

Fiscal Estimate Narratives

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LRB Number	05-4560/1	Introduction Number	SB-580	Estimate Type	Original
Description Child pornography, sexual exploitation of a child, using a computer to facilitate a child sex crime, child sex offenders working with children, making appropriations, and providing penalties					

Assumptions Used in Arriving at Fiscal Estimate

Under current law, a person convicted of child pornography offenses is guilty of a Class I felony and a person convicted of sexually exploiting a child is guilty of a Class F felony. This bill changes the crimes of child pornography and sexual exploitation of a child to Class C felonies, punishable by a fine of up to \$100,000, a maximum sentence length of 40 years and a maximum confinement time of 25 years. The bill also provides a mandatory minimum prison term of 3 years for a child pornography conviction and 5 years for a conviction of sexually exploiting a child. Under this bill, persons convicted of these offenses cannot be placed on probation. The bill also imposes a child pornography surcharge of \$500 per image or copy of an image associated with the offense, with the number of images determined by the judge.

Under current law, a person convicted of using a computerized communication system to communicate with an individual who the person believes is under 16 with intent to have sexual contact or sexual intercourse with the individual is guilty of a Class D felony. The current maximum sentence length for the Class D felony is 25 years [maximum term of confinement is 15 years] and the offender may be placed on probation. This bill provides a mandatory minimum prison term of 5 years for a conviction of using a computer to facilitate a child sex crime.

Under current law, a person who has committed a serious child sex offense is prohibited from engaging in an occupation or participating in a volunteer position that requires him or her to work or interact primarily and directly with children who are less than 16 years old. A person convicted of this is guilty of a Class F felony. This bill eliminates the reference to "primarily" in the statutes, making the prohibition applicable to any position that requires a person to work directly with children.

CHILD PORNOGRAPHY

Under this bill, a conviction for child pornography increases the maximum sentence length to 40 years (25 year maximum term of confinement) from 3.5 years (1.5 year maximum term of confinement) and the maximum fine to \$100,000 from \$10,000. The offender may not be placed on probation, and must be sentenced to a mandatory minimum confinement time of 3 years.

During CY 2005, 49 offenders convicted of this crime were placed on probation. Assuming 49 offenders in the first year would instead serve a mandatory minimum 3 year prison sentence, and assuming the FY05 per offender annual prison cost of \$26,200 less the FY05 per offender cost of probation of \$2,030, costs in the first year would increase \$1,184,300 [49 offenders]. Second year costs would increase \$2,368,700 [98 offenders] and third and subsequent year costs would increase \$3,553,000 [147 offenders]. This assumes the offenders only serve the mandatory minimum time period in prison and that the probation term was at least equal to the new mandatory minimum confinement time. Any additional confinement time will increase costs.

Also during CY05, 17 offenders were placed in prison for this crime. Of those 17, only 6 received less prison confinement time (an average of 19 months) than the new mandatory minimum of 36 months [3 years]. Assuming no other changes other than increasing the confinement time of the 6 offenders currently sentenced to less than the proposed 3-year mandatory minimum confinement period, costs would increase \$60,500 [5 offenders] in year 2 and, \$205,400 [11 offenders] in year 3 and subsequent years.

SEXUAL EXPLOITATION OF A CHILD

Under this bill, a conviction for sexual exploitation of a child increases the maximum sentence length to 40 years (25 year maximum term of confinement) from 12.5 years (7.5 year maximum term of confinement) and the maximum fine to \$100,000 from \$25,000. The offender may not be placed on probation, and must be sentenced to a mandatory minimum confinement time of 5 years.

During CY 2005, 3 offenders convicted of this crime were placed on probation. Assuming 3 offenders in the first year would instead serve a minimum mandatory 5 year prison confinement sentence, and assuming the net FY05 per offender annual prison cost less probation costs of \$24,170, costs in the first year would increase \$72,500 [3 offenders]. Second year costs would total \$145,000 [6 offenders]; third year \$217,500 [9 offenders], fourth year \$290,000 [12 offenders] and fifth and subsequent year [15 offenders] costs would total \$362,600. This assumes the offenders only serve the mandatory minimum time period in prison and that the probation term was at least equal to the new mandatory minimum confinement term. Any additional confinement time will increase costs.

During CY05, 4 offenders were placed in prison for this crime. Of those 4, only 1 received less prison confinement time than the new mandatory minimum of 60 months [5 years]. Assuming no other change other than raising the single offender to the 60 month level would increase costs \$24,200 starting in year 3, \$48,300 [2 offenders] in year 4, and \$72,500 [3 offenders] in year 5 and subsequent years.

SURCHARGE

The bill also imposes a child pornography surcharge of \$500 per image or copy of an image associated with the offense, with the number of images determined by the judge for a conviction of child pornography or sexual exploitation of a child, with the Department of Corrections receiving 50% of the surcharge collected. Assuming a single image for each conviction, the surcharge would generate \$36,500 in surcharges. However, given that an offender is likely to have an unknown number of images or copies, and the collection rate for this surcharge is unknown, the fiscal effect of this provision cannot be determined.

USING A COMPUTER TO FACILITATE A CHILD SEX CRIME

Under this bill, a person convicted of using a computer to facilitate a child sex crime may not be placed on probation, and must be sentenced to a mandatory minimum confinement time of 5 years.

During CY 2005, 33 offenders convicted of this crime were placed on probation. Assuming 33 offenders in the first year would instead serve a mandatory minimum 5 year prison confinement sentence, and assuming the net FY05 per offender annual prison cost less probation is \$24,170, costs in the first year would increase \$797,600 [33 offenders]. Second year costs would total \$1,595,200 [66 offenders]; third year \$2,392,800 [99 offenders], fourth year \$3,190,400 [132 offenders], and fifth and subsequent year costs would total \$3,988,000 [165 offenders]. This assumes the offenders only serve the mandatory minimum 5-year time period in prison and that the probation term was at least equal to the new mandatory minimum confinement time. Any additional confinement time will increase costs.

During CY05, 4 offenders were placed in prison for this crime. Of those 4, all received less prison confinement time (an average of 33 months) than the new mandatory minimum of 60 months [5 years]. Assuming no other change except raising the mandatory confinement time to the 60 month level would increase costs starting in year two by \$12,100 [1 offender]; \$48,300 [2 offenders] in year three, \$120,900 in year four [6 offenders], and \$217,500 in the fifth and subsequent years [10 offenders].

CHILD SEX OFFENDER WORKING WITH CHILDREN

The Department is unable to estimate the number of additional persons who will be convicted of this crime by eliminating the reference to working "primarily" with children.

SUMMARY

If CY05 convictions for the above crimes are indicative of future trends, the state would see an increase in

prison population of 85 offenders in the first year after enactment of this bill at a cost of \$2,054,500, with costs increasing to \$8,399,100 by year 5 for 351 offenders. As an alternative to prison beds, the Department could contract for prison beds. If the increased number of offenders were placed in contract beds at the current rate of \$51.46, total costs would increase \$1,423,800 in Year 1 and \$5,879,600 by Year 5 and thereafter. Costs in subsequent years will be higher if judges increase sentence lengths and/or extended supervision terms as a result of the imposition of mandatory minimum sentences and the increases in maximum sentence lengths in the bill for some of the offenses. While the Department is likely to see offenders on community supervision for longer periods as a result of these changes, the fiscal impact of this cannot be determined.

Long-Range Fiscal Implications