

LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6069

BILL NUMBER: HB 1191

NOTE PREPARED: Jan 13, 2022

BILL AMENDED:

SUBJECT: Child Exploitation and Child Pornography.

FIRST AUTHOR: Rep. Karickhoff

BILL STATUS: CR Adopted - 1st House

FIRST SPONSOR:

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Child Exploitation* – It provides that a person who knowingly or intentionally produces, disseminates, or possesses with intent to disseminate an image that depicts or describes sexual conduct: (1) by a child who the person knows is less than 18 years of age; (2) by a child who appears to be less than 18 years of age and the representation of the image is obscene; or (3) that is a representation of a child who appears to be less than 18 years of age and the representation of the image is obscene; commits the offense of child exploitation.
- B. *Possession of Child Pornography* – It provides that a person who knowingly or intentionally receives, possesses, or accesses with intent to view an image that depicts or describes sexual conduct: (1) by a child who the person knows is less than 18 years of age; (2) by a child who appears to be less than 18 years of age and the representation of the image is obscene; or (3) that is a representation of a child who appears to be less than 18 years of age and the representation of the image is obscene; commits the offense of possession of child pornography.
- C. *Added Condition* – It specifies that it is not a required element of the offense of child exploitation or possession of child pornography that the child depicted actually exists under certain circumstances.
- D. It defines "image". It makes conforming changes.

Effective Date: July 1, 2022.

Explanation of State Expenditures: This bill expands the conditions for which either the possession of child pornography or child exploitation can be prosecuted. Any increase in DOC's offender population due to this bill should be minor since relatively few individuals are prosecuted in Indiana's courts and confined in state prison facilities for either of these offenses. Child exploitation is a Level 5 felony. Possession of child pornography is a Level 6 felony.

A Level 5 felony is punishable by a prison term ranging from 1 to 6 years, with an advisory sentence of 3 years. A Level 6 felony is punishable by a prison term ranging from 6 to 30 months, with an advisory sentence of 1 year. In each case, the specific sentence depends on mitigating and aggravating circumstances.

Both Level 5 and Level 6 sentences may be suspended and the person placed on either probation or community corrections. If no time is suspended, the offender can receive good time credit of 25% for a Level 5 felony and 50% for a Level 6 felony and educational credit time. After adjusting for credit time, the offender can be released from prison and placed on parole.

Additional Information – These four provisions in this bill could slightly increase the number of prosecutions for child exploitation and possession of child pornography:

1. It adds computer generated images to a list of images that would be child pornography.
2. It specifies that child pornography does not have to be an image of an actual child.
3. It specifies that those who receive child pornography commit a Level 6 felony.
4. It substitutes the term "obscene" as criteria to determine whether images depicting sexual conduct by a child less than 18 is child pornography.

It is possible that using the term obscene could increase the number of prosecutions for these two offenses. Under current law, images depicting sexual acts by children under the age of 18 and that lack serious literary, artistic, political or scientific value are considered child pornography. The statutory definition for obscenity includes this criteria and also includes a matters or performances which: (1) the average person, applying contemporary community standards, finds that the dominant theme of the matter or performance, taken as a whole, appeals to the prurient interest in sex; and (2) the matter or performance depicts or describes, in a patently offensive way, sexual conduct (IC 35-49-2-1).

According to the Abstracts of Judgment for fiscal years 2014 through 2021, almost 68% of those who were convicted and sentenced for child exploitation as a Level 5 felony were confined in a DOC facility with an average sentence of 3.27 years. The average number of commitments to DOC for child exploitation was 10.7 individuals per year between FY 2014 and FY 2021 and ranged between 5 and 26 in any given year.

For possession of child pornography, almost 12% of those who were convicted of possession of child pornography as a Level 6 felony were confined in a DOC facility with an average sentence of 1.46 years. On average, 15 persons have been committed for possession of child pornography between FY 2014 and FY 2021 and ranged between 5 and 23 in any given year.

The average expenditure to house an adult offender was \$24,506 annually, or \$67 daily, in FY 2021. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,333 annually, or \$11.67 daily, per prisoner. These marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene.

The estimated average cost of housing a juvenile in a state juvenile facility was \$133,799, or \$366.32 daily, in FY 2021. The marginal cost for juvenile facilities was \$4,891 annually or \$13.40 daily

Explanation of State Revenues: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a felony is \$10,000. Criminal fines are deposited in the Common School Fund.

Felony cases are filed in a circuit or superior courts, where 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. In addition, some or all of the following revenue is deposited into the state General Fund: automated record keeping fee (\$20), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$3).

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. Of the persons convicted and sentenced for a child exploitation, 89% were confined in a county jail before trial while 86% of the persons convicted and sentenced for possession of child pornography were confined in a county jail prior to trial.

The average cost per day is approximately \$54 based on the per diem payments reported by U.S. Marshals to house federal prisoners in 16 county jails across Indiana during federal FY 2017.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$5), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Department of Correction, U.S. Department of Justice Marshals Service, Abstracts of Judgement, Indiana Supreme Court, Indiana Code

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