Departmental – Public Safety and Correctional Services)
Judicial Proceedings

Correctional Services - Sexual Acts With Inmates - Employees

This departmental bill alters a prohibition against sexual acts with inmates by applying the prohibition to any employee of the Department of Public Safety and Correctional Services (DPSCS) and any employee of a contractor providing goods or services to DPSCS. The bill also expands the conduct prohibited by including “sexual contact” under the prohibition. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$3,000 and/or imprisonment for three years.

The bill eliminates current reference to the prohibition being applicable to “a correctional employee.”

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s expanded prohibition. However, it is unclear whether this bill would change current prohibitions relating to local correctional personnel.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s expanded prohibition. However, it is unclear whether this bill would change current prohibitions relating to local correctional personnel.

Small Business Effect: DPSCS has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: A correctional employee is prohibited from engaging in vaginal intercourse or a sexual act with an inmate.

A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$3,000 and/or imprisonment for three years.

“Sexual contact” means an intentional touching of the victim’s or actor’s genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party. It includes an act: (1) in which a part of an individual’s body, except the penis, mouth, or tongue, penetrates, however slightly, into another individual’s genital opening or anus; and (2) that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party. It does not include a common expression of familial or friendly affection or an act for an accepted medical purpose.

Background: Sexual misconduct offenses involving inmates and other persons continues as a problem for the Division of Correction (DOC). Some of the other persons involved in the misconduct do not readily meet the current law definition of “correctional employee.” According to DPSCS, several other states have expanded the applicability of their prohibitions against this type of conduct.

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 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 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.

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 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: None.

Cross File: None.

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

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