

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 799

(Chair, Judicial Proceedings Committee)(By Request -  
Sexual Offender Advisory Board)

Judicial Proceedings

Judiciary

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**Criminal Law - Sex Offenders - Statutory Sex Offense**

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This bill creates a new misdemeanor of statutory sexual offense, alters the age difference required between a victim and an offender for the crime of third degree sexual offense, adds to the circumstances that would constitute a fourth degree sexual offense, and requires the Department of Public Safety and Correctional Services (DPSCS) to maintain a centralized nonpublic registry database for persons convicted of statutory sexual offense to be used only for law enforcement purposes.

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**Fiscal Summary**

**State Effect:** The creation of the new misdemeanor offense will likely decrease State incarceration costs due to fewer people being committed to Division of Correction (DOC) facilities and more people being committed to local detention facilities. Minimal increase in fine revenues as a result in a shift of some third and fourth degree sexual offenses from the circuit courts to the District Court and convictions under the new misdemeanor offense. The centralized nonpublic registry database can be maintained with the existing budgeted resources of DPSCS.

**Local Effect:** Minimal increase in local incarceration costs due to more people being committed to local detention facilities. Minimal decrease in fine revenues as a result of a shift of some third and fourth degree sexual offenses from the circuit courts to the District Court.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** Specifically, the bill provides that the misdemeanor of statutory sexual offense occurs if a person engages in a sexual act or vaginal intercourse with another and (1) the victim is 14 or 15 years old; (2) the person performing the sexual act is at least 4 years older than the victim but less than 10 years older than the victim; and (3) the person performing the sexual act has not been previously convicted of a sexual offense, sexual abuse of a minor, child pornography, possession of a visual representation of a child under 16 engaged in certain sexual acts, or human trafficking involving a minor victim, or a crime committed in another jurisdiction, federal or military court, or foreign country that, if committed in this state, would constitute one of these crimes. A violator is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

The bill changes some current provisions relating to third degree sexual offense, and adds new prohibitions, under that offense by specifying that a person may not:

- engage in a sexual act or vaginal intercourse with another if the victim is 14 or 15 years old and the person performing the sexual act is at least 10 years older than the victim; or
- engage in a sexual act or vaginal intercourse with another if the victim is 14 or 15 years old and the person performing the sexual act is at least 4 years older than the victim but less than 10 years older than the victim, and has been previously convicted of a sexual offense or previously convicted of sexual abuse of a minor, child pornography, possession of a visual representation of a child under 16 engaged in certain sexual acts, or human trafficking involving a minor victim.

Prohibitions against fourth degree sexual offense are also altered. Under the new provisions, the age-related fourth degree prohibitions against sexual acts and vaginal intercourse are also reclassified as a misdemeanor of statutory sexual offense. A violator is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

Under provisions relating to the State's sex offender registry, the bill requires a person convicted of statutory sexual offense be included as a "nonpublic registrant" of the sex offender registry. The nonpublic registrant must register as a Tier I sex offender. Such a registration must be accessible only by law enforcement personnel for law enforcement purposes.

**Current Law:** Third degree sexual offense comprises various prohibitions including a sexual act with a victim who is 14 or 15 years old by a person at least 21 years old, and vaginal intercourse with a victim who is 14 or 15 years old by a person at least 21 years old. A violator is guilty of a felony and subject to a maximum imprisonment for 10 years.

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, a third degree sexual offense may be charged. 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 a misdemeanor 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 2010, Maryland’s sex offender registration laws were substantially revised in an effort to comply with federal law and increase penalties for certain sex offenses committed against minors. A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life.

A nonpublic listing of juvenile sex offenders is required to be maintained by DPSCS, which is accessible only by law enforcement personnel for law enforcement purposes. A juvenile registrant must appear in person at a location designated by the Department of Juvenile Services (DJS) every three months to update and verify the information included in the registry and to allow DJS to take a digital image of the juvenile registrant.

**Background:** According to the Sexual Offender Advisory Board, across the states, the age of consent ranges from 14 to 18 years, with the median age of consent being 16. In states where the age of consent is 18 years old, the statutes tend to address “statutory rape” situations separately from other sexual offenses. In Maryland, the age of consent is 16 years old for vaginal intercourse and 14 years old for sexual contact.

The board also reports that Maryland’s definitions of sexually abusive behavior are substantially similar to federal law. All states allow for some difference between “penetration” of the victim and “contact” with the victim. All states also make allowances for violent or forcible aggravating factors, though differing on the specific terminology used in statute.

According to the board, the vast majority of states have some age-based or age-gap provision built into sex crime statutes. States that have “risk-based” sex offender

registries, as opposed to “offense-based” registries, tend to have fewer age-based statutory provisions. The age gaps between victim and offender in age-based offenses range between 4 years and 10 years. The board also reports that many states are currently considering legislative changes that would increase the age-gap between victim and offender.

This bill was recommended by the board as a part of its 2011 Report to the Governor and the Maryland General Assembly. The board believes that creation of a new statutory sex offense statute would prevent sex offenses from being routinely pled to second degree assaults or from resulting in probation before judgment dispositions. The board also believes that this bill would also help to solve the reporting issues that occur when sex offenses are pled to non-sex offenses. The board does not believe that this bill puts Maryland at risk to lose its “substantially compliant” status under the federal Sex Offender Registration and Notification Act.

According to the Maryland Criminal Sentencing Commission’s guidelines worksheets, in fiscal 2011, there were 191 convictions for third degree sex offenses and 65 convictions for fourth degree sex offenses. The age of the victims is not tracked in those data.

**State Revenues:** General fund revenues increase minimally as a result in a shift of some third and fourth degree sexual offenses from the circuit courts to the District Court and convictions under the new misdemeanor of statutory sexual offense.

**State Expenditures:** DPSCS advises that the inclusion of new, nonpublic registrants in the State’s sex offender registry can be handled with existing budgeted resources.

The creation of the new misdemeanor of statutory sexual offense would likely decrease State incarceration costs due to fewer people being committed to DOC facilities and more people being committed to local detention facilities. The number of people convicted of this proposed crime is expected to be fewer than 250 annually, which represents the total number of all existing third and fourth degree sexual offense convictions.

Any increase in caseloads for the Division of Parole and Probation (DPP) as a result of the bill will be handled with existing budgeted resources. If, over time, the bill’s provisions result in significantly more persons being under supervision by DPP at a much earlier date so that current resources are insufficient, DPP may have to hire additional agents. The current annual cost of a new parole or probation agent (including salary, fringes, and operating expenses) is about \$60,000. The current annual cost of supervising one offender is about \$1,600.

Although the Office of the Public Defender (OPD) believes that this bill will result in increased caseloads for OPD, the office did not quantify such a prospect. Legislative Services assumes that the bill's provisions can be handled with the existing budgeted resources of OPD since the bill is not expected to affect the number of third or fourth degree offenses committed annually.

**Local Revenues:** Revenues decrease minimally as a result in a shift of some third and fourth degree sexual offenses from the circuit courts to the District Court, thus fine revenues from some existing offenses will be paid to the State rather than to local governments.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalty for statutory sexual offense. The number of people convicted of this proposed crime is expected to be fewer than 250 annually. This estimate represents the total number of all existing third and fourth degree sexual offense convictions.

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 approximately \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 776 (Chair, Judiciary Committee) (By Request - Sexual Offender Advisory Board) - Judiciary.

**Information Source(s):** Garrett, Howard, and Montgomery counties; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts and Maryland District Court); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2012  
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