

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 105

(Senators Brochin and Raskin)

Judicial Proceedings

Rules and Executive Nominations

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**Criminal Law - Sexual Contact with Minors - School Employees**

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This bill alters the definition of a “person in a position of authority” under the fourth degree sex offense statute by removing the limitation of the definition to full-time school employees. The bill prohibits a person employed full-time as a “person in a position of authority” from engaging in a sexual act, sexual contact, or vaginal intercourse with a minor knowing that the minor is a student enrolled at the school where the “person in a position of authority” is employed. The same prohibition applies to a part-time “person in a position of authority” if the person is at least eight years older than the victim.

Violators are guilty of a fourth degree sexual offense and are subject to the penalties available under existing statute. A person convicted of conspiring to commit, attempting to commit, or committing a fourth degree sexual offense because of his/her classification as a full-time “person in a position of authority” is required to register as a Tier I sex offender with the Department of Public Safety and Correctional Services (DPSCS).

The bill takes effect June 1, 2013.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues from fines imposed in District Court cases. Minimal increase in general fund expenditures due to the expanded application of existing incarceration penalties.

**Local Effect:** Minimal increase in local revenues from fines imposed in circuit court cases. Minimal increase in local expenditures due to the expanded application of existing incarceration penalties.

**Small Business Effect:** None.

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## Analysis

**Current Law:** There is no general prohibition against consensual sex with any person age 16 or older. However, depending on the age of the victim and the circumstances of the event, a person unlawfully engaging in sexual acts with a minor could be subject to a charge of second degree rape or second, third, or fourth degree sexual offense. Penalties range from a fine of up to \$1,000 and/or imprisonment for up to 1 year (for a misdemeanor fourth degree sexual offense) to a maximum imprisonment of 20 years (for the felony of second degree rape).

The crime of fourth degree sexual offense prohibits a person from (1) engaging in sexual contact with another without the consent of the other or (2) engaging in a sexual act or vaginal intercourse with a victim who is age 14 or 15 and the defendant is at least four years older than the victim. Chapter 317 of 2006 (HB 353) expanded the offense by specifying that, with certain exceptions, a “person in a position of authority” may not engage in a sexual act, sexual contact, or vaginal intercourse with a minor who, at the time of the act, contact, or intercourse, is a student enrolled at a school where the person is employed. Fourth degree sexual offense is a misdemeanor and carries maximum penalties of imprisonment for one year and/or a fine of \$1,000. There is a three-year statute of limitations for prosecution of a fourth degree sexual offense involving a person in a position of authority.

A “person in a position of authority” is a person who (1) is at least age 21; (2) is employed as a full-time permanent employee by a public or private preschool, elementary school, or secondary school; and (3) because of the person’s position or occupation, exercises supervision over a minor who attends the school. A “person in a position of authority” includes a principal, vice principal, teacher, or school counselor at a public or private preschool, elementary school, or secondary school.

A person convicted of conspiring to commit, attempting to commit, or committing a fourth degree sexual offense because of his/her classification as a “person in a position of authority” is required to register as a Tier I sex offender with DPSCS. A person who is designated as a Tier 1 sex offender must register with DPSCS every six months for 15 years.

Among other things, the State’s third degree sexual offense statute prohibits a person from:

- engaging in sexual contact with another if the victim is younger than 14 and the person performing the sexual contact is at least four years older than the victim; or
- engaging in a sexual act or vaginal intercourse with another if the victim is 14 or 15 years old and the person performing the act is at least 21 years old.

Third degree sexual offense is a felony punishable by imprisonment for up to 10 years.

Under the State's prohibition against sexual child abuse (applicable when the victim is younger than 18) by persons with custodial responsibilities or household or family members, a violator is guilty of a felony and subject to a maximum imprisonment term of 25 years.

A person is prohibited from engaging in three or more acts in a continuing course of unlawful sexual conduct with a victim younger than 14. A violator is guilty of a felony and is subject to imprisonment for a maximum of 30 years. A sentence imposed for this violation may be separate from and consecutive to or concurrent with a sentence for child sexual abuse.

**Background:** There were 468 convictions in the District Court for fourth degree sexual offense during fiscal 2011. According to the Maryland State Commission on Criminal Sentencing Policy, there were 85 convictions for fourth degree sexual offense in the circuit courts during fiscal 2012. It is unclear how many of these convictions involved a "person in a position of authority."

In March 2012, fourth degree sex offense charges were dropped against a Montgomery County teacher and coach accused of having sex with a 16-year-old student he coached on a high school cross country team. Prosecutors commented that despite the fact that the accused was a full-time employee of the county's school system, the charges had to be dropped because he was only a *part-time* employee of the school at which he coached the victim.

**State Revenues:** General fund revenues from fines imposed in District Court cases increase minimally as a result of the bill's expanded application of existing statutory monetary penalty provisions.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's expanded application of an existing incarceration penalty due to more people being committed to State correctional facilities for convictions in Baltimore City.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues increase minimally from fines imposed in circuit court cases due to the application of existing fines to additional cases.

**Local Expenditures:** Expenditures increase as a result of the bill's expanded application of an existing 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 \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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Analysis by: Amy A. Devadas

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