

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 781

(Delegate Clippinger, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Person in a Position of Authority - Sexual Offenses With a Minor

This bill (1) repeals provisions under the fourth degree sexual offense statute involving a “person in a position of authority”; (2) redefines “person in a position of authority”; and (3) creates a new criminal offense prohibiting specified sexual acts between a minor and a person in a position of authority. Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$1,000 maximum fine. The offense carries a three-year statute of limitations.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from fines collected in District Court cases. Minimal increase in general fund expenditures due to the bill’s incarceration penalty.

Local Effect: Minimal increase in local revenues from fines collected in circuit court cases. Minimal increase in local expenditures due to the bill’s incarceration penalty.

Small Business Effect: None.

Analysis

Bill Summary: A “person in a position of authority” is a person who (1) is at least 21 years old; (2) works at a public or private preschool, elementary school, or secondary school or a sports or recreational facility or program; and (3) exercises supervision over one or more minors enrolled or participating in the institution, program, or activity. “Person in a position of authority” includes an individual who is a volunteer with, under contract with, or a paid employee of a county board of education or an institution, a program, or an activity described above.

A person in a position of authority may not engage in sexual contact, a sexual act, or vaginal intercourse with a minor who is enrolled or participating in the institution, program, or activity at which the person in a position of authority works.

Unless specifically charged by the State, a violation of this prohibition may not be considered a lesser-included offense of another crime, and a prosecution for a violation of this prohibition does not preclude a prosecution for sexual abuse of a minor.

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 age 14 or 15 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 or sexual contact with a minor without the consent of the minor.

A “person of authority” is a person who (1) is at least age 21; (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.

Among other things, the State’s third degree sexual offense statute prohibits a person from:

- engaging in sexual contact with another if the victim is younger than 14 and the person performing the sexual contact is at least four years older than the victim; or
- engaging in a sexual act or 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.

Third degree sexual offense is a felony punishable by imprisonment for up to 10 years.

Under the State's prohibition against sexual child abuse (applicable when the victim is younger than 18) by persons with custodial responsibilities or household or family members, a violator is guilty of a felony and subject to a maximum imprisonment term 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 younger than 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 Maryland State Commission on Criminal Sentencing Policy, there were 85 convictions for fourth degree sexual offense in the circuit courts during fiscal 2012 and 93 convictions in fiscal 2013. It is unclear how many of these convictions involved a "person in a position of authority."

In March 2012, fourth degree sex offense charges were dropped against a Montgomery County teacher and coach accused of having sex with a 16-year-old student he coached on a high school cross country team. Prosecutors commented that despite the fact that the accused was a full-time employee of the county's school system, the charges had to be dropped because he was only a *part-time* employee of the school at which he coached the victim.

State Revenues: General fund revenues from fines imposed in District Court cases increase minimally to the extent that the bill's expanded definition of a "person in a position of authority" results in more fines being collected in District Court cases.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal. The bill's expansion of the definition of a "person in a position of authority" increases the number of individuals subject to prosecution.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally to the extent that more fines are imposed in circuit court cases.

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. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 460 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Department of Public Safety and Correctional Services; Office of the Public Defender; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Natural Resources; Maryland State Commission on Criminal Sentencing Policy; WJLA; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2014
mc/kdm Revised - House Third Reader - March 14, 2014

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510