

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 661

(Delegate Shank, *et al.*)

Judiciary

Judicial Proceedings

Crimes - Internet Child Pornography - Removal

This bill requires an investigative or law enforcement officer, after having attempted to obtain voluntary compliance from an interactive computer service provider (ICSP), to apply for a court order of authorization to remove or disable access to an item of child pornography.

Fiscal Summary

State Effect: The State Police and District Court could handle the bill's requirements using existing budgeted resources. The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

Local Effect: Law enforcement agencies could handle the bill's requirements using existing budgeted resources. The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: Under the bill, an ICSP is an entity that provides a service that provides or enables computer access via the Internet by multiple users to a computer server or similar device used for storing graphics, video, or images.

If upon review of an investigative or law enforcement officer's application, the court finds probable cause, the court must issue an order directing the ICSP to remove or

disable access to the item on its service within five business days from receiving the order. The order is to be served by the State's Attorney's office.

An ICSP that willfully fails to comply with the order is guilty of a misdemeanor, punishable by a fine of up to: (1) \$5,000 for the first violation; (2) \$20,000 for the second violation; and (3) \$30,000 for each subsequent violation. Such violators may be prosecuted, indicted, tried, and convicted in any county in or through which: (1) the ICSP provides Internet access; (2) any communication from the ICSP traveled; or (3) the communication from the ICSP originated or terminated.

The bill specifies circumstances under which an ICSP must report the location of an item of child pornography to the State Police. Willful and knowing failure to report such information, if required, is a misdemeanor, punishable by a fine of up to: (1) \$5,000 for the first violation; (2) \$20,000 for the second violation; and (3) \$30,000 for each subsequent violation.

The bill does not impose a duty on an ICSP to monitor its service or affirmatively to seek evidence of child pornography on its service. The bill does not apply to the ICSP's transmission or routing of, or intermediate or temporary storage or caching of, an item that is otherwise subject to the bill.

Current Law: No provision specifically requires an ICSP to remove or disable access to an item of child pornography.

A person may not: (1) cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; (2) photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct; (3) use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct; (4) knowingly promote, distribute, or possess with intent to distribute a depiction of a minor engaged in sadomasochistic abuse or sexual conduct; or (5) use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate 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 in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

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

A person may not knowingly possess a film, videotape, photograph, or other visual representation depicting an individual under age 16: (1) engaged in sadomasochistic abuse or sexual conduct; or (2) in a state of sexual excitement. Violators are guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,500 and/or imprisonment for one year for a first violation. Second and subsequent violators are subject to maximum penalties of a fine of \$5,000 and/or imprisonment for two years.

An investigative or law enforcement officer acting in a criminal investigation, or a person acting under the officer's direction may intercept a wire, oral, or electronic communication in order to prove evidence of child pornography. The Attorney General, the State Prosecutor, or a State's Attorney may apply to a judge and the judge may grant an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of a child pornography offense.

Background: Pennsylvania recently adopted a similar provision.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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