

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1283
Judiciary

(Delegate Valderrama, *et al.*)

Criminal Law - Sexual Crimes - Definitions

This bill alters the definition of the terms “sexual act” and “sexual contact” under provisions prohibiting sexual crimes. Specifically, the bill adds a “part of an individual’s body” to specified considerations relating to a sexual act and eliminates from the definition of sexual contact an act 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.

Fiscal Summary

State Effect: Minimal. Although the bill’s changes are not expected to materially affect State operations or finances, they may affect sexual offense charges which may be brought and affect pleadings, convictions, and sentencing in such cases. Any such effect cannot be reliably predicted or quantified, but is assumed to occur in only a small number of cases.

Local Effect: Minimal.

Small Business Effect: None.

Analysis

Current Law: “Sexual act” means any of the following acts, regardless of whether semen is emitted: (1) anilingus; (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.

“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.

State Revenues: General fund revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures may 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 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 Revenues: Revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures may 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 \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Guy G. Cherry

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