

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 335

(Senator Simonaire, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - "Student Protection Act of 2010"

This bill increases the maximum incarceration penalty for a fourth-degree sexual offense committed by a person in a position of authority against a minor student from one year to three years. The bill also increases the maximum incarceration penalty for a person in a position of authority who has previously been convicted of first or second degree rape, a sexual offense in the first through fourth degrees, attempted first or second degree rape or sexual offense, continuing course of conduct with a child, or sexual abuse of a minor ("subsequent offender"). Under the bill, the maximum incarceration penalty for such a subsequent offender increases from three years to five years.

If the State decides to proceed against a defendant as a subsequent offender, the State must comply with the procedures for the indictment and trial of a subsequent offender under the Maryland Rules.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's incarceration penalties. Revenues are not affected.

Local Effect: Potential minimal increase in local expenditures due to the bill's incarceration penalties. Revenues are not affected.

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 one year (for a misdemeanor fourth degree sexual offense) to a maximum imprisonment of 20 years (for the felony of second degree rape). Under the Criminal Law Article, “minor” means an individual younger than the age of 18.

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. 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. “Person of authority” is defined as a person who is: (1) at least 21 years old; (2) employed as a full-time permanent employee at a preschool, elementary school, or secondary school; and (3) exercises supervision over a minor who attends the school as a result of the person’s position or occupation. In addition to teachers, the definition includes principals, vice principals, and counselors.

A violator is guilty of the misdemeanor of fourth degree sexual offense and is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000. If the defendant is a subsequent offender, he/she is subject to maximum penalties of three years imprisonment and/or a \$1,000 fine. If the State decides to proceed against a defendant as a subsequent offender, the State must comply with the procedures for the indictment and trial of a subsequent offender under the Maryland Rules.

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalties due to people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted and subject to the bill’s increased penalties 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 DOC 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 Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. 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 DOC 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: None.

Cross File: None.

Information Source(s): Charles, Frederick, Montgomery, and Somerset counties; Commission on Criminal Sentencing Policy; Maryland State Department of Education; Judiciary (Administrative Office of the Courts); 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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