

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 397 (Senators Stone and Hughes)
(Committee to Revise Article 27 – Crimes and Punishments)
Judicial Proceedings

Criminal Law - Obscene Materials - Revision

This bill generally conforms and updates provisions relating to obscene materials. The bill replaces the term “matter” with the term “material.” The bill prohibits the use of an electronic medium relating to an obscene act, sadomasochistic abuse, or sexual conduct involving a minor. The bill increases, from two years to three years, the maximum imprisonment penalty for subsequent violations of the misdemeanor prohibition against the knowing possession of “any material” depicting an individual under 16 years old engaged as the subject of sadomasochistic abuse, engaged in sexual conduct, or in a state of sexual excitement. In addition, the bill clarifies provisions relating to the storage and destruction of seized obscene material.

The bill also narrows the scope of provisions relating to injunctions that may be sought in circuit court by a State’s Attorney by allowing such an injunction to be sought to prevent the “possession with intent to distribute” rather than the simple possession of obscene material.

Fiscal Summary

State Effect: The bill’s changes are not expected to significantly affect State operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill removes references to obscene “matter” and “visual representations” and replaces those terms with the term “material” and defines that term as:

- printed, written, computer, or electronic medium;
- visual representation;
- mechanical, chemical, electrical, digital, or computer reproduction; or
- other article, equipment, machine, or other medium.

“Material” includes any: (1) book, magazine, or newspaper; (2) picture, drawing, photograph, motion picture, video, or other pictorial representation; (3) statue or other figure; or (4) recording or transcription.

Current Law: “Matter” means: (1) a book, magazine, newspaper, or other printed or written material; (2) a picture, drawing, photograph, motion picture, or other pictorial representation; (3) a statue or other figure; (4) a recording, transcription, or mechanical, chemical, or electrical reproduction; or (5) any other article, equipment, machine, or material.

A State’s Attorney may maintain an action for an injunction in the circuit court against a person to prevent the sale, further sale, distribution, further distribution, acquisition, publication, or possession within the State of any book, magazine, pamphlet, newspaper, story paper, writing paper, picture, card, drawing, photograph, motion picture film or showing, or any article or instrument the use of which is obscene.

A computer may not be used for certain actions relating to an obscene act, sadomasochistic abuse, or sexual conduct involving a minor.

Background: The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State’s criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims’ rights representative. In past sessions the committee has successfully sponsored legislation to revise the laws on accessory before and after the fact, arson, assault, benefit of clergy, burglary, destructive devices, disorderly conduct, escape, Medicaid fraud, offensive contact, prostitution, robbery, sabotage, trespass, and victims’ rights. This bill was recommended by the committee.

The main purpose of the bill is to establish a more uniform and clear definition of “material” that also recognizes developing technology in the distribution of obscene materials.

Additional Information

Prior Introductions: None.

Cross File: HB 672 (Delegates Getty and Doory) (Committee to Revise Article 27 – Crimes and Punishments) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2002
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