

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 308 (Senator Stone)
Judicial Proceedings

Crimes - Child Pornography - Mandatory Minimum Sentences

This bill alters penalty provisions applicable to the crime of child pornography. The bill mandates a minimum sentence of 5 years for a first offense and 10 years for each subsequent offense. Notwithstanding current provisions of the Criminal Law Article relating to sentencing for crimes with minimum and maximum penalties, the bill prohibits a court from imposing less than these mandatory minimum sentences for violations of this offense.

The bill also (1) prohibits a court from suspending either of the mandatory minimum sentences required under the bill; and (2) except for parole provisions applicable to the Patuxent Institution, prohibits parole for a person convicted of this offense prior to expiration of the mandatory minimum sentence.

Fiscal Summary

State Effect: Minimal increase in general fund incarceration expenditures due to the bill's penalty provisions.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: 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 Expenditures: According to the Commission on Criminal Sentencing Policy, from July 1, 2001 to June 30, 2006, there were 66 persons convicted of child pornography as a first offense, and as the most serious offense when multiple charges were brought. Of that total over the 5-year period, 38 persons (57%) received a prison term with an average sentence of about 64 months (5 years and 4 months); less suspended sentences, the average was about 22 months. There were no recorded convictions for this offense as a repeat violation.

Accordingly, this bill would add about 42 months to the sentence of about 13 offenders per year and cause the incarceration of an additional 28 offenders who do not receive an incarceration sentence after conviction.

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 and some persons receiving a longer sentence. The number of people convicted of this proposed crime is not expected to be affected.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2007
mll/jr

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