

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 30
Judiciary

(Delegate Wivell)

Criminal Law - Display of Material Harmful to Minors - Restrictions

This bill prohibits a person from offering for sale in a retail establishment open to the general public a book, magazine, or any other printed material with a cover or content that depicts material that is “harmful to minors” if the material is on open display to or within the convenient reach of minors who may frequent the establishment. However, this material may be displayed, individually or collectively, behind an opaque covering that conceals the book, magazine, or other printed material so that no more than the title, name, price, and date is exposed.

Violations are civil infractions and are subject to a civil penalty of \$100 for the first violation and \$300 for a second or subsequent violation. A citation for a second violation may not be issued within 30 days after the date of the first citation. After a citation is issued for a second or subsequent violation, a citation may be issued each day that the violation continues after the date of the second or subsequent violation.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from civil penalties imposed in the District Court. Any increase in District Court caseloads can be handled with existing budgeted resources.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Potential meaningful impact on small businesses that must alter retail displays as a result of the bill. The extent of any impact depends on the cost of altering retail displays to comply with the bill’s provisions in order to avoid civil penalties.

Analysis

Bill Summary: The bill defines “harmful to minors” as a description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, or sexual excitement that (1) predominantly appeals to the prurient, shameful, or morbid interest of minors; (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and (3) is without serious literary, artistic, political, or scientific value for minors.

Current Law: The First Amendment to the U.S. Constitution protects freedom of speech. However, courts have determined that not all types of speech are protected. Obscenity is one example of speech that is not protected under the First Amendment. *Miller v. California*, 413 U.S. 15 (1973), involved a bookseller who appealed his conviction under California obscenity laws for distributing illustrated books of a sexual nature. In *Miller*, the U.S. Supreme Court established the following three-pronged test for obscenity:

- whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;
- whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Under the Criminal Law Article, a person may not willfully or knowingly display or exhibit to a minor an item (1) the cover or content of which is principally made up of an obscene description or depiction of illicit sex or (2) that consists of an obscene picture of a nude or partially nude figure. A person is also prohibited from willfully or knowingly engaging in the business of displaying, exhibiting, selling, showing, advertising for sale, or distributing such an item to a minor. If a newsstand or other place of business is frequented by minors, the owner, operator, franchisee, manager, or an employee with managerial responsibility may not openly and knowingly display such an item at the place of business. The terms “item,” “obscene,” and “partially nude” are specifically defined under the statute.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$1,000 maximum fine for a first violation and imprisonment for up to three years and/or a \$5,000 maximum fine for each subsequent violation.

Also, a person may not knowingly sell or offer to sell to a minor written, printed, audio, or visual material that contains obscene material or depicts or contains specified acts or content (“restricted content”). Also, a person who operates or is employed in a sales, cashier, or managerial capacity in a retail establishment may not knowingly allow a minor

without the presence of the minor's parent or guardian to enter or remain on the premises where items considered as restricted content or specified activities are shown, displayed, or depicted. Violators are guilty of a misdemeanor, punishable by imprisonment for up to six months and/or a \$1,000 maximum fine.

A person is also prohibited from (1) knowingly displaying for advertising purposes a picture, photograph, drawing, sculpture, or other visual representation or image of an individual or portion of a human body that depicts sadomasochistic abuse, sexual conduct, or sexual excitement or contains a verbal description or narrative account of those activities or (2) knowingly allowing such a display on premises that the person owns, rents, or manages. Violators are guilty of a misdemeanor, punishable by imprisonment for up to six months and/or a \$1,000 maximum fine.

An employee of a person who operates premises where a prohibited public display is situated is presumed to have been the operator of the premises when the violation occurred if the employee was on the premises at the time of the violation.

Background: Several states, including Florida, Maine, Rhode Island, and South Dakota, have enacted statutes pertaining to the display or sale of material that is obscene or "harmful to minors." The statutes vary in scope, application and penalties, and some have been the subject of legal challenges.

State Expenditures: The Judiciary advises that it does not anticipate a significant fiscal or operational impact as a result of the bill.

Local Fiscal Effect: Harford, Carroll, Montgomery, and Queen Anne's counties advise that the bill has no fiscal impact on their jurisdictions. Baltimore County and the St. Mary's Sheriff's Office advise that they can handle enforcement with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Maryland Chamber of Commerce; First Amendment Center; www.pbs.org; American Civil Liberties Union; Freedom to Read Foundation/American Library Association; National District Attorney's Association; Department of Legislative Services

Fiscal Note History: First Reader - January 15, 2016
min/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510