

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 99 (Chairman, Judiciary Committee)
 (Departmental – State Police)

Judiciary

Crimes - Child Pornography - Electronic Communication with Minor

This departmental bill prohibits communication with a minor (or someone believed to be a minor) by computer to engage in sexually explicit conversation to seduce, solicit, lure, or entice the minor to engage in any sexual conduct, sexual excitement, or sadomasochistic abuse. Violators are guilty of a felony and, for a first offense, subject to maximum penalties of a fine of \$25,000 and/or imprisonment for ten years. Subsequent violations subject the offender to maximum penalties of a fine of \$50,000 and/or imprisonment for 20 years.

The bill also specifies that the jurisdictions in which a person may be prosecuted, indicted, tried, and convicted include either: (1) any county or city in or through which the communication originated or terminated; or (2) the jurisdiction where any person as a result of the communication traveled for the purpose of the furtherance of the crime.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's incarceration penalty provision. Revenues would not be affected.

Local Effect: Potential minimal increase in revenues due to the bill's monetary penalty provision. Expenditures are not expected to be affected.

Small Business Effect: The Department of State Police has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: Maryland's criminal code prohibits sex with minors and, by common law, prohibits the solicitation of sex with a minor. Depending on the age of the victim and the circumstances of the event, a person engaging in sexual acts with a minor could be subject to a charge of second degree rape; second, third, or fourth degree sexual offense; or child sexual abuse. Penalties range from a fine of up to \$1,000 and/or imprisonment for up to one year (for a misdemeanor fourth degree sexual offense) to a maximum imprisonment of 20 years (for the felony of second degree rape or child sexual abuse that results in the death of the victim).

Under case law, a solicitation consists of the accused person's oral or written efforts to activate another to commit a criminal offense. Because the minor is not guilty of a criminal offense under the sexual offenses law, but is rather the victim, it does not appear that the common law crime of solicitation would apply to a person who requests a minor to engage in sexual relations.

The existing prohibition against using a computer for illegally "engaging, facilitating, encouraging, offering, or soliciting" a minor refers only to unlawful sexual conduct or sadomasochistic abuse, and does not include circumstances involving "someone believed to be a minor."

Specifically, Maryland law currently prohibits the depiction or description of a minor engaging in an obscene act or engaging in sexual conduct or sadomasochistic abuse, as defined, and provides that "[e]very person who, by means of computer, knowingly compiles, enters, transmits, makes, prints, publishes, reproduces, causes, allows, buys, sells, receives, exchanges, or disseminates any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging, facilitating, encouraging, offering, or soliciting unlawful sexual conduct or sadomasochistic abuse" is guilty of a felony.

Violators of these provisions are guilty of a felony and subject to maximum penalties of a fine of \$25,000 and/or imprisonment for ten years. Second and subsequent violators are subject to maximum penalties of a fine of \$50,000 and/or imprisonment for 20 years.

"Sadomasochistic abuse" is defined as flagellation or torture by or on a human who is nude, or clad in undergarments, or in a revealing or bizarre costume, or the condition of one who is nude or so clothed and is being fettered, bound, or otherwise physically restrained.

“Sexual conduct” is defined as human masturbation, sexual intercourse, or any touching of or contact with genitals, pubic areas, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex, or between humans and animals.

“Sexual excitement” is defined as the condition of human male or female genitals, or the breasts of the female, when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Background: This legislation was originally offered in the 2000 session (HB 584) as a recommendation on Internet-based crime by the Maryland Information Technology Board (ITB). It is also a departmental response to a case currently before the Maryland Court of Appeals wherein the Attorney General is appealing the dismissal of charges in the Frederick County Circuit Court against Donald Taylor, Jr., 44, of Camden, New Jersey, for three counts of solicitation of a minor on the computer. Taylor was also charged with an attempted third degree sex offense, which involves intercourse with a person 14 or 15 years of age, where the perpetrator is at least 21 years of age, and with attempting to assault a minor in the second degree.

In October 1999, the police received a complaint about Taylor. A State police officer, posing as “Stephanie,” a 15-year-old girl living in Frederick, began having Internet chat conversations with Taylor. The judge in the case granted Taylor’s motion to dismiss all of the charges. She dismissed the charges of solicitation of a minor over the Internet because there was no minor involved. She dismissed the attempted third degree sex offense on two grounds: that Taylor had not taken a substantial step toward commission of the crime, and that it was impossible for Taylor to have committed the crime because there was no minor involved.

Arguments on this appeal were heard by the Court of Appeals in May 2001 (*State of Maryland v. Donald Taylor, Jr.*, case number 124 of the September term 2000). As of this writing, an opinion has not been issued.

State Expenditures: General fund expenditures could increase minimally as a result of the bill’s incarceration penalty due to more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds,

personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$300 per month.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision since these cases would most likely be heard in the circuit courts.

Additional Information

Prior Introductions: Similar bills were introduced during the 2001 and 2000 sessions. HB 202 in 2001 and HB 584 in 2000 each received an unfavorable report from the Judiciary Committee.

Cross File: None.

Information Source(s): Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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