

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Revised

House Bill 1207

(Delegate Dumais, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Sexual Contact with Inmates in Correctional and Juvenile Facilities

This bill expands a prohibition against sexual acts with inmates by applying the prohibition to any individual working in a correctional facility, whether on a paid or volunteer basis, 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 expands the prohibited conduct by including sexual contact under this prohibition as it applies to individuals confined in adult and juvenile facilities. The bill also expands the application of the prohibition against sexual activity with individuals confined in juvenile facilities to any person.

The bill adds a violation of the prohibition against engaging in sexual activity with inmates in correctional and juvenile facilities as a cause for automatic termination of employment from the State Personnel Management System.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's expanded prohibition. The bill's impact on automatic terminations cannot be readily predicted, but is not expected to be significant.

Local Effect: Potential minimal increase in 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 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.

“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.

“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.

The following actions are causes for automatic termination of employment:

- intentional conduct, without justification, that seriously injures another person, causes substantial damage to property, or seriously threatens the safety of the workplace;
- theft of State property of a value greater than \$300;
- illegal sale, use, or possession of drugs on the job;
- conviction of a controlled dangerous substance offense by an employee in a designated sensitive classification;
- conviction of a felony;
- accepting for personal use any fee, gift, or other valuable thing in connection with or during the course of State employment if given to the employee by any person with the hope or expectation of receiving a favor or better treatment than that accorded to other persons;
- violation of the Fair Election Practices Act, or using, threatening, or attempting to use political influence or the influence of any State employee or officer in securing promotion, transfer, leave of absence, or increased pay; and
- wantonly careless conduct or unwarrantable excessive force in the treatment or care of an individual who is a client, patient, prisoner, or any other individual who is in the care or custody of the State.

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 \$2,300 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 \$465 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 2008 are estimated to range from \$21 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 \$42 to \$120 per inmate in fiscal 2008.

Additional Information

Prior Introductions: HB 775 of 2005, a similar departmental bill, received an unfavorable report from the House Judiciary Committee. SB 185 of 2003, a similar departmental bill, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

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

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