

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 623
Judiciary

(Delegate Lopez, *et al.*)

Criminal Law - Possession of Child Pornography - Penalty

This bill removes the misdemeanor classification and exclusive penalty provision currently applicable to a *first* violation of the State’s prohibition on possession of child pornography. As a result, *any* violation for possession of child pornography is a felony, punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues and minimal increase in general fund incarceration expenditures due to the bill’s alteration of the application of existing penalty provisions.

Local Effect: Potential minimal increase in local government revenues and minimal decrease in local government incarceration expenditures due to the bill’s alteration of the application of existing penalty provisions.

Small Business Effect: None.

Analysis

Current Law:

Possession of Child Pornography – § 11-208 of the Criminal Law Article

Under current law, a person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child or a

computer-generated image that is indistinguishable from an actual and identifiable child younger than age 16:

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

Violators are guilty of a misdemeanor, punishable by imprisonment for up to 5 years and/or a \$2,500 maximum fine for a first offense. A subsequent violation is a felony, punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine.

Background: According to the Judiciary, during fiscal 2019, 595 violations of possession of child pornography were filed in the District Court and 1,020 violations were filed in the circuit courts. According to the Maryland State Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy received information for 47 individuals sentenced to 94 counts for possession of child pornography under § 11-208 of the Criminal Law Article in the State's circuit courts during fiscal 2019.

The Department of Public Safety and Corrections Services reports that during fiscal 2019, the department conducted intake for four inmates with one or more offenses of possession of child pornography. All four inmates received the maximum sentence of five years.

State Revenues: General fund revenues may decrease minimally from fines imposed in the District Court. The bill's reclassification of a first-time violation for possession of child pornography from a misdemeanor to a felony shifts cases from the District Court to the circuit courts.

State Expenditures: General fund expenditures increase minimally as a result of the bill's alteration of the application of existing penalty provisions due to more people being committed to State correctional facilities, people being committed to State facilities for longer periods of time, and increased payments to counties for reimbursement of inmate costs.

As previously noted, all four inmates who entered State correctional facilities in fiscal 2019 for possession of child pornography were sentenced to the maximum 5-year penalty available under existing statute (assuming that all four inmates were first-time offenders). This estimate assumes that this population is the group most likely to receive a maximum 10-year sentence under the bill. Any increase in general fund incarceration expenditures for this population will begin in the out-years, as these individuals conclude serving the 5-year sentence available under current law and begin serving additional time under the bill.

However, the bill may result in additional incarceration costs by increasing sentences for individuals currently serving sentences in local detention facilities such that (1) these individuals are shifted to State correctional facilities or (2) these individuals remain in local facilities with the State paying for reimbursement of inmate costs. Data is not readily available on the number of individuals in local facilities sentenced for a first-time violation of possession of child pornography and the sentences these individuals received.

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 \$3,800 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or 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.

The bill's provisions make behavior currently classified as a misdemeanor a felony. Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

Local Revenues: Local revenues may increase minimally from fines imposed in circuit court cases. The bill shifts cases from the District Court to the circuit courts and increases the fine applicable to a first-time violation for possession of child pornography.

Local Expenditures: Local incarceration expenditures decrease minimally to the extent the bill shifts individuals from local detention facilities to State correctional facilities and/or the State pays for reimbursement of local inmate costs.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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