

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 456

(Delegate Dumais, *et al.*)

Judiciary

Judicial Proceedings

---

Correctional and Juvenile Facilities - Contact with Inmates and Juveniles -  
Penalties

---

This bill expands a prohibition against sexual acts with inmates by applying the prohibition to a “staff member” of a correctional facility or any juvenile confinement facility, including an employee, an individual working with or engaging inmates on behalf of a service agency, a volunteer participating in a sponsored program, and a vendor or contract employee with access to either type of facility. The bill also expands the prohibited conduct by including kissing and fondling under the prohibition.

---

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 local revenues and expenditures due to the bill’s expanded prohibition.

**Small Business Effect:** None.

---

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 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, 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 act” means any of the following acts, regardless of whether semen is emitted: (1) analingus; (2) cunnilingus; (3) fellatio; (4) anal intercourse, including penetration, however slight, of the anus; or (5) an act in which an object penetrates, however slightly, into another individual's genital opening or anus and that can reasonably be construed to be for sexual arousal or gratification or for the abuse of either party. The term does not include vaginal intercourse, or an act in which an object penetrates an individual's genital opening or anus 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:** The federal Prison Rape Elimination Act of 2003 (PREA) was enacted to address the problem of sexual abuse of persons in the custody of U.S. correctional agencies. The major provisions of PREA (P.L. 108-79) include:

- development of standards for detection, prevention, reduction, and punishment of prison rape;
- collection and dissemination of information on the incidence of prison rape; and
- award of grant funds to help state and local governments implement the purposes of the Act.

The Act applies to all public and private institutions that house adult or juvenile offenders and is also relevant to community-based agencies. Maryland does not currently receive any grant funds under this program, but the Department of Public Safety and Correctional Services (DPSCS) has recently applied for a grant of about \$1 million.

HB 775 of 2005, a departmental bill from DPSCS, would have expanded the prohibition against sexual acts with inmates by applying the prohibition to any individual working in a “correctional facility,” including an employee of DPSCS or a correctional facility and any employee of a contractor providing goods or services to DPSCS or a correctional facility. The bill also would have expanded the prohibited conduct by including “sexual contact” under this prohibition and a similar prohibition applicable to an employee or licensee of DJS. Under the bill, engaging in the sexual contact would have subjected 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 was to be made a felony, subjecting the violator to a maximum imprisonment penalty of 10 years. The bill received an unfavorable report from the Judiciary Committee. SB 185 of 2003, a similar departmental bill, received an unfavorable report from the Judicial Proceedings Committee.

**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 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 \$1,974 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 \$341 per month. Excluding medical care, the average variable costs total \$134 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 2007 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 2007.

## **Additional Information**

**Prior Introductions:** HB 775 of 2005 and SB 185 of 2003, similar departmental bills, received unfavorable reports from the Judiciary Committee and the Judicial Proceedings Committee, respectively.

**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 13, 2006  
ncs/jr

---

Analysis by: Guy G. Cherry

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510