

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3219

STATE OF NEW JERSEY

DATED: JUNE 19, 2017

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3219 (1R).

This bill establishes additional penalties for child pornography crimes. Specifically, the bill expands the definition of child pornography to include the portrayal of a child in a sexual manner; establishes the crime of “leader of child pornography network”; and enhances penalties and revises the sentencing provisions for these crimes. The bill addresses changes in the child pornography industry which are not adequately addressed by current law.

This bill builds upon recent amendments to N.J.S.2C:24-4, pursuant to P.L.2013, c.136, which addressed the newer means of distribution of child pornography, such as computer file-sharing programs. These programs are used to share and distribute files by various means including the Internet or directly between computer systems, such as peer-to-peer networks.

Child Erotica: The bill criminalizes the possession and distribution of “child erotica,” which refers to images that depict nearly naked, suggestively-posed, and inappropriately sexualized children. New Jersey’s child pornography statute currently does not criminalize “child erotica,” and refers only to a depiction of a child engaging in a prohibited sexual act or simulation of such act.

The bill amends the current definition of child pornography (an “item depicting the sexual exploitation or abuse of a child”) to include an item which portrays a child in a sexually suggestive manner. The bill defines the term “portray a child in a sexually suggestive manner” to mean:

-- to depict a child’s less than completely and opaquely covered intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or

-- to depict any form of contact with a child’s intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or

-- to otherwise depict a child for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value.

Leader of a Child Pornography Network: Under the bill, a person is guilty of the crime of “leader of a child pornography network” if the person knowingly conspires with others to establish or maintain a child pornography distribution network through which files containing child pornography are made available to an organized group. Leader of a child pornography network is a crime of the first degree if the offense involves 100,000 or more child pornography items; a crime of the second degree if the offense involves at least 1,000 but less than 100,000 items; and a crime of the third degree if the offense involves less than 1,000 items. A crime of the first degree is punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both; a crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; a crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both; and a crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Enhanced Penalties for Possession of Large Quantities: Under current law, possession of child pornography is increased from a crime of the fourth degree to a crime of the third degree, and carries a presumption of imprisonment if a person possesses 100 or more items of child pornography. Due to rapid advancements in technology, enormous numbers of digital files are capable of being downloaded at very high speeds, and hard drive memory storage has been greatly expanded, increasing both the quantity and frequency of child pornography distribution. These advances also have led to an increase in the number of “super-possessors” who possess thousands to hundreds of thousands of items of child pornography.

Child pornography super-possessors currently may face the same penalties as a defendant possessing 100 items of child pornography. In addition, current law does not differentiate between a single still image of child pornography and an extended video sequence, which could consist of thousands of digital images. This bill creates enhanced penalties for super-possessors by making possession of 100,000 or more items of child pornography a crime of the first degree; possession of less than 100,000 items but greater than 1,000 items a crime of the second degree; and possession of 1,000 items a crime of the third degree. The bill also promotes more equitable sentencing for video images by providing that each video or video segment of child pornography is the equivalent of 10 separate items.

Enhanced Penalties for File Sharing: Under current law, a person convicted of distribution of child pornography is guilty of a

crime of the second degree with a mandatory minimum sentence of one-third to one-half the sentence imposed or five years, whichever is greater. A distributor who is caught transmitting 25 child pornography files currently faces the same penalties as a distributor caught sending 10,000 files. The bill revises the penalties for distribution of child pornography to provide that a person who distributes 1,000 or more items is guilty of a crime of the first degree. Distribution of less than 1,000 items remains a crime of the second degree.

Sentencing Provisions and Fines: Under current law, an offender is referred to the Adult Diagnostic and Treatment Center (ADTC) for sex offender treatment if the court finds that the offender's conduct is characterized by a pattern of repetitive, compulsive behavior and the offender is amenable and willing to participate in sex offender treatment. A psychological examination is ordered for offenders convicted of a number of sex offenses which include the distribution of child pornography, but not possession of child pornography. A prosecutor may make a motion requesting that the court impose a special sentence of parole supervision for life on a person who possesses any amount of child pornography. Judges currently are required to order a psychological examination of certain sex offenders to determine if referral to the ADTC is appropriate.

The bill provides that if a person is convicted of possessing 1,000 or more items of child pornography: the court is required to consider imposing a sentence of parole supervision for life; the person is subject to evaluation for ADTC commitment; and the person is required to register as a sex offender and be subject to the community notification and Internet publication requirements under Megan's Law.

The bill clarifies that for all child pornography manufacturing and distribution offenses, including the crime of leader of a child pornography network established by the bill, a fine is to be imposed and deposited into the Computer Crime Prevention Fund.

The bill is scheduled to take effect on the first day of the seventh month following enactment.

FISCAL IMPACT:

The Administrative Office of the Courts has indicated that the Judiciary has insufficient information to estimate the number of individuals who may be charged with or convicted of a crime created or expanded by the bill. As a result, the Judiciary cannot determine the increase in revenue or expenditures that is expected to result from the bill.

The Office of Legislative Services (OLS) generally agrees with the Judiciary that there is no information available to determine the number of offenders who will be subject to the bill, the cost to the

Judiciary to implement the bill's provisions, or the revenue increase that could result from increased fines.

In addition, the OLS expects the State Parole Board will likely incur indeterminate costs to provide parole supervision for life for those offenders who are sentenced to lifetime supervision as a result of the bill. Insufficient information is available concerning the number of offenders who will be subject to such supervision.

The OLS also expects the Department of Corrections to incur an indeterminate cost increase to house offenders convicted under the bill. The OLS notes that the FY 2016 marginal cost to house an inmate in a State prison facility was \$8.45, per day or \$3,084 annually for food, wages and clothing. As a result, any offender convicted under the bill and incarcerated in a State correctional facility will cost \$3,084 per year. The OLS further notes that the average cost of housing an inmate is about \$47,000 per year. It is unclear at what point the number of inmates added to the State prison population results in the average cost rather than the marginal cost per inmate.