

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 698

(Delegate Ross, *et al.*)

Judiciary

**Crimes - Video and Computer Games Rated "Mature" or "For Adults Only" -
Prohibition on Sale or Rental to Minor**

This bill prohibits a person from knowingly selling or renting to a minor a video or computer game which was given an official rating of "Mature" or "For Adults Only" (or an equivalent rating) by the game manufacturer or the Entertainment Software Rating Board. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for six months and/or a fine of \$1,000.

The bill also provides that it is an affirmative defense to a charge for this offense that the defendant made a reasonable effort to ascertain the minor's legal age, including requiring identification showing date of birth.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Current Law: "Minor" means an individual under the age of 18 years.

A person may not knowingly sell or offer to sell to a minor:

- a picture, photograph, drawing, sculpture, motion picture, film, or other visual representation or image of an individual or portion of the human body that depicts sadomasochistic abuse, sexual conduct, or sexual excitement;
- a book, magazine, paperback, pamphlet, or other written or printed matter however reproduced, that contains:
 - any matter enumerated above;
 - obscene material; or
 - explicit verbal descriptions or narrative accounts of sadomasochistic abuse, sexual conduct, or sexual excitement; or
- a sound recording that contains:
 - obscene material; or
 - explicit verbal descriptions or narrative accounts of sadomasochistic abuse, sexual conduct, or sexual excitement.

A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for six months and/or a fine of \$1,000.

For monetary consideration or other valuable commodity or service, a person may not knowingly:

- exhibit to a minor without the presence of the minor's parent or guardian a motion picture show or other presentation of specified adult sexual displays;
- sell to a minor an admission ticket or other means to gain entrance to a motion picture show or other presentation of specified adult sexual displays; or
- admit a minor without the presence of the minor's parent or guardian to premises where a motion picture show or other presentation of specified adult sexual displays is exhibited.

A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for six months and/or a fine of \$1,000.

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 any premises where specified adult sexual activity is shown, displayed, or depicted. A violator is guilty of a misdemeanor

and subject to maximum penalties of imprisonment for six months and/or a fine of \$1,000.

In addition, under provisions relating to obscene matter, 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 may not willfully or knowingly engage in the business of displaying, exhibiting, selling, showing, advertising for sale, or distributing 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.

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 at the place of business an item whose sale, display, exhibition, showing, or advertising is prohibited by these provisions.

A violator is guilty of a misdemeanor and subject to the following maximum penalties:

- for a first violation, imprisonment not exceeding one year or a fine not exceeding \$1,000 or both; and
- for each subsequent violation, imprisonment not exceeding three years or a fine not exceeding \$5,000 or both.

Background: The Entertainment Software Rating Board (ESRB) is a nonprofit organization that rates PC, video, and wireless games in terms of content. ESRB ratings have two parts: rating symbols that suggest what age group the game is best for, and content descriptors that indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern. In 2001, the Federal Trade Commission announced that the ESRB has been approved as a “safe harbor” program under the terms of the federal Children’s Online Privacy Protection Act.

State Revenues: General fund revenues could increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill’s incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. 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 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. 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 \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 3, 2005
ncs/jr

Analysis by: Guy G. Cherry

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