

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 196

(Senator Garagiola, *et al.*)

Judicial Proceedings

Judiciary

Sexual Offense in the Fourth Degree - Statute of Limitations - Increase

This bill increases the statute of limitations for a fourth degree sexual offense involving nonconsensual sexual contact from one year to three years, if the victim was a minor at the time of the offense. The bill retains the three year statute of limitations currently applicable to a fourth degree sexual offense committed by a person in a position of authority.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: The crime of fourth degree sexual offense prohibits a person from engaging in nonconsensual sexual contact with another person. It also 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. However, if the person performing the act is at least 21 years old, he/she may be charged with a third degree sexual offense. 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. However, if the defendant has a prior conviction for specified sexual offenses not arising from the same incident, the defendant is subject to maximum penalties of three years imprisonment and/or a \$1,000 fine.

In general, a prosecution for a misdemeanor has a one year statute of limitations. However, a prosecution for a third degree sexual offense involving a “person in a position of authority” has a three year statute of limitations.

Background: According to the State Commission on Criminal Sentencing Policy, there were 360 convictions in the State’s circuit courts for fourth degree sexual offense in fiscal 2010.

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

State Expenditures: General fund expenditures 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 as a result of this bill 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 \$2,920 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 about \$390 per month. Excluding all medical care, the average variable costs total \$170 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 increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures 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 have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: HB 724 (Delegate A. Miller, *et al.*) - Judiciary.

Information Source(s): Baltimore, Carroll, Cecil, Harford, and St. Mary's counties; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; State's Attorneys' Association; Department of Legislative Services

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