

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 472 (Senator Stone)
Judicial Proceedings

**Possession of Visual Representation of Child Under 16 Engaged in Sexual Acts -
Sex Offender Registration**

This bill expands the definition of “offender” under the State’s sex offender registration requirements to include a person convicted of the knowing illegal possession of an image showing an actual child under the age of 16 engaged as a subject in sadomasochistic abuse or sexual conduct.

Fiscal Summary

State Effect: The bill’s requirements can be handled with the existing budgeted resources of law enforcement, the courts, the Office of the Public Defender, and the State’s sex offender registry.

Local Effect: The bill’s requirements can be handled with the existing budgeted resources of local law enforcement and the courts. The continued availability of grants through the Sex Offender Compliance and Enforcement in Maryland (SOCEM) program and federal registration assistance funds will continue to offset operational costs for law enforcement in some jurisdictions.

Small Business Effect: None.

Analysis

Current Law: A person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child under the age of 16:

- engaged as a subject of sadomasochistic abuse;
- engaged in sexual conduct; or
- in a state of sexual excitement.

A violator is guilty of a misdemeanor and subject to maximum penalties of 5 years imprisonment and/or a \$2,500 fine for a first violation; and 10 years imprisonment and/or a \$10,000 fine for a subsequent violation.

This prohibition may not be construed to prohibit a parent from possessing visual representations of the parent's own child in the nude unless the visual representations show the child engaged as a subject of sadomasochistic abuse, or in sexual conduct and in a state of sexual excitement.

It is an affirmative defense to a charge of violating this section that the person promptly and in good faith:

- took reasonable steps to destroy each visual representation; or
- reported the matter to a law enforcement agency.

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 with the State’s sexual offender registry 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.

Background: Organized through the Governor's Office of Crime Control and Prevention (GOCCP), the SOCEM program provides resources to all 24 designated State law enforcement agencies responsible for the registration and re-registration of sex offenders in the offender registry. Current grant funding through GOCCP assists State and local law enforcement agencies in the enforcement of registration and compliance requirements. The proposed fiscal 2011 State budget includes \$728,916 in general funds for the SOCEM grant program.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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