

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 6 (Senator Simonaire)
Judicial Proceedings

Criminal Procedure - Offender Registry - Possession of Child Pornography

This bill requires persons convicted of a crime involving possession of child pornography to register as an “offender” in the State sex offender registry.

Fiscal Summary

State Effect: None. The bill’s requirements could be handled with the existing budgeted resources of the Department of Public Safety and Correctional Services.

Local Effect: None. The bill’s requirements could be handled with the existing budgeted resources of local law enforcement as supervising authorities.

Small Business Effect: None.

Analysis

Current Law: A person may not knowingly possess a film, videotape, photograph, or other visual representation depicting an actual child 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 two years for a first violation. Second and subsequent violators are subject to maximum penalties of a fine of \$10,000 and/or imprisonment for five years.

An affirmative defense to a charge under this offense may be made 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.

Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland. Juveniles who are adjudicated as adults and convicted for crimes that require registration are included in the registry. Juveniles who are adjudicated delinquent for these crimes through the juvenile court system are not included in the registry.

Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator.

“Offender” means a person who is ordered by a court to register and who • has been convicted of child kidnapping; • kidnapping; • fourth degree sexual offense, if the victim is under 18; • false imprisonment, if the victim is under 18 and the person is not the victim’s parent; • a crime that involves soliciting a person under 18 to engage in sexual conduct; • production or distribution of child pornography; • prostitution or related criminal prohibitions if the intended prostitute or victim is under 18; • any crime that involves conduct that by its nature is a sexual offense against a person under 18; • an attempt to commit any of these offenses; or • has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in Maryland, would constitute one of these crimes.

“Child sexual offender” means a person who • has been convicted of sexual abuse of a minor; • has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under 15 ; • has been convicted of fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or • has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute one of these crimes.

“Sexually violent predator” means a person who • is convicted of a sexually violent offense; and • has been determined to be at risk of committing another sexually violent

offense. Also included under this definition are persons who are or were required to register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction.

“Sexually violent offender” means a person who • has been convicted of a sexually violent offense; or • has been convicted of an attempt to commit a sexually violent offense.

Sexual offenders are required to register, every 3 or 6 months, with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. Registration must include a photograph, which has to be updated at least annually. The registry is operated by the Sexual Offender Registry Unit of the Department of Public Safety and Correctional Services. Under the State’s sexual offender registration laws, a State’s Attorney may request that a sexual offender be designated a sexually violent predator. Lifetime registration is required for • sexually violent predators; • persons convicted of a sexually violent offense; • persons convicted of child abuse for commission of a sexual act involving penetration of a child under 12; and • recidivist sexual offenders.

A review of the Maryland Sentencing Guidelines database indicates there were a total of 23 individuals convicted in Maryland’s circuit courts for possession of child pornography, as first offense, in fiscal 2006 and 2007 combined. Many of these individuals were convicted of multiple counts of possession of child pornography. In 12 of the 23 cases in fiscal 2007, possession of child pornography was the controlling (or most serious offense). Among these 12 offenders, 3 (25%) received a sentence including a period of incarceration. Accordingly, on average, six individuals are convicted for possession of child pornography in Maryland’s circuit courts annually, with approximately 25% receiving some period of incarceration. It should be noted that since possession of child pornography is a misdemeanor offense, it is likely additional individuals have been convicted for this offense in Maryland’s District Courts.

State Fiscal Effect: Although this bill would likely lead to an increased number of persons required to register annually, its requirements could be handled with the existing budgeted resources of the registry and the Division of Parole and Probation.

Local Fiscal Effect: Although this bill would likely lead to an increased number of persons required to register annually, its requirements could be handled with the existing budgeted resources of local law enforcement as supervising authorities for registered sex offenders.

Additional Information

Prior Introductions: None.

Cross File: HB 60 (Delegate Stifler) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Somerset County, Montgomery County, Prince George's County, Charles County, Department of Health and Mental Hygiene, Office of the Attorney General, Department of Public Safety and Correctional Services, Department of Legislative Services

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