

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 44
Judiciary

(Delegate Miller)

Crimes - Sexual Offense in the Fourth Degree - Causing a Person to Ingest Bodily Fluid

This bill expands the crime of sexual offense in the fourth degree to include prohibiting a person from intentionally causing another to ingest bodily fluid without consent or by force or threat of force. Bodily fluid is defined as seminal fluid, blood, urine, or feces.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to expanded application of current law penalty provisions.

Local Effect: Minimal increase in revenues and expenditures due to expanded application of current law penalty provisions.

Small Business Effect: None.

Analysis

Current Law: The crime of fourth degree sexual offense prohibits a person from engaging in: (1) nonconsensual sexual contact with another; (2) a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 4 years older than the victim; or (3) vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 4 years older than the victim. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

There is a similar prohibition involving correctional facilities whereby an inmate may not maliciously cause or attempt to cause an employee of a State correctional facility, a local correctional facility, or a sheriff's office, regardless of employment capacity, to come into contact with: (1) seminal fluid, urine, or feces; or (2) blood, if the contact with the blood is not the result of physical injury resulting from physical body contact between the inmate and the employee. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,500 and/or imprisonment for 10 years. A sentence imposed under this provision may not be suspended and must be consecutive to any sentence that the inmate was serving at the time of the crime or that had been imposed but was not yet being served at the time of sentencing.

The acts criminalized under this bill as fourth degree sexual offense could also constitute second degree assault. Under the State's prohibition against assault in the second degree, a person may not commit an assault. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,500 and/or imprisonment for 10 years.

Background: According to the database maintained by the State Commission on Criminal Sentencing Policy, between 1999 and 2002 there were 196 cases involving a charge of fourth degree sexual offense heard in the circuit courts. The average sentence meted out to persons convicted of this offense for that time period was 4.8 months.

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 applicable incarceration penalties 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 2005 are estimated to range from \$14 to \$58 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the 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 \$350 per month.

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

Local Expenditures: Expenditures could increase as a result of the bill's 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 \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: In 2003, SB 349 received an unfavorable report from the Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services (Division of Correction, Division of Parole and Probation), Department of Legislative Services

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mh/jr

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