

**Department of Legislative Services**  
Maryland General Assembly  
2005 Session

**FISCAL AND POLICY NOTE**

House Bill 775 (Chairman, Judiciary Committee)  
(By Request – Departmental – Public Safety and Correctional Services)

Judiciary

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**Criminal Law - Sexual Acts with Inmates in Correctional and Juvenile Facilities  
- Penalties**

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This departmental bill expands a prohibition against sexual acts with inmates by applying the prohibition to any individual working in a “correctional facility,” including an employee of the Department of Public Safety and Correctional Services (DPSCS) or a correctional facility and any employee of a contractor providing goods or services to DPSCS or a correctional facility. The bill also expands the prohibited conduct by including “sexual contact” under this prohibition and a similar prohibition applicable to an employee or licensee of the Department of Juvenile Services (DJS).

The bill provides that engaging in sexual contact subjects the violator to maximum misdemeanor penalties of a fine of \$3,000 and/or imprisonment for three years. Engaging in a sexual act or vaginal intercourse is made a felony and subjects the violator to a maximum imprisonment penalty of 10 years.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill’s expanded prohibition.

**Local Effect:** Potential minimal increase in revenues and expenditures due to the bill’s expanded prohibition.

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

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## Analysis

**Current Law:** A correctional employee is prohibited from engaging in vaginal intercourse or a sexual act with an inmate. An employee or licensee of DJS is prohibited from engaging in vaginal intercourse or a sexual act with an individual confined in a child care institution licensed by DJS, a juvenile detention center, and facilities necessary to diagnose, care for, train, educate, and rehabilitate properly children who need these services, including: (1) the Baltimore City Juvenile Justice Center; (2) the J. DeWeese Carter Center; (3) the Charles H. Hickey, Jr. School; (4) the Alfred D. Noyes Children's Center; (5) the Cheltenham Youth Facility; (6) the Victor Cullen Center; (7) the Thomas J. S. Waxter Children's Center; (8) the Lower Eastern Shore Children's Center; (9) the Western Maryland Children's Center; and (10) youth centers.

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.

“Correctional facility” means a facility that is operated for the purpose of detaining or confining adults who are charged with or found guilty of a crime.

**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 \$310 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 2006 are estimated to range from \$17 to \$65 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 \$33 to \$119 per inmate in fiscal 2006.

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### **Additional Information**

**Prior Introductions:** SB 185 of 2003, a similar departmental bill, received an unfavorable report from the Judicial Proceedings Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 24, 2005  
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