

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 361
Judiciary

(Charles County Delegation)

Criminal Law - Sexual Act - Definition

This bill alters the Criminal Law definition of a “sexual act” by providing that it includes an act in which an object penetrates, however slightly, into another individual’s “genital, anal, or other intimate area” rather than another individual’s “genital opening or anus.”

Fiscal Summary

State Effect: None. The bill’s provisions are not expected to measurably affect State operations or finances.

Local Effect: None. The bill’s provisions are not expected to measurably affect local operations or finances.

Small Business Effect: None.

Analysis

Current Law: The crime of first degree sexual offense prohibits a person from engaging in a sexual act with another by force, or the threat of force, without the consent of the other, and:

- employing or displaying a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;
- suffocating, strangling, disfiguring, or inflicting serious physical injury on the victim or another in the course of committing the crime;

- threatening, or placing the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;
- committing the crime while aided and abetted by another; or
- committing the crime in connection with a burglary in the first, second, or third degree.

A violator is guilty of a felony and subject to imprisonment not exceeding life. A violator is subject to imprisonment for life without the possibility of parole if: (1) the person is convicted in the same proceeding of child kidnapping and the victim was a child under the age of 16; or (2) the defendant was previously convicted of first degree rape.

Second degree sexual offense is a felony prohibiting a person from engaging in a sexual act with another: (1) by force, or the threat of force, without the consent of the other; (2) if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual; or (3) if the victim is under the age of 14 years, and the person performing the act is at least four years older than the victim. A violator is subject to maximum imprisonment for 20 years.

Third degree sexual offense is a felony and the prohibitions provide that a person may not:

- engage in sexual contact with another without the consent of the other;
- employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon; suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime; threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or commit the crime while aided and abetted by another;
- engage in sexual contact with another if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual;

- engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least four years older than the victim;
- engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or
- engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

A violator is subject to maximum imprisonment for 10 years.

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 four 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 four 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.

First and second degree sexual offenses are included among the crimes of violence that may subject a violator to mandatory minimum sentencing.

A correctional employee is prohibited from engaging in vaginal intercourse or a sexual act with an inmate. An employee or licensee of the Department of Juvenile Services (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. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$3,000 and/or imprisonment for three years.

Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator. Sexual offenders are required to register with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life, depending on the offense.

Additional Information

Prior Introductions: HB 715 of 2005, an identical bill, had a hearing before the House Judiciary Committee and was withdrawn.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2006
nas/jr

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