

**SENATE APPROPRIATIONS COMMITTEE
FISCAL NOTE**

BILL NO. Senate Bill 87

PRINTER NO. 64

AMOUNT

See Fiscal Impact

FUND

General Fund

DATE INTRODUCED

January 22, 2021

PRIME SPONSOR

Senator Baker

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 87 amends Titles 18 (Crimes and Offenses), 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to increase the penalties of crimes related to child pornography, to create a child sexual abuse task force and to provide for a sentence enhancement for sexual abuse of children.

Section 6312 (relating to sexual abuse of children) is amended to increase the grading of child pornography offenses by one grade when the child depicted is under ten years of age or prepubescent.

The grading of offenses under 18 Pa.C.S. § 6312 (relating to sexual abuse of children) would increase as follows:

- A violation of § 6312(b) (relating to photographing, videotaping, depicting on computer or filming sexual acts) would increase from a felony of the second degree to a felony of the first degree; and
- A first offense violation of § 6312(c) (relating to dissemination of photographs, videotapes, computer depictions and films) or § 6312(d) (relating to child pornography) would increase from a felony of the third degree to a felony of the second degree.

The legislation establishes the “Task Force on Child Pornography” within the Department of Human Services to conduct a review to ascertain any inadequacies relating to the offense of child pornography in 18 Pa.C.S. § 6312 (relating to sexual abuse of children). Composition of the task force shall consist of the following members:

- 1) The Secretary of the Department of Human Services or a designee;
- 2) The Attorney General or a designee;
- 3) The Commissioner of Pennsylvania State Police or a designee;
- 4) The Chairman of the Pennsylvania Commission on Crime and Delinquency or a designee;

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- 5) The Executive Director of the Pennsylvania Commission on Sentencing or a designee;
- 6) Two members of the Pennsylvania Senate, one appointed by the President Pro Tempore of the Senate and one appointed by the Minority Leader of the Senate;
- 7) Two members of the Pennsylvania House of Representatives, one appointed by the Speaker of the House of Representatives; and one appointed by the Minority Leader of the House of Representatives;
- 8) The Victim Advocate from the Office of Victim Advocate or a designee from that office;
- 9) The President of the Pennsylvania District Attorneys Association or a designee;
- 10) The Director of the Pennsylvania Coalition Against Rape or a designee;
- 11) One member of the Pennsylvania Sexual Offenders Assessment Board. If possible, the member shall be a member of the Association for the Treatment of Sexual Abusers;
- 12) One member of the Pennsylvania Internet Crimes Against Children (ICAC) Task Force;
- 13) The director of a rape crisis center located in this Commonwealth or a designee, appointed by the Governor;
- 14) One representative of a children's advocacy center that assists in the investigation, prosecution and treatment of child sexual and physical abuse cases, appointed by the Governor;
- 15) Two medical professionals that specialize in the field of child sexual abuse, one of whom shall be appointed by the President Pro Tempore of the Senate and one of whom shall be appointed by the Speaker of the House of Representatives;
- 16) One member of the public appointed by the President Pro Tempore of the Senate; and
- 17) One member of the public, appointed by the Speaker of the House of Representatives.

Members of the task force may not receive per diem expenses.

The legislation requires the Pennsylvania Commission on Sentencing (commission) to provide for a sentence enhancement within its guidelines for an offense under § 6312 if the child depicted is known to the defendant. Additionally, when the increased grading provisions under 18 Pa.C.S. § 6312 (d.1)(3) apply, the commission shall provide a sentence enhancement if indecent contact with the child is depicted and the child depicted is under ten years of age or prepubescent.

This act shall take effect in 60 days.

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FISCAL IMPACT:

According to the Pennsylvania Commission on Sentencing (commission), a sentence enhancement currently exists for when a child depicted is under 13 years of age or prepubescent. According to 2018 sentencing data, there were 1,677 convictions for 18 Pa.C.S. § 6312 offenses, of which 163 of those cases would have increased the grade of offense provided for in this legislation: 134 offenses graded as a felony of the third degree would increase to a felony of the second degree and 29 offenses graded as a felony of the second degree would increase to a felony of the first degree.

As noted, the commission currently has a sentence enhancement related to this statute. Aside from some impact due to the increased grade of certain convictions, this legislation would also require the following two changes to the existing enhancement:

- Dropping the age of the child depicted from 13 to 10, would have a minor impact, since both the current enhancement and the proposed enhancement include a prepubescent child; and
- The proposed sentence enhancement provision includes circumstances where the child depicted is known to the defendant. The commission does not have any data on this and cannot provide an estimated impact on that provision.

Felony convictions carry the following possible sentences:

- Felony of the first degree may be sentenced to a term of imprisonment, the maximum of which is more than ten years;
- Felony of the second degree may be sentenced to a term of imprisonment, the maximum of which is not more than ten years; and
- Felony of the third degree may be sentenced to a term of imprisonment, the maximum of which is not more than seven years.

Of the 163 individuals mentioned above, 53 were sentenced to a term of imprisonment in a state correctional institution. With the increased grading of offenses, assuming 50% of those individuals would receive an additional two years imprisonment in a state correctional institution with a marginal cost of \$18.34 per inmate/per day, the Commonwealth would incur additional costs of approximately \$354,787.