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FISCAL AND POLICY NOTE
First Reader

House Bill 1388
Judiciary

(Delegate Flanagan, *et al.*)

Sexual Crimes - Video Games - Prohibited Conduct and Warnings to Game
Developers

This bill prohibits a person who has been convicted of a “sexual crime involving a child,” as defined under the bill, from using a “multiplayer augmented reality game.” Violators are guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a \$5,000 maximum fine for a first offense. A second or subsequent offense is a felony, punishable by imprisonment for up to five years and/or a \$10,000 maximum fine.

The bill also requires the Department of Public Safety and Correctional Services (DPSCS) to post a warning on its website urging computer program developers to avoid designing computer programs that may place children at risk of being in proximity to sexual offender registrants.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill’s penalty provisions.

Small Business Effect: None. The bill does not restrict the types of programs a small business computer program developer may produce, nor does it restrict the sale of video games.

Analysis

Bill Summary: A “multiplayer augmented reality game” is an electronic game played using images on a video screen that enables (1) a real-time or indirect view of a physical real-world environment that has been enhanced by adding virtual computer-generated information and (2) an individual who plays the game to electronically affect the game experience of another individual. “Sexual crime involving a child” means a violation of:

- Title 3, Subtitle 3 of the Criminal Law Article (various sexual crimes, including rape, sexual offenses, continuing course of conduct with a child, incest, and sexual solicitation of a minor);
- § 3-602 of the Criminal Law Article (sexual abuse of a minor);
- § 3-902 of the Criminal Law Article involving a victim who is a minor (visual surveillance with prurient intent); or
- Title 11 of the Criminal Law Article involving a victim who is a minor (indecent and obscenity offenses, including pornography-related offenses and prostitution and human trafficking).

Current Law: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment under specified circumstances, 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. The registry is maintained by DPSCS.

A listing of juvenile sex offenders must also be maintained by DPSCS, which is accessible only by law enforcement personnel for law enforcement purposes.

For all sex offender registrants in the State, a registration statement must include numerous items of identifying information related to the registrant, as well as information about the intended residence, vehicles owned or used, fingerprints, and other elements, as specified. In addition, a registrant is required to notify each local law enforcement unit where the registrant resides or habitually lives at least three days before leaving the United States to commence residence or employment or attend school in a foreign country.

If the registrant is determined to be a sexually violent predator, the registration statement must also include the anticipated future residence, if known at the time of registration, and documentation of treatment received for a mental abnormality or personality disorder.

Within three days after obtaining a sex offender registration statement, the supervising authority must send a copy of the registration statement with the attached fingerprints, palm prints, and updated digital image of the registrant to the local law enforcement unit in each county where the registrant will reside or habitually live or where a registrant who is not a resident is a transient or will work or attend school.

A local law enforcement unit that receives a notice from a supervising authority must send a copy of the notice to the police department, if any, of a municipal corporation if the registrant (1) is to reside or habitually live in the municipal corporation after release; (2) escapes from a facility but resided or habitually lived in the municipal corporation before being committed to the custody of a supervising authority; or (3) is to change addresses to another place of residence within the municipal corporation.

Additional residency notification requirements include the following:

- As soon as possible, but not later than three working days after receipt of a registrant's change of residence or change in the county in which the registrant habitually lives, the local law enforcement unit must notify DPSCS of the change.
- As soon as possible, but not later than three working days after receipt of such a notice, the local law enforcement unit must give notice to DPSCS of the registrant's intent to change residence, a county in which the registrant habitually lives, vehicle or license plate information, electronic mail or Internet identifiers, or landline or cellular phone numbers.

A registrant may not knowingly fail to register, knowingly provide false information of a material fact required for the registry, knowingly fail to provide any information required to be included in a registration statement, or knowingly fail to provide written notice regarding change of residence, vehicle, legal change of name, or change in employment or enrollment at a higher education institution. A first offense is a misdemeanor subject to maximum penalties of three years imprisonment and/or a \$5,000 fine. A second or subsequent offense is a felony subject to maximum penalties of five years imprisonment and/or a \$10,000 fine.

Background: In April 2012, several video game companies reached an agreement with the Attorney General of the State of New York to close the accounts of more than 3,500 registered sex offenders in that State. New York requires convicted sex offenders to register all of their e-mail addresses and other related online identifying information in order to limit offender access to specified online networks. Offender online accounts were identified by cross-referencing this identification information with online account information.

Several news reports in summer 2016 noted growing concern that popular games, such as Pokémon Go, could lure children to locations in close proximity to sexual offenders. In August 2016, legislation was introduced in the New York State Senate to prohibit specified sexual offenders under supervision from playing Pokémon Go and similar augmented reality games.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,600 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 State inmate (including variable health care costs) is about \$800 per month. Excluding all health care, the average variable costs total \$210 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

DPSCS can alter its website to post the required warning to computer program developers with existing budgeted resources.

The Judiciary advises that it does not expect a significant fiscal or operational effect from the bill. The Office of the Public Defender (OPD) advises that the bill may increase OPD caseloads, but the extent of the increase is too speculative to determine at this time.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

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 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, and Montgomery counties; cities of Frederick and Havre de Grace; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; *New York Times*; New York State Senate; CBS New York; Department of Legislative Services

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