

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1310
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: Potential minimal increase in revenues and expenditures due to application of penalty provisions as the bill’s changes may affect sexual offense charges which may be brought and affect pleadings, convictions, and sentencing in such cases. It is assumed that the bill will affect a small number of cases.

Local Effect: Minimal increase in revenues and expenditures due to a broader definition of activities that are considered sexual crimes.

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: Revenues may increase minimally as a result of the expanded application of monetary penalty provisions to more cases involving sexual offenses 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 \$2,750 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 \$409 per month. Excluding all medical care, the average variable costs total \$182 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced 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 expanded application of monetary penalty provisions, to more cases involving sexual offenses 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 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: HB 1283 of 2009 received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: SB 667 (Senator Forehand, *et al.*) - Judicial Proceedings.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2010
ncs/kdm

Analysis by: Amy A. Devadas

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