

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 43

(Senators Elfreth and Hettleman)

Judicial Proceedings

Judiciary

Criminal Law - Law Enforcement Officers - Prohibition on Sexual Activity

This bill expands the list of individuals a law enforcement officer is statutorily prohibited from engaging in sexual contact, vaginal intercourse, or a sexual act with to include (1) a person who is a victim, witness, or suspect in an open investigation that the law enforcement officer is conducting, supervising, or assisting with if the law enforcement officer knew or should have known that the person is a victim, witness, or suspect in the investigation and (2) a person requesting assistance from or responding to the law enforcement officer in the course of the law enforcement officer's official duties. These additional prohibitions do not apply if the officer had a prior existing legal sexual relationship with the individual *and* did not act under the color or pretense of office or under color of official right when seeking consent to the vaginal intercourse, sexual act, or sexual contact.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's expanded application of an existing penalty provision.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's expanded application of an existing penalty provision.

Small Business Effect: None.

Analysis

Current Law: Pursuant to Chapter 500 of 2018, a law enforcement officer may not engage in sexual contact, vaginal intercourse, or a sexual act with a person in the custody of the

law enforcement officer. Violators are guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a \$3,000 maximum fine. A similar prohibition and the same penalty apply to correctional officers/correctional employees and inmates. A sentence imposed for a violation of these prohibitions may be separate from and consecutive to or concurrent with a sentence imposed for an offense under Title 3, Subtitle 3 of the Criminal Law Article, as specified. Title 3, Subtitle 3 of the Criminal Law Article contains additional statutory provisions pertaining to several sexual crimes, ranging from rape in the first degree to sexual offense in the fourth degree.

Additional Information

Prior Introductions: HB 764 of 2020, a similar bill, passed the House with amendments and was scheduled for a hearing in the Senate Judicial Proceedings Committee, but the hearing was canceled.

Designated Cross File: HB 411 (Delegate Williams, *et al.*) - Judiciary.

Information Source(s): Baltimore City; Harford, Montgomery, and Wicomico counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; University System of Maryland; Morgan State University; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - January 14, 2021
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