

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1311 (Delegate McComas)
 Economic Matters

Criminal Law - Obscene Material - Device Filters

This bill (1) requires, beginning on January 1, 2025, all “devices” (tablets or smartphones manufactured on or after January 1, 2025) activated in the State to enable a filter to prevent minors from accessing obscene material; (2) prohibits a person other than a parent or legal guardian of a minor from deactivating or uninstalling the filter; (3) subjects a manufacturer of a device to civil and criminal liability for failure to comply with the bill’s device filter requirements; (4) authorizes the Attorney General to take certain actions against persons who violate the bill’s provisions; and (5) authorizes parents or legal guardians of minors to file a private cause of action against manufacturers, as specified.

Fiscal Summary

State Effect: General fund expenditures increase *by as much as* \$119,300 in FY 2025 for the Office of the Attorney General (OAG) to implement the bill, as discussed below. Future years reflect annualization and inflation. Minimal increase in general fund revenues from civil and criminal penalties.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	-	-	-	-	-
GF Expenditure	\$119,300	\$206,100	\$215,300	\$224,700	\$234,600
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Required Filters

Beginning on January 1, 2025, all devices activated in the State must:

- determine the age of the user during activation and account set-up;
- enable an existing filter for minor users, wherein the filter must be set to the on position when the user is a minor;
- prevent a minor from accessing obscene material through all Internet browsers or search engines on the device via mobile data networks, wired Internet networks, and wireless Internet networks;
- notify the minor user of the device when the filter blocks the device from accessing a website;
- allow parents or legal guardians of minor users to disable the filter or unblock a website after providing reasonable age verification; and
- allow parents or legal guardians of minor users to re-activate the filter at any time.

Except for a parent or legal guardian, a person may not deactivate or uninstall the filter for a minor under the care and control of the parent or guardian.

“Filter” means software installed on a device that can prevent the device from accessing or displaying obscene material through Internet browsers or search engines.

“Minor” means an individual younger than age 18 who is not emancipated, married, or a member of the armed forces of the United States.

“Obscene” has the meaning stated in § 11-203 of the Criminal Law Article (see “Current Law” section below).

Manufacturer Liability

Beginning January 1, 2025, a manufacturer of a device must be subject to civil and criminal liability if a device is activated in the State, the device does not enable a required filter (as described above) on activation, and a minor accesses obscene material on the device. However, this does not apply to a manufacturer that makes a good faith effort to provide a device that, on activation of the device in the State, automatically enables a generally accepted and commercially reasonable filter that blocks obscene material on all Internet

browsers or search engines accessed on the device. These liability provisions may not be construed to create a cause of action against the retailer of a device.

Disabling a Filter – Civil and Criminal Liability

Except for a minor's parent or legal guardian, any person is civilly liable for disabling the filter on a device in the possession of the minor if the minor accesses obscene material. With respect to criminal liability, beginning on January 1, 2025, a person (other than a parent or legal guardian) who disables the filter on a device in the possession of a minor is subject to a fine up to \$5,000 for a first offense and imprisonment for up to one year and/or a \$50,000 maximum fine for a subsequent offense.

Actions by the Attorney General

If the Attorney General has reason to believe that a person violated or is violating the bill's provisions, the Attorney General, acting in public interest, may file a civil cause of action in the name of the State against the person to:

- enjoin any action that constitutes a violation of the bill by the issuance of a temporary restraining order or preliminary or permanent injunction;
- recover from the alleged violator a civil penalty of up to \$5,000 per violation with a maximum total of \$50,000 in aggregate, as determined by the court;
- recover from the alleged violator the Attorney General's reasonable expenses, investigative costs, and attorney's fees; or
- obtain other appropriate relief.

For purposes of assessing a penalty, a manufacturer is considered to have committed a separate violation for each device manufactured on or after January 1, 2025, that violates the provisions of the bill. The Attorney General may issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry in addition to other powers conferred on the Attorney General by the bill. Also, the Attorney General may seek the revocation of any license or certificate authorizing a manufacturer to engage in business in the State.

Parents and Legal Guardians – Private Causes of Action

Any parent or legal guardian of a minor who accesses obscene material in violation of the bill may file a private cause of action against a manufacturer who fails to comply with the bill. A prevailing plaintiff may recover specified types of damages; other relief as the court deems appropriate, including reasonable court costs and expenses; and reasonable attorney's fees.

Class Action Lawsuits

The bill may not be construed to preclude the bringing of a class action lawsuit against a manufacturer when its conduct in violation of the bill is knowing and willful.

Current Law: Section 11-203 of the Criminal Law Article prohibits a person from willfully or knowingly displaying or exhibiting or engaging 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 as specified above.

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.

Under § 11-203, “obscene” means (1) that the average adult applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (2) that the work depicts specified sexual conduct in a way that is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material; and (3) that the work, taken as a whole, lacks serious artistic, educational, literary, political, or scientific value. An “item” means a still picture, photograph, book, pocket book, pamphlet, magazine, videodisc, videotape, video game, film, computer disc, or recorded telephone message.

State Revenues: General fund revenues increase minimally from civil and criminal monetary penalties imposed under the bill.

State Expenditures:

Office of the Attorney General

General fund expenditures for OAG increase *by as much as* \$119,257 in fiscal 2025, which accounts for a January 1, 2025 effective date to account for the bill’s provisions. This estimate reflects the cost of hiring one assistant Attorney General to litigate cases and one investigator with technical expertise to investigate whether the devices and manufacturers are complying with the requirements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$105,285
Operating Expenses	<u>13,972</u>
Maximum FY 2025 State Expenditures	\$119,257

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. This estimate reflects the *maximum* level of additional resources assumed to be required by OAG. OAG has the discretion to bring cases, and it is unclear how many cases will be brought by OAG under the bill. However, given the unique nature of cases subject to the bill, additional resources are assumed to be necessary and have thus been accounted for in this estimate.

Office of the Public Defender

The Office of the Public Defender (OPD) advises that the bill’s criminal provisions require an additional assistant Public Defender, at a cost of \$ \$91,079 in fiscal 2025 and increasing to \$124,718 by fiscal 2029. OPD advises that the bill increases cases, particularly juvenile cases for minors who learn how to disable the filter on their or their friend’s devices. However, the Department of Legislative advises that because the only criminal cases eligible for OPD representation under the bill are second or subsequent offenses, OPD can likely implement the bill with existing budgeted resources. A first offense under the bill is subject to a fine only; OPD does not provide legal representation in criminal cases that are not subject to incarceration.

Other Impacts

The bill’s penalty provisions are not anticipated to materially affect incarceration expenditures. The bill is not anticipated to materially affect the workload of the Judiciary.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Legislative Services

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