

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 1052
Judiciary

(Delegate Morales)

Crimes - Rape and Sexual Offenses - Consent

This bill defines “consent” under the laws governing sexual crimes under Title 3, Subtitle 3 of the Criminal Law Article to mean a clear, unambiguous, knowing, informed, and voluntary agreement to engage in vaginal intercourse, a sexual act, or sexual contact.

Consent may not be imputed from silence, inaction, or previous instances in which the consent was obtained. It is the responsibility of an individual who engages in vaginal intercourse, a sexual act, or sexual contact with another person to obtain affirmative consent from that individual for the activity before engaging in the activity. Consent may be withdrawn at any time for any reason, at which time an individual engaged in vaginal intercourse, a sexual act, or sexual contact must cease the activity.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from fines imposed in the District Court. Minimal increase in general fund expenditures for incarcerations in State correctional facilities.

Local Effect: Minimal increase in local expenditures for incarcerations in local detention facilities. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The responsibility to obtain consent affirmatively applies to an individual who engages in vaginal intercourse, a sexual act, or sexual contact even if that individual is under the influence of a drug or another intoxicating substance.

An individual is incapable of providing consent to engage in vaginal intercourse, a sexual act, or sexual contact if the individual is (1) a mentally defective individual; (2) a mentally incapacitated individual; (3) a physically helpless individual; or (4) otherwise incapable, permanently or temporarily, of affirmatively communicating the consent of the individual to the vaginal intercourse, a sexual act, or sexual contact.

Current Law: Title 3, Subtitle 3 of the Criminal Law Article contains statutory provisions pertaining to several sexual crimes, ranging from rape in the first degree to sexual offense in the fourth degree. “Consent” is not defined in those provisions.

State law defines a “mentally defective individual” to mean an individual who suffers a developmental disability or mental disorder, which either temporarily or permanently renders the individual incapable of apprising the nature of the individual’s conduct, resisting vaginal intercourse, a sexual act, or sexual contact, or communicating unwillingness to engage in such acts.

A “mentally incapacitated individual” is an individual who, because of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed on the individual without the individual’s consent or awareness, is substantially incapable of apprising the nature of the individual’s conduct or resisting vaginal intercourse, a sexual act, or sexual contact.

A “physically helpless individual” is an individual who is unconscious or does not consent to vaginal intercourse, a sexual act, or sexual contact, and is physically unable to resist or communicate the unwillingness to engage in such acts.

Background: In September 2014, California enacted “yes means yes” legislation applicable to all colleges and universities in California that accept state financial aid. Under the legislation, consent requires “an affirmative, unambiguous and conscious decision” by each party to engage in sexual activity.

Also in September 2014, President Obama launched a national campaign aimed at combatting sexual assault on college campuses.

State Revenues: General fund revenues increase minimally from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally to the extent that the bill results in more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 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 State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had 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 State 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 State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures increase minimally to the extent that more people are incarcerated in local detention facilities as a result of the bill. 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 State 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State's Attorneys' Association, cnn.com, *USA TODAY*, Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2015
md/kdm

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