

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1090
Judiciary

(Delegate Glenn, *et al.*)

Criminal Law - Third Degree Sexual Offense - Person in Position of Authority

This bill specifies that “a person in a position of authority,” who is at least six years older than the victim, may not engage in sexual contact, a sexual act, or vaginal intercourse with a minor: (1) while the minor is enrolled or participating in the institution, program, or activity at which the person in authority works; or (2) who was previously enrolled or participating in the institution, program, or activity at which the person in the position of authority was working at the same time. A violator is guilty of the felony of third degree sexual offense and subject to a maximum penalty of 10 years imprisonment.

The bill repeals current law prohibitions against a person in a position of authority committing certain sexual acts against minors under the prohibitions against the misdemeanor of fourth degree sexual offense. The bill also repeals the three-year statute of limitations for a prosecution of sexual abuse of a minor student by a person in a position of authority, as a fourth degree sexual offense.

Fiscal Summary

State Effect: Potential minimal increase in State correctional costs due to more persons being sentenced to a State correctional facility rather than a local facility. Although the bill effectively expands, and increases the severity of, existing prohibitions relating to persons in positions of authority, it is not expected to have a significant impact on State correctional costs. General fund revenues could decrease minimally as a result of some cases shifting from the District Court to the circuit courts.

Local Effect: Potential minimal decrease in local correctional costs due to more persons being sentenced to a State correctional facility rather than a local facility.

Small Business Effect: None.

Analysis

Current Law: There is no general prohibition against consensual sex with any person age 16 or older. However, depending on the age of the victim and the circumstances of the event, a person unlawfully engaging in sexual acts with a minor could be subject to a charge of second degree rape or second, third, or fourth degree sexual offense. Penalties range from a fine of up to \$1,000 and/or imprisonment for up to 1 year (for a misdemeanor fourth degree sexual offense) to a maximum imprisonment of 20 years (for the felony of second degree rape).

Under the State's prohibition against third degree sexual offense, a person may not:

- (a) engage in sexual contact with another without the consent of the other; and (b) 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 4 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 guilty of the felony of third degree sexual offense and subject to imprisonment for a maximum of 10 years.

The crime of fourth degree sexual offense prohibits a person from engaging in a sexual act or vaginal intercourse with a victim who is 14 or 15 years old and the defendant is at least four years older than the victim. Chapter 317 of 2006 provides that, with specified

exceptions, a “person in a position of authority” may not engage in a sexual act, sexual contact, or vaginal intercourse with a minor who, at the time of the act, contact, or intercourse, is a student enrolled at a school where the person is employed. A violator is guilty of the misdemeanor of fourth degree sexual offense and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

Under the State’s prohibition against sexual child abuse (applicable when the victim is under 18 years of age) by persons with custodial responsibilities or household or family members, a violator is guilty of a felony and subject to a maximum imprisonment of 25 years.

A person is prohibited from engaging in three or more acts in a continuing course of unlawful sexual conduct with a victim under age 14. A violator is guilty of a felony and is subject to imprisonment not exceeding 30 years. A sentence imposed for this violation may be separate from and consecutive to or concurrent with a sentence for child abuse.

This bill provides a new and expanded definition of “a person in a position of authority.”

Background: In fiscal 2008, the Division of Correction (DOC) had a total intake of 64 persons convicted of third degree sexual offense and 12 persons convicted of fourth degree sexual offense; the Division of Parole and Probation had a total intake of 190 persons convicted of third degree sexual offense and 172 persons convicted of fourth degree sexual offense.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court; and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

State Expenditures: General fund expenditures may 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 these proposed crimes 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 \$2,600 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 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 2010 are estimated to range from \$23 to \$71 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 Expenditures: Expenditures may decrease 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 \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: None.

Cross File: SB 681 (Senator Muse, *et al.*) - Judicial Proceedings.

Information Source(s): Allegany County, Harford County, Montgomery County, Talbot County, Wicomico County, Baltimore City, City of Annapolis, City of Bowie, Town of Elkton, City of Takoma Park, Town of Thurmont, Department of Human Resources, Maryland State Department of Education, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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