

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 138

(Delegate Bartlett, *et al.*)

Judiciary

Criminal Law - Third-Degree Sexual Offense - Burglary

This bill establishes that it is a third-degree sexual offense to engage in sexual contact with another person without the other person's consent in connection with a burglary in the first-, second-, or third-degree. A person who conspires to, attempts to, or commits this offense is (1) a Tier I sex offender if the victim is not a minor; (2) a Tier II sex offender if the victim is a minor who is at least age 13; or (3) a Tier III sex offender if the victim is a minor who is younger than age 13. The bill applies prospectively to acts committed on or after October 1, 2026.

Fiscal Summary

State Effect: Potential minimal increase in State expenditures due to the bill's application of an enhanced incarceration penalty to these acts and changes in sex offender classifications. Revenues are not affected.

Local Effect: Potential minimal decrease in local revenues from fines imposed in circuit court cases. Expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: Depending on the nature of the offense, engaging in unlawful sexual contact with another person may be classified as a third-degree or fourth-degree sexual offense.

Third-Degree Sexual Offense: Under the State's prohibition against third-degree sexual offense, a person may not:

- engage in sexual contact with another without the consent of the other; and (1) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon; (2) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime; (3) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or (4) commit the crime while aided and abetted by another;
- engage in sexual contact with another if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know of the victim's condition;
- engage in sexual contact with another if the victim is younger than age 14, and the person performing the sexual contact is at least 4 years older than the victim;
- engage in a sexual act with another if the victim is age 14 or 15, and the person performing the sexual act is at least age 21; or
- engage in vaginal intercourse with another if the victim is age 14 or 15, and the person performing the act is at least age 21.

A violator is guilty of the felony of third-degree sexual offense and subject to imprisonment for a maximum of 10 years.

Fourth-Degree Sexual Offense: The fourth-degree sexual offense statute prohibits a person from (1) engaging in sexual contact with another without the consent of the other or (2) except as prohibited under the third-degree sexual offense statute, engaging in a sexual act or vaginal intercourse with a victim who is age 14 or 15 and the person performing the act is at least 4 years older than the victim. Fourth-degree sexual offense is a misdemeanor, punishable by imprisonment for up to one year and/or a \$1,000 maximum fine. However, an increased penalty of imprisonment for up to three years and/or a \$1,000 maximum fine applies to a person who has been convicted on a prior occasion not arising from the same incident of violations of specified sexual crimes under State law. The specified crimes are: first-degree rape; second-degree rape; third-degree sexual offense; fourth-degree sexual offense; attempted rape in the first degree; attempted rape in the second degree; attempted sexual offense in the first-degree (as it existed before October 1, 2017); attempted sexual offense in the second degree (as it existed before October 1, 2017); continuing course of conduct with a child; and sexual abuse of a minor.

First-Degree Burglary: A person may not break and enter the dwelling of another with the intent to commit theft. A violator is guilty of first-degree burglary, a felony punishable by up to 20 years imprisonment. In addition, a person may not break and enter the dwelling of another with the intent to commit a crime of violence. A violator is guilty of home invasion, a felony punishable by up to 25 years imprisonment.

Second-Degree Burglary: A person may not break and enter the storehouse of another with the intent to commit theft, a crime of violence, or arson in the second degree. A violator is guilty of second-degree burglary, a felony punishable by up to 15 years imprisonment.

A person may not break and enter the storehouse of another with the intent to steal, take, or carry away a firearm. A violator is guilty of second-degree burglary, a felony punishable by up to 20 years imprisonment and/or a maximum fine of \$10,000.

Third-Degree Burglary: A person may not break and enter the dwelling of another with the intent to commit a crime. A violator is guilty of burglary in the third degree, a felony punishable by up to 10 years imprisonment.

Sex Offender Registration: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from incarceration or release from court if the person did not receive a sentence with a term of incarceration. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland.

A Tier I sex offender must register in person every six months with a local law enforcement unit for 15 years. A Tier II sex offender must register in person every six months with a local law enforcement unit for 25 years. A Tier III sex offender must register in person every three months with a local law enforcement unit for the life of the registrant.

An individual convicted of a fourth-degree sexual offense is a Tier I sex offender. An individual convicted of a third-degree sexual offense is a Tier III sex offender if the conviction was for engaging in sexual contact with a victim who is younger than age 14 and the defendant was at least 4 years older than the victim. Other acts that qualify as a third-degree sexual offense may result in classification as a Tier II or Tier III sex offender.

State Revenues: Since offenders subject to the bill's provisions must commit a felony burglary, cases affected by the bill are heard in the circuit courts. As a result, the bill does not affect State revenues from fines imposed in District Court cases.

State Expenditures: Given that an offender subject to the bill's provisions would also be sentenced for a burglary, the bill's fiscal impact exists only to the extent that (1) an offender serves a longer sentence as a result of the reclassification of his/her sexual offense from a fourth degree to a third degree or (2) the bill's provisions result in a defendant being classified as a higher level sex offender than under current law.

The number of people convicted of a third-degree sexual offense as a result of the bill is expected to be minimal. Offenders subject to the bill's provisions will likely be housed in State correctional facilities, since the bill requires the sexual offense to be committed during the commission of a burglary and persons serving a sentence longer than 18 months are incarcerated in State correctional facilities.

The Department of Public Safety and Correctional Services advises that it does not anticipate a fiscal impact from the bill's provisions.

Local Revenues: Revenues may decrease as a result of fewer fines being imposed in cases heard in the circuit courts. While a fourth-degree sexual offense may be subject to a maximum fine of \$1,000, there is no monetary penalty associated with a third-degree sexual offense.

Local Expenditures: As previously stated, persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Given that the bill's enhanced penalty is predicated on the commission of a burglary in the first-, second-, or third-degree, it is unlikely that offenders subject to the bill's provisions are housed in local detention facilities or will be housed in local detention facilities in the future.

Additional Comments: The bill classifies a person convicted of engaging in sexual contact with another in connection with the commission of specified burglaries as a third-degree sexual offense. The bill requires an individual convicted of this offense to register as a *Tier II* sex offender if the victim is a minor who is at least age 13. Under current law, sexual contact with a minor who is younger than age 14 by a defendant who is at least 4 years older is a third-degree sexual offense that is eligible for registration as a *Tier III* sex offender, which is a more serious sex offender category. Therefore, in a limited number of cases, the bill may result in a defendant being registered as a lower level sex offender than under current law.

Additional Information

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

Cross File: SB 230 (Senator West) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - January 23, 2026
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