

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1049
Judiciary

(Delegate Wilson)

Criminal Law - Distribution of Child Pornography - Minor

This bill decriminalizes specified instances of distribution or manufacturing of child pornography by a person younger than age 18.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

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

Small Business Effect: None.

Analysis

Bill Summary: A person *at least age 18* may not knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance:

- that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or
- in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct.

Current Law: Section 11-207 of the Criminal Law Article prohibits the manufacturing or distribution of child pornography. The statute contains several prohibitions, though none of the prohibitions are specifically limited to acts committed by a person at least age 18. The prohibitions affected by the bill's provisions are contained in § 11-207(a)(4). Violators of § 11-207 are guilty of a felony, punishable by imprisonment for up to 10 years and/or a \$25,000 maximum fine for a first violation and imprisonment for up to 20 years and/or a \$50,000 maximum fine for each subsequent violation.

Background: Information is not readily available about how many relevant cases were handled through the juvenile courts.

However, with respect to the adult courts, according to the Judiciary, there were 250 violations filed in the District Court and 230 violations filed in the circuit courts under § 11-207 (a)(4) of the Criminal Law Article during fiscal 2018. A violation is a charge filed with the court. It is not a conviction, and one person may be associated with multiple violations. According to the Maryland Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy received information for 58 individuals sentenced to 99 counts under § 11-207 of the Criminal Law Article in Maryland Circuit Courts. Information was not provided as to how many of those convictions were under § 11-207 (a)(4).

The Safe Schools Reporting Act of 2005 (Chapter 547), requires a uniform reporting form to be available in public schools to victims of bullying and requires annual reports from the Maryland State Department of Education (MSDE) on the incidence of harassment and intimidation. According MSDE's most recent report, a total of 6,091 bullying incidents were reported for the 2016-2017 school year. An estimated 6.2% of these incidents involved "electronic communication." The uniform reporting form includes sexting in the definition of "electronic communication."

State Expenditures: The bill is not expected to materially affect State finances. This estimate assumes that the Department of Juvenile Services (DJS) handles very few cases that would fall under the bill's provisions. Any resources devoted to relevant DJS cases are likely to be redistributed to other DJS cases. Any reduction in caseloads for the Office of the Public Defender (OPD) is likely to be redirected to address other OPD cases. The bill is not expected to have a material effect on the Judiciary.

Local Expenditures: The juvenile courts are contained within the circuit courts. Any reduction in juvenile court caseloads is not expected to materially affect local finances. The Maryland State's Attorneys' Association advises that the bill does not have a fiscal or operational effect on prosecutors.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Office of the Public Defender; *Bullying, Harassment, or Intimidation in Maryland Public Schools (2018)*; Department of Legislative Services

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mm/kdm

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