

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 351
Judiciary

(Delegate Clippinger, *et al.*)

Criminal Law - Third Degree Sexual Offense - Burglary

This bill establishes that it is a third-degree sexual offense to engage in sexual contact with another person without the other person's consent in connection with a burglary in the first, second, or third degrees.

The bill applies prospectively to acts committed on or after October 1, 2012.

Fiscal Summary

State Effect: Potential minimal increase in State expenditures due to the bill's application of an enhanced incarceration penalty to these acts. Revenues are not affected.

Local Effect: Potential minimal decrease in local revenues from fines imposed in circuit court cases. Expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: Under the State's prohibition against third degree sexual offense, a person may not:

- engage in sexual contact with another without the consent of the other; and (1) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon; (2) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing

the crime; (3) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or (4) commit the crime while aided and abetted by another;

- engage in sexual contact with another if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know of the victim's condition;
- engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim;
- engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or
- engage in 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.

A violator is guilty of the felony of third degree sexual offense and subject to imprisonment for a maximum of 10 years.

Engaging in sexual contact with another without the consent of the other is a sexual offense in the fourth degree, which is a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000. An individual who engages in unwanted sexual contact while committing a burglary is likely to be charged with sexual offense in the fourth degree, in addition to the burglary charge. An individual convicted of a sexual offense in the fourth degree who has been previously convicted of specified sexual crimes stemming from a separate incident is subject to a maximum penalty of imprisonment for up to three years and/or a maximum fine of \$1,000.

First-degree Burglary: A person may not break and enter the dwelling of another with the intent to commit theft or a crime of violence. A violator is guilty of first-degree burglary, a felony punishable by up to 20 years imprisonment.

Second-degree Burglary: A person may not break and enter the storehouse of another with the intent to commit theft, a crime of violence, or arson in the second degree. A violator is guilty of second-degree burglary, a felony punishable by up to 15 years imprisonment.

A person may not break and enter the storehouse of another with the intent to steal, take, or carry away a firearm. A violator is guilty of second-degree burglary, a felony punishable by up to 20 years imprisonment and/or a maximum fine of \$10,000.

Third-degree Burglary: A person may not break and enter the dwelling of another with the intent to commit a crime. A violator is guilty of burglary in the third degree, a felony punishable by up to 10 years imprisonment.

Background: During fiscal 2011, the Division of Correction (DOC) conducted intake on:

- 78 individuals for third-degree sexual offense;
- 15 individuals for fourth-degree sexual offense;
- 352 individuals for burglary in the first degree;
- 178 individuals for burglary in the second degree; and
- 83 individuals for burglary in the third degree.

State Revenues: Since offenders subject to the bill's provisions must commit a felony burglary, cases affected by the bill are currently being heard in the circuit courts. As a result, the bill does not affect State revenues from fines imposed in District Court cases.

State Expenditures: Given that an offender subject to the bill's provisions would also be sentenced for a burglary, the bill's fiscal impact exists only to the extent that an offender would serve a longer sentence as a result of the reclassification of his/her sexual offense from a fourth degree to a third degree. The number of people convicted of a third degree sexual offense as a result of the bill is expected to be minimal. Offenders subject to the bill's provisions will likely be housed in DOC facilities, since the bill requires the sexual offense to be committed during the commission of a burglary and persons serving a sentence longer than 18 months are incarcerated in DOC facilities.

Local Revenues: Revenues may decrease as a result of fewer fines being imposed in cases heard in the circuit courts. While a fourth degree sexual offense may be subject to a maximum fine of \$1,000, there is no monetary penalty associated with a third degree sexual offense.

Local Expenditures: As previously stated, persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Given that the bill's enhanced penalty is predicated on the commission of a burglary in the first, second, or third degree, it is unlikely that offenders subject to the bill's provisions are currently being housed in local detention facilities or will be housed in local detention facilities in the future.

Additional Information

Prior Introductions: None.

Cross File: SB 642 (Senator Ramirez, *et al.*) - Judicial Proceedings.

Information Source(s): Montgomery and Prince George's counties, Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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