

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 685
Judiciary

(Delegate McComas, *et al.*)

Criminal Law - Possession of Child Pornography - Penalty

This bill increases the penalties applicable to the offense of knowingly possessing a visual representation of a minor engaged in certain sexual acts, and changes the offense from a misdemeanor to a felony. The bill increases the maximum penalties for a first offense from imprisonment for one year and/or a fine of \$2,500 to imprisonment for two years and/or a fine of \$5,000. For a subsequent offense, the bill increases the maximum penalties from imprisonment for two years and/or a fine of \$5,000 to imprisonment for four years and/or a fine of \$10,000.

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.

Background: Changing crimes from misdemeanors to felonies means: (1) that such cases will likely be filed in the circuit courts rather than the District Court; and (2) some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions. It is not known whether, under this bill's provisions, the prospect of a jury trial might spur more plea bargains and affect actual sentencing practices for this offense.

In any case, this bill would shift some unknown number of cases from the District Court to the circuit courts.

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 continue 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: HB 1193 of 2006 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: SB 329 (Senator Jacobs, *et al.*) – Judicial Proceedings.

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

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mll/jr

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