

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 99
Judiciary

(Delegate Bartlett)

Judicial Proceedings

Criminal Law – Sexual Solicitation of a Minor Through Child Pornography –
Prohibition

This bill expands the existing crime of sexual solicitation of a minor (§ 3-324 of the Criminal Law Article) by prohibiting a person from committing the crime of sexual solicitation of minor with the intent to commit a violation of the prohibition against production or distribution of child pornography (§ 11-207 of the Criminal Law Article). Violators are subject to the existing penalties for sexual solicitation of a minor, which is a felony punishable by (1) imprisonment up to 10 years and/or a fine of up to \$25,000 for a first offense or (2) imprisonment for up to 20 years and/or a fine of up to \$50,000 for a second or subsequent offense.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law/Bill Summary:

Sexual Solicitation of a Minor – § 3-324 of the Criminal Law Article

Under current law, “solicit” means to command, authorize, urge, entice, request, or advise a person by any means, including (1) in person; (2) through an agent or agency; (3) over

the telephone; (4) through any print medium; (5) by mail; (6) by computer or Internet; or (7) by any other electronic means.

Currently, a person may not, with the intent to commit any of the crimes listed below, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under the laws on (1) rape in the second degree; (2) sexual offense in the third degree; (3) engaging in prostitution; (4) receiving the earnings of a prostitute; (5) abduction of a child younger than age 16 for the commission of a sexual crime; (6) procuring or soliciting prostitution; or (7) maintaining a house of prostitution. The bill adds § 11-207 of the Criminal Law Article (production or distribution of child pornography) to this list of crimes.

Current law also prohibits a person who intends to commit any of the crimes listed above from knowingly soliciting the consent of a parent, guardian, or custodian of a minor, or a law enforcement officer posing as such a person, to engage in activities with the minor that would be unlawful for the person to engage in under the laws corresponding to those crimes. The bill adds § 11-207 of the Criminal Law Article (production or distribution of child pornography) to the list of crimes under this provision.

A violation of either prohibition is a felony with a maximum penalty of (1) imprisonment for up to 10 years and/or a fine of up to \$25,000 for a first offense or (2) imprisonment for up to 20 years and/or a fine of up to \$50,000 for a second or subsequent offense.

For the purposes of determining jurisdiction, a violation is committed in the State if the solicitation originated in or is received in the State.

Production or Distribution of Child Pornography – § 11-207 of the Criminal Law Article

Under current law, a person may not:

- cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;
- photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct or in a manner that reflects the belief, or that is intended to cause another to believe, that the matter,

- visual representation or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or
- use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

Violators are guilty of a felony, punishable by (1) for a first violation, imprisonment for up to 10 years and/or a \$25,000 maximum fine and (2) for each subsequent violation, imprisonment for up to 20 years and/or a \$50,000 maximum fine.

State Expenditures: The bill is not expected to materially affect State incarceration expenditures or workloads for the Judiciary or the Office of the Public Defender (OPD).

The Department of Public Safety and Correctional Services (DPSCS) advises that during fiscal 2023, the Division of Corrections (DOC) received four individuals for violations of § 11-207 of the Criminal Law Article, including three individuals who violated the existing prohibition against soliciting a minor to engage in child pornography and one individual who violated the computer-related prohibitions under § 11-207. DPSCS also advises that DOC received 16 individuals during fiscal 2023 for violating the prohibition against sexual solicitation of a minor under § 3-324 of the Criminal Law Article.

The Judiciary advises that it does not anticipate a significant operational or fiscal impact on the courts from the bill.

OPD advises that most of the bill's provisions would not expand its workload, but an unpredictable number of new cases could result in some additional costs. The Department of Legislative Services advises that any increase in caseloads is expected to be minimal and absorbable within existing caseloads.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 113 (Senator Kelly, *et al.*) - Judicial Proceedings.

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

Fiscal Note History: First Reader - January 18, 2024
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