

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 1128  
Judiciary

(Delegate Valderrama, *et al.*)

Judicial Proceedings

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Criminal Law - Sexual Crimes - Definitions

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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.

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Fiscal Summary

**State Effect:** Minimal decrease in general fund revenues and minimal increase in general fund expenditures due to the shifting of cases from the District Court to the circuit courts and enhanced incarceration penalties resulting from the bill’s expansion of the definition of “sexual act” to include behavior currently included in the definition of “sexual contact.”

**Local Effect:** Minimal increase in local revenues and minimal decrease in local expenditures from enhanced penalties imposed in cases affected by the bill’s expansion of the definition of “sexual act” to include activities currently defined as “sexual contact.”

**Small Business Effect:** None.

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Analysis

**Current Law:** In general, offenses involving a “sexual act” carry more severe penalties than offenses involving “sexual contact.”

“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 decrease minimally due to the shifting of cases from the District Court to the circuit courts as a result of the bill’s expanded definition of “sexual act” to include activity currently under the definition of “sexual contact.”

**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, longer commitments to DOC facilities, and increased payments to counties for reimbursement of inmate costs.

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 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 Revenues:** Revenues may increase minimally from circuit court monetary penalties as a result of the bill's shifting of cases from the District Court to the circuit courts.

**Local Expenditures:** Expenditures decrease minimally if the bill's expanded definition of "sexual act" results in defendants being convicted of more serious crimes with incarceration penalties that must be served in DOC facilities or if the incarceration penalties imposed are eligible for State reimbursement.

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.

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### Additional Information

**Prior Introductions:** HB 1310 of 2010 received a hearing in the House Judiciary Committee, but no further action was taken. SB 667, its cross file, passed the Senate and received a hearing in the House Judiciary Committee, but no further action was taken. HB 1283 of 2009 received a hearing in the House Judiciary Committee, but no further action was taken.

**Cross File:** SB 204 (Senator Forehand, *et al.*) - Judicial Proceedings.

**Information Source(s):** Commission on Criminal Sentencing Policy, 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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