

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 424

(Chair, Judiciary Committee)(By Request - Departmental
- Public Safety and Correctional Services)

Judiciary

**Crimes - Indecent Exposure and Possession of Child Pornography - Offender
Registration**

This departmental bill specifies that the possession of a digital image showing an actual child under the age of 16 engaged as a subject in sadomasochistic abuse or sexual conduct is a criminal offense. The bill repeals a provision that provides that it is an affirmative defense to a violation if a person takes reasonable steps to destroy the visual representation.

The bill also alters the definition of “offender” under the State’s sex offender registration provisions to require registration if an “offender” is ordered to register by the court when the person has been convicted of the offense of indecent exposure if the offense occurred in the presence of an individual under the age of 18 or the offense of possession of child pornography.

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: The Department of Public Safety and Correctional Services (DPSCS) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

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.

Indecent exposure is a common law offense. The meaning accorded to the offense is judicially determined and based on case law. It is regarded as a general intent crime that includes within its scope an innumerable variety of offenses, including acts that are reckless or negligent. It is not necessarily sexual in nature.

A person convicted of indecent exposure is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

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: In *State v. Duran*, 407 Md. 532 (2009), the Court of Appeals held that a defendant who pled guilty to indecent exposure based upon three separate incidents in which he exposed himself to various girls of middle school age could not be required to register as a sex offender, because indecent exposure is not a statutorily enumerated crime requiring registration and is not a crime ‘that by its nature is a sexual offense’ under Section 11-701(d)(7) of the Criminal Procedure Article.

Organized through the Governor’s Office of Crime Control and Prevention (GOCCP), the Sex Offender Compliance and Enforcement in Maryland (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): Montgomery, Washington, and Worcester counties; Baltimore City; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2010
mlm/hlb

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Crimes – Indecent Exposure and Possession of Child Pornography – Offender Registration

BILL NUMBER: HB 424

PREPARED BY: Department of Public Safety and Correctional Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.