

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 223  
Judiciary

(Delegate Love)

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

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This bill expands the definition of a “person in a position of authority” under the fourth-degree sexual offense statute. The bill also expands the application of the fourth-degree sexual offense statute to include specified individuals. Finally, the bill establishes that unless specifically charged by the State, a violation of the fourth-degree sexual offense statute cannot be a lesser included offense of any other crime.

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Fiscal Summary

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill’s expanded application of existing penalty provisions.

**Local Effect:** Minimal increase in local revenues and expenditures due to the bill’s expanded application of existing penalty provisions.

**Small Business Effect:** None.

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Analysis

**Bill Summary/Current Law:** Under current law, a “person in a position of authority” is a person who (1) is at least age 21; (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 redefines a person in a position of authority to be an individual who is

- at least age 21;
- is employed by or under contract with (1) a public or private preschool, elementary school, or secondary school; (2) a child care facility, including an after-school program; (3) a commercial or nonprofit instructional program for music, dance, art, tutoring, academic enrichment, martial arts, or a program with a similar purpose; (4) a sports, scouting, or recreational activity or program; (5) a day or overnight camp; (6) a religious institution; or (7) any unit of local, State, or federal government; and
- because of the person's position or occupation, exercises supervision over a minor who attends or participates in an institution, a program, or an activity listed above or operated by any unit of local, State, or federal government.

Under current law, a person in a position of authority includes a principal, vice principal, teacher, coach, or school counselor at a public or private preschool, elementary school, or secondary school. The bill repeals these specific inclusions. Instead, the bill specifies that a person of authority includes an individual who is under contract with or is a volunteer, an intern, or a paid employee of an institution, program, or activity mentioned above and who, in that capacity, (1) directs or supervises minors enrolled or participating in the institution, program, or activity or (2) supervises one or more persons in a position of authority within the institution, program, or activity.

Currently, 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) 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 four years older than the victim. Additionally, with specified exceptions, it is a fourth-degree sexual offense for a person in a position of authority to 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.

Under the bill, with specified exceptions, a person in a position of authority is prohibited from engaging in a sexual act, sexual contact, or vaginal intercourse with a minor who (1) at the time of the offense, is enrolled or participating in the institution, program, or activity where the person is employed or under contract or (2) was previously enrolled or participating in the institution, program, or activity at the same time the person of authority was employed or under contract.

A fourth-degree sexual offense is a misdemeanor, punishable by imprisonment for up to one year and/or a \$1,000 maximum fine. A penalty of imprisonment for up to three years and/or a \$1,000 maximum fine applies to specified subsequent offenders. Imposition of the

subsequent offender penalty is subject to specified procedural requirements. 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.

In *State v. Frazier*, No. 45, Sept. Term 2019, the Maryland Court of Appeals held that when a defendant is convicted of second-degree assault and fourth-degree sexual offense and the convictions are required to merge under the rule articulated in *State v. Lancaster*, 332 Md. 385 (1993), the sentencing court may only impose a sentence on the maximum penalty associated with the greater offense (fourth-degree sexual offense), even if the lesser offense (second-degree assault) carries a heavier maximum penalty. The court noted that while the General Assembly amended the fourth-degree sexual offense statute after the *State v. Lancaster* decision (which also involved a conviction for fourth-degree sexual offense), it did not alter the penalty or indicate that the offense should be read to warrant a cumulative punishment.

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

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties 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 under the bill is expected to be minimal. The Judiciary can implement the bill's provisions using existing budgeted resources.

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 \$3,900 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender (OPD) advises that the bill increases the agency's workload and caseload by an unpredictable amount. The Department of Legislative Services advises that the bill is unlikely to generate enough additional cases to warrant the hiring of additional OPD staff.

**Local Revenues:** Revenues increase minimally as a result of the bill's expanded application of existing monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalties. 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 \$40 to \$170 per inmate in recent years.

The Maryland State's Attorneys' Association advises that the bill has no fiscal or operational effect on prosecutors.

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### Additional Information

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Caroline and Prince George's counties; City of Bowie; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of Health; Department of Juvenile Services; Department of Public Safety and Correctional Services; Baltimore City Public Schools; Prince George's County Public Schools; Department of Legislative Services

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