

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 99

(Senator Stone, *et al.*)

Judicial Proceedings

Judiciary

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Criminal Law - Possession of Child Pornography - Penalties

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This bill increases the penalties for possession of a visual representation of a child under 16 engaged in specified sexual acts. The maximum imprisonment penalty for a misdemeanor first offense is increased from two years to five years. For a subsequent offense, the maximum imprisonment penalty is increased from 5 years to 10 years, and the offense becomes a felony. The bill also grants concurrent jurisdiction to the District Court and the circuit courts for such cases.

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Fiscal Summary

**State Effect:** Potential minimal increase in State correctional costs due to the bill's increased incarceration penalty provisions. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** A person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation depicting an actual child under age 16: (1) engaged in sadomasochistic abuse; (2) engaged in sexual conduct; or (3) in a state of sexual excitement. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,500 and/or two years imprisonment for a first violation. Second and subsequent violations are subject to maximum penalties of a fine of \$10,000 and/or five years imprisonment.

**Background:** In fiscal 2008, the Division of Correction (DOC) had an intake of five persons with at least one conviction for the specific offense of child pornography. Their average sentence was about 56 months. Two of those persons had also been convicted on additional, more serious charges. There were 30 probation intakes for that offense in fiscal 2008.

**State Expenditures:** General fund expenditures may increase minimally as a result of the bill's incarceration penalty due to more people being committed to DOC facilities for longer periods of time due to increased incarceration penalty provisions. The number of people convicted of these 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.

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### **Additional Information**

**Prior Introductions:** SB 414/HB436, similar bills, were introduced in 2008. HB 436 passed the House, was referred to the Senate Judicial Proceedings Committee, and had no further action taken on it. SB 414 had a hearing before the Judicial Proceedings Committee with no further action taken.

**Cross File:** HB 9 (Delegates Waldstreicher and McComas) - Judiciary.

**Information Source(s):** Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - January 26, 2009  
mlm/kdm Revised - Senate Third Reader - April 2, 2009

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