

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 858
Judiciary

(Delegate McDermott, *et al.*)

Criminal Procedure - Probation - Sexual Crimes Involving a Minor

This bill authorizes the District Court to order probation for a period no longer than 6 years, and a circuit court to order probation for a period no longer than 10 years, for a defendant who is convicted of sexual solicitation of a minor, creation and/or distribution of child pornography, or possession of child pornography.

The bill also removes the requirement that a defendant convicted of sexual abuse of a minor; rape involving a minor in the first and second degree; and a sexual offense involving a minor in the first, second, or third degree *must consent in writing* to an extended term of probation.

Fiscal Summary

State Effect: The bill's changes can be handled with existing resources; however, there is a potential minimal impact in future years, as discussed below.

Local Effect: The bill is not expected to affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: If a defendant is convicted of sexual abuse of a minor; rape involving a minor in the first or second degree; or a sexual offense involving a minor in the first, second, or third degree, and the defendant consents in writing, a court may order probation for a time longer than the sentence that was imposed on the defendant, but not longer than 10 years if ordered by a circuit court or 6 years if ordered by the District Court.

If a defendant is convicted of sexual solicitation of a minor, creation and/or distribution of child pornography, or possession of child pornography, a court may order probation for a time longer than the sentence, but not longer than five years if ordered by a circuit court, or three years if ordered by a District Court. The penalties for sexual solicitation of a minor, creation and/or distribution of child pornography, and possession of child pornography can be found below in **Exhibit 1**.

Exhibit 1
Criminal Penalties

<u>Violation</u>	<u>Penalty</u>
Sexual Solicitation of a Minor	Felony – 10 years and/or \$25,000 fine
Creation/Distribution of Child Pornography (1 st Offense)	Felony – 10 years and/or \$25,000 fine
Creation/Distribution of Child Pornography (Subsequent Offense)	Felony – 20 years and/or \$50,000 fine
Possession of Child Pornography (1 st Offense)	Misdemeanor – 5 years and/or \$2,500 fine
Possession of Child Pornography (Subsequent Offense)	Misdemeanor – 10 years and/or \$10,000 fine

Source: Department of Legislative Services

Background: The Administrative Office of the Courts advises that in 2013, there were 78 violations of sexual solicitation of a minor, 132 violations of creation/distribution of child pornography, and 312 violations of possession of child pornography.

The Maryland State Commission on Criminal Sentencing Policy advises that in the circuit courts in fiscal 2013, there were 21 convictions for sexual solicitation of a minor, 20 convictions for creation/distribution of child pornography, and 62 convictions for possession of child pornography.

The Department of Public Safety and Correctional Services (DPSCS) advises that in fiscal 2012, 16 individuals were committed to probation for sexual solicitation of a minor and 51 individuals were committed to probation for possession of child pornography.

State Expenditures: Although there is no way to reliably estimate the number of defendants that receive longer probation periods as a result of this bill, there is potential for an increase in the probation case load of DPSCS' Community Supervision office. Any such increase, however, is likely to be minimal. DPSCS advises that its sexual offender containment supervision model assumes caseload averages of 30 to 35 cases per containment agent. Each new agent costs \$68,768, including salary, fringe benefits, and equipment, while the approximate cost of supervising an offender per year is \$1,595.

Additional Information

Prior Introductions: None.

Cross File: SB 674 (Senator Jacobs, *et al.*) - Judicial Proceedings.

Information Source(s): Montgomery, Washington, and Worcester counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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