

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 212
Judiciary

(Delegates Crosby and Pippy)

Judicial Proceedings

Criminal Law - Indecent Exposure Within the Sight of a Minor

This bill codifies the prohibition on committing the common law crime of indecent exposure. A violator is guilty of a misdemeanor and subject to the existing statutory penalty of imprisonment for up to three years and/or a fine of up to \$1,000. The bill also establishes a new offense by prohibiting a person from committing indecent exposure with prurient intent within the sight of a minor who is at least two years old and more than four years younger than the perpetrator. This offense is a misdemeanor and is punishable by imprisonment for up to five years and/or a fine of up to \$10,000.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provision.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provision.

Small Business Effect: None.

Analysis

Current Law: Under the English common law, indecent exposure is the willful and intentional exposure of the private parts of one's body in a public place in the presence of an assembly. The main elements of the offense are the willful exposure, the public place in which it is performed, and the presence of persons who saw it. There is no distinction between the act being committed in the presence of an adult or a minor.

Chapter 331 of 2021 specified that indecent exposure includes engaging in an act of masturbation in public, whether or not the person's genitalia are exposed.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

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 for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

The Judiciary advises that in fiscal 2022, there were 617 violations (charges) of indecent exposure filed in the District Court, which resulted in 64 convictions. During that time, 125 violations (charges) of indecent exposure were filed in the circuit courts, resulting in 33 convictions. A violation is a charge filed with the court; one person may be associated with multiple violations. The Department of Public Safety and Correctional Services advises that during fiscal 2022, the Division of Parole and Probation conducted 96 intakes and the Division of Correction conducted one intake for individuals that had an indecent exposure offense.

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 \$4,970 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender advises that the bill increases agency caseloads, necessitating the hiring of one full-time attorney, at a cost of \$111,880 in fiscal 2024 and increasing to \$156,399 by fiscal 2028. The Department of Legislative Services advises that the bill is unlikely to warrant the hiring of an additional attorney, since it applies to individuals who would face indecent exposure charges under existing statute.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

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 \$90 to \$300 per inmate in recent years.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 34 of 2022 and HB 211 of 2020.

Designated Cross File: SB 208 (Senator Bailey) - Judicial Proceedings.

Information Source(s): Baltimore, Frederick, Montgomery, and Somerset counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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