

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 355

(Senator Salling)

Judicial Proceedings

Criminal Law - Display of Obscene Material to Minors - Prohibition

This bill makes several changes to the prohibition on the sale or display of an obscene “item” to a minor under § 11-203 of the Criminal Law Article. The bill (1) expands the definition of an “item” under the statute to include a drawing or illustration; (2) includes public schools and school principals as locations and individuals subject to an existing prohibition, respectively; and (3) expands a specified prohibition to include the rental or borrowing of items subject to specified restrictions under existing statute and makes corresponding changes.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill’s expanded application of existing penalty provisions. Otherwise, the bill is not anticipated to materially affect State finances or operations, including expenditures for the Department of Public Safety and Correctional Services, administrative activities of the Maryland State Department of Education (MSDE), the workloads of the District Court, and the caseloads of the Office of the Public Defender.

Local Effect: Potential minimal increase in local incarceration expenditures due to the bill’s expanded application of existing penalty provisions. Otherwise, the bill’s changes can likely be handled with existing budgeted resources, as discussed below. Revenues are not materially affected.

Small Business Effect: Potential minimal.

Analysis

Bill Summary/Current Law:

Sale of Display of Obscene Item to a Minor – (§ 11-203 of the Criminal Law Article)

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. The bill does not alter this prohibition.

Under current law, 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.

The bill adds language to specifically include a *public school* as an affected location and a *principal* as an individual subject to this prohibition. The bill also adds *rental* or *borrowing* to the list of prohibited activities related to the specified obscene items.

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. The bill does not alter these penalties.

Definitions

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.

The bill expands the definition of an “item” to include a drawing or illustration.

Code of Maryland Regulations

State regulations currently require a local education agency (LEA) to have school library media program implementation documents that are reviewed and updated on a periodic basis. These documents must include (1) selection and removal policies and procedures; (2) curriculum and instruction documents for teaching information literacy skills including reading, research, and critical thinking skills; and (3) handbooks or manuals of operational procedures. Regulations further require LEAs to establish a joint committee of educators and representatives of the community to review and comment specifically on family life and human sexuality instructional materials, and if necessary, approve the instructional materials pursuant to local policy.

Local Expenditures: MSDE advises that local law enforcement agencies and LEAs may need to allocate resources to investigate complaints regarding educational materials alleged to violate the bill, even if the items have already been vetted through an LEAs curriculum review process. The Department of Legislative Services agrees that more complaints could arise but advises that any additional work can likely be handled with existing resources.

Additional Comments: MSDE advises that the prohibition against the sale or display of an obscene item to a minor already applies to staff persons in both public schools and nonpublic schools. MSDE further advises that all LEAs have processes and procedures in place to ensure that instructional materials are age appropriate and aligned to the standards of both the State Board of Education and the local board of education.

Additional Information

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

Designated Cross File: HB 671 (Delegate Grammer, *et al.*) - Ways and Means.

Information Source(s): Baltimore and Frederick counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland State Department of Education; Department of Public Safety and Correctional Services; Anne Arundel County Public Schools; St. Mary's County Public Schools; Department of Legislative Services

Fiscal Note History: First Reader - February 1, 2024
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