

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 226  
Judiciary

(Delegate Love, *et al.*)

Judicial Proceedings

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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 and makes related changes to prohibitions under that statute. The bill also establishes that (1) unless specifically charged by the State, a violation of the fourth-degree sexual offense statute may not be considered a lesser included crime of any other crime and (2) a sentence imposed for a violation of the fourth-degree sexual offense statute may be imposed separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation.

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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:**

*Person in a Position of Authority*

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 a person who is:

- at least age 21 and works for remuneration or as a volunteer for a public or private preschool, elementary school, or secondary school; or
- at least age 22 and works for remuneration or as a volunteer for a "program" and exercises supervision over or works or interacts with one or more minors who attend the school or participate in the program.

The bill defines "program" to mean an individual, a business, a religious or faith-based institution, or an organization that provides, on a for-profit or nonprofit basis, instructional, coaching, recreational, spiritual, character-building, or supervisory services or activities for minors, including: (1) sports, music, dance, art, or martial arts coaching or instruction; (2) tutoring or academic enrichment; (3) day care or after school care; (4) scouting; or (5) day or overnight camping. "Program" also means 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 retains these specific inclusions.

### *Sexual Offense in the Fourth Degree*

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 pertaining to other criminal provisions, 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 pertaining to other criminal provisions, a *person in a position of authority* is prohibited from engaging in a sexual act, sexual contact, or vaginal intercourse with a minor who, at the time of the sexual act, sexual contact, or vaginal intercourse (1) is a student enrolled at a school where the person in a position of authority works or (2) is participating in a program for which the person in a position of authority works and is at least six years younger than the person in a position of authority.

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. The bill does not alter the applicable penalties or statute of limitations.

**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 \$4,970 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 advises that the bill may lead to a minimal increase in the agency's workload and caseload that can be absorbed within existing budgeted resources.

**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 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. *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 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:** Similar legislation has been introduced within the last three years. See SB 49 and HB 223 of 2022 and HB 223 of 2021.

**Designated Cross File:** SB 21 (Senator Folden) - Judicial Proceedings.

**Information Source(s):** Harford County; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; University System of Maryland; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Baltimore City Public Schools; Montgomery County Public Schools; Maryland State Department of Education; Department of Legislative Services

**Fiscal Note History:** First Reader - January 30, 2023  
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