

Department of Legislative Services
Maryland General Assembly
1999 Session

FISCAL NOTE
Revised

Senate Bill 356 (Senator Stone. *et al.*)

Judicial Proceedings

Criminal Law - Obscene Matter and Matter That is Harmful to Minors - Penalties

This bill defines the terms “harmful to minors” and “obscene”, and makes specified changes to Article 27 and the subtitles relating to Nudity and Sexual Displays and Obscene Matter.

Fiscal Summary

State Effect: Potential indeterminate increases in general fund revenues and expenditures due to the bill’s penalty provisions.

Local Effect: Potential indeterminate increases in revenues and expenditures due to the bill’s penalty provisions.

Small Business Effect: Indeterminate. It is assumed that some promoters, distributors, and sellers of the cited matter and material are small businesses. However, any adverse effect on such businesses cannot be reliably predicted or measured without any actual experience under the bill’s provisions.

Fiscal Analysis

Bill Summary: This bill prohibits a person from knowingly providing or exhibiting or offering to provide or exhibit to a minor material that is “harmful to minors” or “obscene.” Violators with respect to material harmful to minors are guilty of a misdemeanor, and violators with respect to material that is obscene are guilty of a felony.

The bill subjects all misdemeanor violations under this section, including current law prohibitions, to increased maximum penalties of a fine of \$10,000 and/or imprisonment for one year. The current law maximums are a fine of \$1,000 and/or imprisonment for six months. In addition, the bill establishes, with respect to material that is obscene, new felony maximum penalties of a fine of \$50,000 and/or imprisonment for three years.

The bill eliminates a current law misdemeanor relating to sending or bringing into the State obscene matter. The bill creates a new felony prohibition whereby a person may not knowingly “promote” obscene matter into or within the State. Violators are subject to maximum penalties of a fine of \$100,000 and or imprisonment for three years. However, the violator is only guilty of a misdemeanor if: (1) acting within the scope of employment without managerial responsibility or financial interest in the obscene matter; or (2) not acting for compensation. Maximum penalties for this offense are a fine of \$10,000 and/or imprisonment for one year.

The bill provides specified injunctive relief in the circuit courts from related promotions, sales, and distributions, in addition to that which is provided under current law.

The bill establishes that the standard for misdemeanor violations under the current law prohibition against the sale or display of certain items to persons under 18 is whether the material is harmful to minors rather than obscene. These provisions do not apply to the Internet or other interactive computer services. Violators are subject to maximum penalties of a fine of \$10,000 and/or imprisonment for one year.

In provisions relating to child pornography, the bill prohibits a person from possessing material if it depicts an individual under age 18 engaged in certain conduct. Current law prohibits such possession if the participant is under age 16. First offense misdemeanor maximum penalties under child pornography provisions are increased from a fine of \$2,500 and/or imprisonment for one year to a fine of \$10,000 and/or imprisonment for two years. Second or subsequent offenses are made felonies with maximum penalties increased from a fine of \$5,000 and/or imprisonment for two years to a fine of \$25,000 and/or imprisonment for five years.

The bill includes matter that is harmful to a minor under a current law misdemeanor prohibition against requiring acceptance of certain material as a condition of sale or denial of a franchise.

The bill makes specified age threshold changes to exemptions under the Obscene Matter Subtitle. Finally, the bill increases the monetary penalties for first offense violations under this subtitle, if not otherwise provided, from \$1,000 to \$10,000; and increases the monetary

penalties for second or subsequent offense violations from \$5,000 to \$25,000.

State Revenues: General fund revenues could increase by an indeterminate amount as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures could increase by an indeterminate amount as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime cannot be reliably estimated, but is not expected to materially affect average daily prison populations.

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$275 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2000 are estimated to range from \$8 to \$48 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center (BCDC), a State operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase by an indeterminate amount as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase by an indeterminate amount as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities 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 \$15 to \$80 per inmate in fiscal 2000.

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

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