

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 893

(Senator Jones-Rodwell)

Judicial Proceedings

Coaches - Sexual Contact with Minors - Prohibition

This bill prohibits a “coach” from engaging in a sexual act, sexual contact, or vaginal intercourse with a minor, while the minor is participating on a sports team, in an extracurricular activity, or in a recreational activity that the coach advises. Violators are guilty of misdemeanor sexual offense in the fourth degree. The bill retains the current statutory maximum penalties of one year imprisonment and/or a \$1,000 fine for a first-time offender and three years imprisonment and/or a \$1,000 fine for specified repeat offenders. A prosecution for the offense created by the bill must be instituted within three years after the offense was committed.

A “coach” is a person who (1) is at least 18 years old; (2) is employed or volunteers at a recreation center or public or private school, college, or university; and (3) because of his/her position, advises a minor who participates on a sports team, in an extracurricular activity, or in a recreational activity.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in District Court cases. Potential minimal increase in general fund expenditures due to the bill’s incarceration penalties. The extent of the fiscal impact will depend on how many of the acts prohibited under the bill are not currently being prosecuted under other provisions of law.

Local Effect: Potential minimal increase in local revenues from fines imposed in circuit court cases. Potential minimal increase in local expenditures due to the bill’s incarceration penalties.

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

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. There is a three-year statute of limitations for prosecution of a fourth degree sexual offense involving a person in a position of authority.

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 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, and the person performing the sexual contact is at least four 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.

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

In 2011, two rock climbing coaches at a private rock climbing center in Columbia entered guilty pleas to various sexual offenses involving a 14-year-old female student at the center.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, and Worcester counties; Baltimore City Community College; Commission on Criminal Sentencing Policy; Maryland State Department of Education; Maryland Higher Education Commission; Maryland Independent College and University Association; Judiciary (Administrative Office of the Courts); Morgan State University; University System of Maryland; *gazette.net*; *Columbia Patch*; *Ellicott City Patch*; Department of Legislative Services

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