

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 471
Judiciary

(Delegate Pippy)

Criminal Law – Indecent Exposure With Lascivious or Prurient Intent

This bill prohibits a person from indecently exposing the person’s genitals with lascivious or prurient intent in a public place in the presence of another. Violators are guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a \$1,000 maximum fine. The bill expands the definition of a “Tier I sex offender” to include a person convicted of conspiring to commit, attempting to commit, or committing a violation of this prohibited act in the presence of a minor younger than age 14 and at least four years younger than the person convicted.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for expanded sex offender registration, including the sex offender registration process, as discussed below. Revenues are not materially affected.

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

Small Business Effect: None.

Analysis

Current Law: Indecent exposure is a common law offense that is subject to a statutory penalty. Under the English common law, indecent exposure is the willful and intentional exposure of the private parts of one’s body in a public place in the presence of an assembly. The main elements of the offense are the willful exposure, the public place in which it is

performed, and the presence of persons who saw it. Violators are guilty of a misdemeanor and subject to imprisonment for up to three years and/or a fine of up to \$1,000.

In *State v. Duran*, 407 Md. 532 (2009), the Court of Appeals held that a defendant who pled guilty to *indecent exposure* based upon three separate incidents in which he exposed himself to various girls of middle school age could not be required to register as a sex offender because indecent exposure is not a statutorily enumerated crime requiring registration and is not a crime “that by its nature is a sexual offense” under applicable provisions of the Criminal Procedure Article.

Sex Offender Registry

Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment under specified circumstances, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. However, for purposes of sex offender registration, a person is convicted when the person (1) is found guilty of a crime by a jury or judicial officer; (2) enters a plea of guilty or *nolo contendere*; (3) is granted a probation before judgment after a finding of guilt for a crime if the court, as a condition of probation, orders compliance with the requirements of the sex offender registration statutes; or (4) is found not criminally responsible for a crime.

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. The registry is maintained by the Department of Public Safety and Correctional Services (DPSCS).

A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life. If a Tier I sex offender meets specified requirements, the registration term may be reduced to 10 years.

State Fiscal Effect: The bill subjects a small subset of the existing indecent exposure population to a statutory offense that is punishable by the same maximum monetary penalty and incarceration penalty as indecent exposure under existing statute. Thus, the bill does not materially affect State revenues or State incarceration expenditures. However, general fund expenditures for DPSCS may increase minimally for expanded sex offender registration under the bill, as discussed below.

The Judiciary advises that in fiscal 2019, there were 709 violations of indecent exposure filed in the District Court, which resulted in 90 convictions; there were an additional

191 violations filed in the circuit courts, resulting in 57 convictions. As noted above, a “conviction” for sex offender registration purposes includes multiple types of dispositions. Data is not readily available on the number of individuals whose indecent exposure violations require registration under the bill due to the disposition of the charge and the circumstances of the violation. Regardless, this estimate assumes that the bill applies to a small population and does not independently subject a significant number of individuals to Tier I sexual offender registration. As noted above, registration commences upon release from prison or release from court if the person did not receive a prison sentence.

For a similar bill introduced during the 2021 legislative session, DPSCS advised that the agency must pay local supervising authorities a processing fee of \$200 per new registrant, annually. *For illustrative purposes only*, if 15 additional individuals are required to register under the bill each year, then general fund expenditures increase by \$3,000 each year.

Local Fiscal Effect: For the reasons stated above, the bill’s monetary and incarceration penalty provisions do not materially affect local finances. As noted above, DPSCS pays local supervising authorities a processing fee of \$200 per new sex offender registrant. However, this processing fee is a reimbursement of local expenditures incurred to process new registrants. Therefore, this analysis assumes that this aspect of the bill’s implementation does not have a material net effect on local finances.

Additional Information

Prior Introductions: HB 1001 of 2021, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, and Talbot counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland State’s Attorneys’ Association; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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