

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 349  
Judiciary

(Delegate Clippinger, *et al.*)

Judicial Proceedings

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Criminal Law - Misdemeanor Possession of Child Pornography - Statute of  
Limitations

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This bill extends the statute of limitations for the prosecution of misdemeanor possession of child pornography from one year to two years.

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Fiscal Summary

**State Effect:** Minimal increase in general fund revenues from fines imposed in District Court cases as a result of the bill. Minimal increase in general fund expenditures for incarcerations imposed as a result of the bill.

**Local Effect:** Minimal increase in local revenues from fines imposed in circuit court cases as a result of the bill. Minimal increase in local expenditures for incarcerations imposed as a result of the bill.

**Small Business Effect:** None.

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Analysis

**Current Law:** In general, there is a one year statute of limitations for the prosecution of a misdemeanor.

A person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child under the age of 16 (1) engaged as a subject of sadomasochistic abuse; (2) engaged in sexual conduct; or (3) in a state of sexual excitement. Violators are guilty of misdemeanor possession of child pornography and are subject to imprisonment for up to five years and/or a

maximum fine of \$2,500. A repeat offender is guilty of felony possession of child pornography and is subject to imprisonment for up to 10 years and/or a maximum fine of \$10,000.

There is an exception to the prohibition for a parent who possesses visual representations of the parent's own child in the nude unless the visual representations show the child engaged (1) as a subject of sadomasochistic abuse; or (2) in sexual conduct and in a state of sexual excitement.

There is an affirmative defense to a charge of violating this section that the person promptly and in good faith (1) took reasonable steps to destroy each visual representation; or (2) reported the matter to a law enforcement agency.

**Background:** According to the Maryland State Commission on Criminal Sentencing Policy, there were 29 convictions for misdemeanor possession of child pornography in the circuit courts in fiscal 2011. Thirteen individuals accounted for these convictions. Data is not readily available on how many convictions occurred in the District Court for this offense.

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

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) and increased payments to counties for reimbursement of inmate costs. The number of people convicted of misdemeanor possession of child pornography as a result of the extended statute of limitations is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 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 DOC inmate (including variable medical care and variable operating costs) is about \$385 per month. Excluding all medical care, the average variable costs total \$170 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 DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has 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 DOC 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 DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalty due to more cases being prosecuted under the bill's extension of the statute of limitations. 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 DOC 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 889 (Senator Stone) - Judicial Proceedings.

**Information Source(s):** Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Legislative Services

**Fiscal Note History:** First Reader - February 12, 2012  
mlm/kdm Revised - House Third Reader - March 22, 2012

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