

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 285

(Delegate Stifler, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Possession of Child Pornography - Penalty

This bill alters provisions applicable to the offense of knowingly possessing and retaining a visual representation of a minor engaged in certain sexual acts. The bill requires that the prohibition apply to an actual child, and also increases the maximum incarceration penalty for a first offense from one year to two years; and for a subsequent offense, increases the maximum penalties from imprisonment for two years and/or a fine of \$5,000 to imprisonment for five years and/or a fine of \$10,000. The bill provides for an affirmative defense to a charge under of this offense if the person charged received a visual representation without soliciting it and acted promptly and in good faith to destroy each visual representation or reported the matter to a law enforcement agency.

Fiscal Summary

State Effect: Potential increase in general fund revenues and expenditures due to the bill's increased penalty provisions.

Local Effect: Potential increase in revenues and expenditures due to the bill's increased penalty provisions.

Small Business Effect: None.

Analysis

Current Law: 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; (2) engaged in sexual conduct; or (3) 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.

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 10 years for a first violation. Second and subsequent violations subject the person, for each violation, to maximum penalties of a fine of \$50,000 and/or imprisonment for 20 years.

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

State Expenditures: General fund expenditures could increase minimally as a result of the bill's increased incarceration penalty due to people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime 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 \$2,300 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 medical care and variable costs) is \$465 per month. Excluding medical care, the average variable costs total \$134 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. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2008 are estimated to range from \$21 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term 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 could increase minimally as a result of the bill's increased monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's increased incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$42 to \$120 per inmate in fiscal 2008.

Additional Information

Prior Introductions: In 2006, HB 1193 would have increased the penalties for possession of a depiction of an individual under 16 years of age. The bill was withdrawn after a hearing before the House Judiciary Committee.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Maryland District Court), Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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