

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 755 (Senator Muse)
Judicial Proceedings

Law Enforcement Officers - Sexual Contact With Person in Custody - Penalty

This bill reclassifies currently prohibited sexual contact between a law enforcement officer and specified individuals from a misdemeanor punishable by imprisonment for up to 3 years and/or a \$3,000 maximum fine to a felony third-degree sexual offense, which is punishable by imprisonment for up to 10 years.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect local finances, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under current law, a law enforcement officer may not engage in sexual contact, vaginal intercourse, or a sexual act with (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; (2) a person requesting assistance from or responding to the law enforcement officer in the course of the law enforcement officer's official duties; or (3) a person in the custody of the law enforcement officer. The prohibitions related to a victim, witness, suspect, person requesting assistance, or person responding to a law enforcement officer, as specified

above, do not apply if the officer had a prior existing legal sexual relationship with the person *and* did not act under the color or pretense of office or under color of official right when seeking consent to the sexual act, vaginal intercourse, or sexual contact. The bill does not alter these prohibitions and exceptions.

Under current law, violators are guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a \$3,000 maximum fine. A sentence imposed for a violation of these prohibitions may be separate from and consecutive to or concurrent with a sentence imposed for most of the offenses contained listed under Title 3, Subtitle 3 of the Criminal Law Article (sexual crimes).

The bill establishes that a law enforcement officer who violates the specified prohibitions is guilty of a felony sexual offense in the third degree and subject to the existing statutory penalty of imprisonment for up to 10 years.

State Revenues: General fund revenues may decrease from fines imposed in District Court cases that shift to the circuit courts under the bill due to the redesignation of an existing misdemeanor offense as a felony third-degree sexual offense. However, the overall impact on State finances is not expected to be material.

State Expenditures: The bill is not expected to materially affect State incarceration expenditures or District Court caseloads despite the bill's application of an increased incarceration penalty for the specified offense. The Department of Public Safety and Correctional Services advises it did not receive any inmates in the Division of Corrections and did not open any supervisions in the Division of Parole and Probation during fiscal 2022 for the offense being reclassified under the bill. The Maryland State Commission on Criminal Sentencing Policy advises that one law enforcement officer was sentenced to one count of sexual contact, vaginal intercourse, or a sexual act as specified and prohibited.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

Local Revenues: The bill's elimination of a monetary penalty for currently prohibited behavior is not expected to materially affect local revenues from fines imposed in circuit court cases under the existing statutory prohibition.

Local Expenditures: Though the bill applies an increased incarceration penalty for currently prohibited activity, the bill is not expected to materially affect local expenditures.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 748 (Delegate Williams) - Judiciary.

Information Source(s): Frederick County; City of Havre de Grace; 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 State Police; Department of Legislative Services

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Analysis by: Amber R. Gundlach

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