

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1246
Judiciary

(Delegate Shank, *et al.*)

Protection of Children from Online Predators Act of 2009

This bill: (1) requires Internet access providers to offer a product/service that includes parental controls for Internet access by minors to customers who are State residents; (2) grants civil immunity to service providers who affect or fail to affect access to Internet services by subscribers under specified circumstances; (3) allows a law enforcement officer to request an “interactive service provider” to make a backup copy of certain electronic information pending a court order or subpoena; (4) creates an additional offense pertaining to solicitation of a minor; (5) requires the Department of Public Safety and Correctional Services (DPSCS) to make certain information about sex offender registrants available to commercial or nonprofit entities; and (6) authorizes a judge to require special supervision of a person convicted of a child sex offense.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for DPSCS due to the bill’s incarceration penalties. DPSCS will be able to handle any enhanced supervisory duties as a result of the bill with existing resources. Revenues are not affected.

Local Effect: Potential minimal increase in local revenues due to fines imposed for the new criminal offenses created by the bill. Potential minimal increase in local expenditures as a result of the bill’s incarceration penalties and an increase in circuit court proceedings for trials and violation of probation proceedings.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires an Internet access provider to offer a product or service that allows a subscriber to block or restrict a minor's access to certain designated web sites if the provider knows or should have known from registration data that the subscriber is a State resident and a product/service compatible with the provider's technology is reasonably and commercially available. A provider must give information about the availability of the product/service to the subscriber at or near the time of subscription. The provider may offer the product/service directly or through a third-party vendor and may charge for the product/service. The requirement does not apply to entities that provide Internet access through a commercial mobile service or services offered by libraries or educational institutions.

The bill defines an "interactive computer service" as an information service, system, or access software provider that offers users the capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information by way of an Internet access provider. "Interactive computer service" includes a service or system that: (1) provides or enables computer access by multiple users to a computer server and (2) provides access to the Internet and systems operated or services offered by libraries or educational institutions.

The bill specifies that an interactive computer service provider is immune from civil liability for identifying, removing or affecting a user based on a good faith belief that the user's electronic identifying information appeared in the National Sex Offender Registry or a state sex offender registry. The same immunity applies if the interactive computer service provider fails to identify, block, or prevent a person from registering for its service or if the provider fails to remove, disable, or otherwise affect a registered user when the person's electronic identifying information appears in the National Sex Offender Registry or a state equivalent.

A law enforcement officer may request the creation of a backup copy of electronic communications pending the issuance of a subpoena or court order if the request is made in connection with an investigation of a possible sexual offense involving a minor. As soon as is reasonably practicable following receipt of the request, the service provider must take the necessary steps to preserve records and other evidence in its possession.

The bill prohibits a person who is at least four years older than a minor under 16 years old from knowingly requesting or encouraging the minor to engage in specified prurient activity through a computer network or system. That the victim was a law enforcement officer posing as a minor less than 16 years of age is not an affirmative defense. If the request or encouragement originated or was received in the State, the activity is under the

State's jurisdiction. Violators are guilty of a felony, subject to a maximum penalties of 10 years imprisonment and/or a \$25,000 fine.

The bill requires DPSCS to make identifying electronic information collected from registration statements of sex offender registrants available through a formal mechanism to commercial or nonprofit entities for the purpose of protecting children from sex offenders.

The bill also authorizes a judge imposing a sentence on a child sex offender to include a special sentence of supervision. A special sentence may include supervision of the offender's electronic communication and browsing history, and unannounced inspection of the offender's computer or other electronic device with Internet access. If the offender used the Internet in commission of the crime for which he/she is being sentenced, the judge may include limitations or restrictions on the offender's Internet access as part of the sentence in an effort to prevent future similar activity. A person subject to a special sentence of supervision may petition the court for release from the supervision. The petition may be granted only if a judge finds, by clear and convincing evidence, that the person: (1) has not committed a child sex offense since the last conviction or release from incarceration, whichever is later; and (2) is not likely to pose a threat to the safety of others if released from supervision. A person who violates a special sentence of supervision is guilty of a felony, subject to a maximum penalties of five years imprisonment and/or a \$10,000 fine.

Current Law: Internet service providers are not required by law to provide parental control software or services to customers.

In accordance with a search warrant issued by a court of competent jurisdiction, an investigative or law enforcement officer may require a provider of wire or electronic communication service to disclose the contents of wire or electronic communication that is in electronic storage in a wire or electronic communications system for 180 days or less. The disclosure may apply to communication that has been in storage for more than 180 days if certain procedures are followed. A provider of an electronic communications service or remote computing service may disclose a record or other information pertaining to a subscriber or other customer to an investigative or law enforcement officer only under subpoena, pursuant to a warrant or court order, or with consent from the customer or subscriber.

A court order or subpoena issued under these circumstances may include a requirement that the service provider create a backup copy of the electronic communications sought to preserve the information. The provider must create the backup copy as soon as practicable (but within 24 hours of receipt of the subpoena/court order) consistent with the provider's regular business practices and without notifying the subscriber or customer

of the subpoena or court order. The provider must confirm to the appropriate governmental entity that a backup copy has been made, and may not destroy the backup copy until after the information has been delivered or the resolution of any court proceedings concerning the subpoena/court order, whichever is later. Within three days of receipt of the confirmation, the officer must give notice to the subscriber or customer that a backup copy has been made.

A person is prohibited from knowingly soliciting a minor or a law enforcement officer posing as a minor by any means, including in person, through an agent or agency, over the telephone, through any print medium, by mail, by computer or Internet, or by any other electronic means with the intent to commit certain sexual crimes. Violators are guilty of a felony, punishable by a maximum penalties of 10 years imprisonment and/or a \$25,000 fine. State jurisdiction is established if the solicitation originated or was received in the State.

Under Maryland law, a registration statement for a sex offender must include specified information, including a list of any aliases, former names, nicknames, electronic mail addresses, computer log-in or screen names or identities, instant-messaging identities, and electronic chat room identities used by the registrant. DPSCS must make registration statements or information about registration statements from individuals on the sex offender registry available to the public and must include a description of the crime of the offender for which the offender is required to register with the sex offender registry. The department may post a current listing of each registrant's name, crime, and other identifying information on the Internet. Current law also authorizes a parole agent to access the personal computer of a registrant to check for materials relating to sexual relations with minors.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of the proposed crimes 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 \$2,600 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 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 2010 are estimated to range from \$23 to \$71 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 Expenditures: Expenditures increase minimally as a result of the bill's 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 \$46 to \$141 per inmate in fiscal 2010.

The bill also creates two felony offenses, both of which are under the jurisdiction of circuit courts. Thus, the bill may result in an increase in circuit court proceedings for trials and violation of probation proceedings related to the new offenses.

Additional Information

Prior Introductions: None.

Cross File: SB 893 (Senator Mooney) - Judicial Proceedings and Finance.

Information Source(s): Charles County, Frederick County, Montgomery County, Somerset County, Office of the Attorney General (Consumer Protection Division), Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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