

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

House Bill 11  
Judiciary

(Delegate Glenn)

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**Criminal Law - Third Degree Sexual Offense - Person in Position of Authority**

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This bill repeals existing statutory prohibitions against a person in a position of authority committing certain sexual acts against minors, currently classified as a misdemeanor fourth degree sexual offense, and creates a new felony third degree sexual offense for similar acts. The bill includes a new and expanded definition of “person of authority” and specifies that “a person in a position of authority,” who is at least six years older than the victim, may not engage in sexual contact, a sexual act, or vaginal intercourse with a minor: (1) while the minor is enrolled or participating in the institution, program, or activity at which the person in authority works; or (2) who was previously enrolled or participating in the institution, program, or activity at which the person in the position of authority was working at the same time. A violator is guilty of the felony of third degree sexual offense and subject to a maximum penalty of 10 years imprisonment.

The bill also repeals the three-year statute of limitations for a prosecution of a fourth degree sexual offense involving sexual abuse of a minor student by a person in a position of authority.

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**Fiscal Summary**

**State Effect:** Minimal increase in State correctional costs due to more persons being sentenced to a State correctional facility rather than a local facility. Although the bill effectively expands, and increases the severity of, existing prohibitions relating to persons in positions of authority, it is not expected to have a significant impact on State correctional costs. General fund revenues could decrease minimally as a result of some cases shifting from the District Court to the circuit courts.

**Local Effect:** Potential minimal decrease in local correctional costs due to more persons being sentenced to a State correctional facility rather than a local facility.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The bill provides a new and expanded definition of “a person in a position of authority.” Under the bill, a “person in a position of authority” is a person who is at least 21 years old and works at a: (1) public or private preschool, elementary school, or secondary school; (2) child care facility, including an after-school program; (3) commercial or nonprofit instructional program for music, dance, art, tutoring, academic enrichment, martial arts, or a program with a similar purpose; (4) sports or recreational facility or program; (5) day or overnight camp; (6) religious institution; or (7) unit of local, State, or federal government. A “person in a position of authority” includes an individual who is (1) a volunteer, intern, or paid employee of an institution, program, or activity listed above and as such, supervises participating or enrolled minors; or (2) supervises one or more persons in a position of authority within the institution, program, or activity.

**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 1 year (for a misdemeanor fourth degree sexual offense) to a maximum imprisonment of 20 years (for the felony of second degree rape).

Under the State’s prohibition against third degree sexual offense, a person may not:

- (a) engage in sexual contact with another without the consent of the other; and (b) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon; suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime; threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or commit the crime while aided and abetted by another;
- engage in sexual contact with another if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know of the victim’s condition;

- engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim;
- engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or
- engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

A violator is guilty of the felony of third degree sexual offense and subject to imprisonment for a maximum of 10 years.

The crime of fourth degree sexual offense prohibits a person from (1) engaging in sexual contact with another without the consent of the other; or (2) 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. Chapter 317 of 2006 expanded the offense by specifying that, with certain 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. Fourth degree sexual offense is a misdemeanor and carries maximum penalties of imprisonment for one year and/or a fine of \$1,000.

A “person of authority” is a person who: (1) is at least 21 years old; (2) is employed as a full-time permanent employee by a public or private preschool, elementary school, or secondary school; and (3) because of the person’s position or occupation, exercises supervision over a minor who attends the school. A “person of authority” includes a principal, vice principal, teacher, or school counselor at a public or private preschool, elementary school, or secondary school.

Under the State’s prohibition against sexual child abuse (applicable when the victim is under 18 years of age) by persons with custodial responsibilities or household or family members, a violator is guilty of a felony and subject to a maximum imprisonment of 25 years.

A person is prohibited from engaging in three or more acts in a continuing course of unlawful sexual conduct with a victim under age 14. A violator is guilty of a felony and is subject to imprisonment for a maximum of 30 years. A sentence imposed for this violation may be separate from and consecutive to or concurrent with a sentence for child sexual abuse.

**Background:** According to the State Commission on Criminal Sentencing Policy, there were 188 convictions for third degree sexual offense in the circuit courts during  
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fiscal 2011. There were 468 convictions in the District Court for fourth degree sexual offense during fiscal 2011.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court; and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

**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 of this proposed crime 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 \$2,900 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 \$385 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 Expenditures:** Local expenditures decrease 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. Per diem operating costs of local

detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** HB 1090 of 2009 received an unfavorable report from the House Judiciary Committee. SB 681 of 2009, the cross filed bill, received an unfavorable report from the Senate Judicial Proceedings Committee.

**Cross File:** None.

**Information Source(s):** Baltimore City; City of Havre de Grace; Kent, Montgomery, Washington, and Worcester counties; Maryland State Department of Education; Department of Juvenile Services; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; State's Attorneys' Association; State Commission on Criminal Sentencing Policy; Maryland Higher Education Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - January 30, 2012  
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