

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 302
Judiciary

(Delegate Embry, *et al.*)

Law Enforcement Officers, Correctional Employees, and Court-Ordered
Services Providers - Prohibition on Sexual Activity - Penalties and Registry

This bill reclassifies and alters the penalty for currently prohibited sexual conduct between specified individuals and an incarcerated individual or confined child under § 3-314 of the Criminal Law Article from a misdemeanor punishable by imprisonment for up to 3 years and/or a maximum fine of \$3,000 to a felony offense punishable by imprisonment for up to 10 years and/or a maximum fine of \$3,000. The bill also classifies an individual convicted of conspiring to commit, attempting to commit, or committing this crime as a “Tier 1 sex offender.”

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Sexual Conduct between Correctional or Department of Juvenile Services Employee or Court-provided Services Provider and Incarcerated Individual or Confined Child – Criminal Law Article § 3-314

Under current law, individuals who hold specified positions are generally prohibited from engaging in sexual contact, vaginal intercourse, or a sexual act with specified people under the individual’s authority. Specifically:

- a correctional employee, a Department of Public Safety and Correctional Services (DPSCS) employee, a correctional facility employee, an employee or contractor providing goods or services to DPSCS, or any other individual working (paid or volunteer) in a correctional facility is prohibited from engaging in the specified acts with an inmate;
- a person is prohibited from engaging in the specified acts with an individual confined in a child care institution licensed by the Department of Juvenile Services, a juvenile detention center, or a facility for juveniles;
- a court-ordered services provider is prohibited from engaging in the specified acts with an individual who is ordered to obtain services during the time that the order is in effect; and
- a law enforcement officer is prohibited from engaging in the specified acts with a person who is in the officer's custody or, with limited exception (described below), a person who is (1) a victim, witness, or suspect in an open investigate that the officer is involved in and should know the person is also involved in, as specified, with limited exception or (2) requesting assistance from or responding to the law enforcement officer during the officer's official duties.

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 violator is guilty of a felony, rather than a misdemeanor, and is punishable by imprisonment for up to 10 years and/or a \$3,000 maximum fine.

Sex Offender Registry

Under current law, a "Tier 1 sex offender" means a person who has been convicted of conspiring to commit, attempting to commit or committing (1) sexual offense in the fourth degree; (2) visual surveillance with prurient intent; (3) possession of visual representation of child under 16 engaged in specified sexual acts; (4) a crime in another jurisdiction that, if committed in the State, would constitute one of the listed crimes; (5) specified federal and military offense; and (6) specified convictions in the courts of

specified countries. A tier 1 sex offender must register in person every six months with a local law enforcement unit for a term of 15 years. However, if the registrant meets specified conditions, the term of registration must be reduced to 10 years.

The bill adds a conviction of conspiring to commit, attempting to commit, or committing prohibited sexual conduct between specified persons under § 3-314 of the Criminal Law Article to the definition of “tier 1 sex offender,” thus requiring a violator to register as a sex offender for at least 10 and up to 15 years, as specified.

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 reclassification of an existing misdemeanor offense as a felony offense. However, the overall impact on State finances is not expected to be material. The Judiciary advises that 6 violations of § 3-314 were filed in the District Court and 11 violations were filed in the circuit courts during fiscal 2023.

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 a specified offense. DPSCS advises that neither the Division of Correction nor the Division of Parole and Probation conducted any intakes during fiscal 2023 for violations of the crimes being reclassified under the bill.

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: Local revenues may increase from fines imposed in circuit court due to cases shifting from the District Court to the circuit courts under the bill. However, the overall impact on local finances is not expected to be material.

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

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 755 and HB 748 of 2023.

Designated Cross File: SB 177 (Senator Muse) - Judicial Proceedings.

Information Source(s): Allegany, Harford, Montgomery, and Talbot counties; cities of College Park, Frostburg, and Rockville; 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 Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2024
js/aad

Analysis by: Amber R. Gundlach

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