

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 460

(Senator Raskin, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Person in a Position of Authority - Sexual Offenses With a Minor

This bill expands the definition of a “person in a position of authority” under the fourth degree sexual offense statute. Under the bill, a “person in a position of authority” is a person who (1) is at least 21 years old; (2) is employed by or under contract with 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. The bill also adds coaches to the list of individuals specifically included as persons in a position of authority under the fourth degree sexual offense statute.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s expanded application of existing monetary and incarceration penalties.

Local Effect: Minimal increase in local revenues and expenditures due to the bill’s expanded application of existing monetary and incarceration penalties.

Small Business Effect: None.

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 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. An increased penalty of imprisonment for up to three years and/or a \$1,000 maximum fine applies to specific repeat offenders. There is a three-year statute of limitations for prosecution of a fourth degree sexual offense involving a person in a position of authority or sexual contact with a minor without the consent of the minor.

A “person 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 of authority” includes a principal, vice principal, teacher, or school counselor at a public or private preschool, elementary school, or secondary school.

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 and 93 convictions in fiscal 2013. 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 due to the bill’s expanded application of existing monetary penalties.

State Expenditures: General fund expenditures increase minimally due to more people being committed to State correctional facilities and increased payments to counties for

reimbursement of inmate costs. The number of people convicted as a result of the bill is expected to be minimal. The bill's expansion of the definition of a "person in a position of authority" increases the number of individuals subject to prosecution.

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 \$3,100 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in 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 City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally to the extent that more fines are imposed in circuit court cases as a result of the bill's expanded application of existing monetary penalties.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: HB 781 (Delegate Clippinger, *et al.*) - Judiciary.

Information Source(s): Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Department of Public Safety and Correctional Services; Office of the Public Defender; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Natural Resources; Maryland State Commission on Criminal Sentencing Policy; WJLA; Department of Legislative Services

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Analysis by: Amy A. Devadas

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