

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

Senate Bill 281 (Senator Stone, *et al.*)
Judicial Proceedings

Obscenity - Providing Minors with Access to Harmful Materials

This bill alters current law by prohibiting a person from recklessly selling, displaying, distributing, or exhibiting certain sexual presentations, depictions, or pictures in a way which is harmful to minors. The bill expands the types of media covered by this prohibition to include moving pictures, film, drawings, writings, computer messages or discs, or other visible or audible matter or communication and exempts services or facilities that relate to recorded telephone and computer messages which are provided by a telephone company. Further, the bill establishes a minimum fine of \$500 and a maximum fine of \$1,000 for this offense. The incarceration penalty remains the same (up to one year) as under current law. Each day this violation occurs constitutes a separate offense.

The bill also establishes a minimum fine of \$500 and a maximum fine of \$1,000 and an increased incarceration penalty of one year (up from six months) for persons who exhibit, sell tickets to, or admit a minor who is unaccompanied by an adult to premises which contain motion pictures or other presentations of obscene materials.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Potential meaningful effect on small businesses, as discussed below.

Fiscal Analysis

State Revenues: General fund revenues could increase under the bill's minimum fine provisions for those cases heard in District Court, depending upon the number of convictions and fines imposed.

State Expenditures: No commitments to a Division of Correction (DOC) facility involving these offenses were recorded in 1995 and 1996. Most convicted under this provision are fined. Persons serving a sentence of one year or less are sentenced to a local detention facility. The State reimburses counties for part of their per diem rate after a person has served 90 days. State per diem reimbursements for fiscal 1998 are estimated to range from \$12 to \$42 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility, with an average monthly cost estimated at \$1,500 for fiscal 1998. [The Baltimore City Detention Center (BCDC), a State operated facility, is used primarily for pretrial detentions. The per diem cost for fiscal 1998 is estimated at \$43 per inmate.]

Local Revenues: Revenues could increase under the bill's monetary penalty provisions for those cases heard in the circuit courts, depending upon the number of convictions and fines imposed.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalties depending upon the number of convictions and sentences imposed. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$23 to \$83 per inmate in fiscal 1998.

Small Business Effect: The bill extends the definition of obscene material to include computer images or graphic files. The bill makes it illegal to "recklessly sell, show, advertise for sale or distribution, or distribute" obscene computer images to a minor. It is unclear whether a company that provides connection to the Internet would be considered to have sold or distributed obscene computer files if a minor accesses such material using the company's service.

To the extent that these providers would be liable under the bill's provisions, small business Internet providers could be adversely affected. In order to comply with the bill's provisions, providers may incur substantial costs to assure that minors are not able to access obscene materials (i.e., blocking access to obscene material or providing software for parents to install to regulate access).

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction), Department of Fiscal Services

Fiscal Note History: First Reader - February 24, 1997

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Analysis by: Lori Caldwell-Valentine

Reviewed by: John Rixey

Direct Inquiries to:

John Rixey, Coordinating Analyst

(410) 841-3710

(301) 858-3710