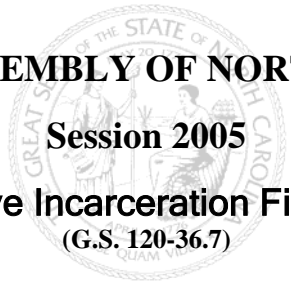


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 2 (Fifth Edition)

SHORT TITLE: No Violent/Obscene Video Game Sales to Minor.

SPONSOR(S): Senator Boseman

FISCAL IMPACT					
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
<b>GENERAL FUND</b>					
<b>Correction</b>	Exact amount cannot be determined; no substantial impact anticipated.				
<b>Judicial</b>	Exact amount cannot be determined; no substantial impact anticipated.				
<b>LOCAL GOVERNMENTS</b>					
	Exact amount cannot be determined; no substantial impact anticipated.				
<b>ADDITIONAL PRISON BEDS*</b>					
	Exact number cannot be determined; no substantial impact anticipated.				
<b>POSITIONS:</b>					
(cumulative)	Exact number cannot be determined; no additional positions anticipated.				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Local Governments					
<b>EFFECTIVE DATE:</b> December 1, 2005					
*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.					

**BILL SUMMARY:** This bill would amend Article 39 of Chapter 14 of the General Statutes to regulate the dissemination of video games that are harmful to minors (as defined in the bill), including sexually explicit and graphically violent games. The bill creates the following new misdemeanors:

<u>Offense Class</u>	<u>Offense</u>
Class 1	Disseminating to a minor a video game that is harmful to minors.
Class 1	Allowing a minor to operate a video game that is harmful to minors in a video arcade.
Class 2	Failure by retailers and video arcade operators to provide a separate viewing area for video games with content that is harmful to minors.
Class 3	Failure by video game retailers and video arcade operators to post a sign notifying customers that a video game rating system is available and have information available to explain the rating system.

Section 3 of the bill would amend Chapter 66 of the General Statutes by adding a new Article 41 requiring that video game retailers and video arcade operators label all graphically violent video games with an accurate depiction of the nature of the violence incorporated into the game. A violation of this provision would constitute an unfair practice under G.S. 75-1.1.

The fifth edition of the bill also amends G.S. 14-190.13(5)e, which defines excretory function as a sexual act, to remove the exception for G.S. 14-190.17A (Third Degree Sexual Exploitation of a Minor). Under current law, excretory function would not be defined as a sexual act for purposes of prosecuting Third Degree Sexual Exploitation of a Minor.

#### **ASSUMPTIONS AND METHODOLOGY:**

##### **Summary**

*Assuming that at least one charge is filed as a result of this bill, there would be some fiscal impact. Due to the small number of charges and convictions occurring under similar provisions of existing law, that impact is not expected to be substantial.* The misdemeanor offenses proposed by this legislation are similar in nature to the provisions of G.S. 14-190.14 and G.S. 14-190.15, which prohibit displaying and disseminating harmful materials to minors and exhibiting harmful performances to minors. In FY 2003-04, there were no convictions under G.S. 14-190.14 and four convictions under G.S. 14-190.15.

Expanding the definition of sexual activity with respect to the Class I felony of Third Degree Sexual Exploitation of a Minor, as provided in the fifth edition of the bill, could result in some additional charges and convictions. As the offense would include conduct that it has not covered in the past, no historical data is available from which to estimate the specific number of new charges and convictions that might result. *However, as the bill does not greatly expand the scope of the offense, and there were relatively few charges (54) and convictions (8) for the offense in FY 2003-04, the impact is not expected to be substantial.*

##### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

## **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Because the proposed legislation creates new offenses and broadens an existing offense, the Sentencing Commission has no historical data from which to project the specific impact that this bill would have on local jail and prison populations.

### **Misdemeanor Offenses**

- In FY 2003-04, 81 percent of Class 1, 86 percent of Class 2, and 77 percent of Class 3 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.
- The remaining 19 percent of Class 1, 15 percent of Class 2, and 23 percent of Class 3 misdemeanants received active sentences with an average estimated time served of 31, 13, and 3 days, respectively.
- Offenders with active sentences of less than thirty days are housed in county jails at county expense, and DOC reimburses counties for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per offender per day.
- *Because active sentences of less than ninety days are served in county jails, misdemeanor convictions resulting from this legislation are not expected to significantly impact prison population.*

### **Expanded Class I Felony (Third Degree Sexual Exploitation of a Minor)**

- In FY 2003-04, there were 8 convictions for Third Degree Sexual Exploitation of a Minor.
- Of all Class I felony convictions in FY 2003-04, 49 percent resulted in intermediate sanctions and 40 percent in community sanctions. Probation officers in DCC supervise offenders with intermediate sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter (based on the average cost and duration of intensive probation, the most common intermediate sanction). The estimated cost for a supervised community offender is \$1.87 per day.
- The remaining 11 percent of Class I convictions resulted in active sentences with an estimated time served of 7 to 9 months.
- If, for example, there were ten additional Class I convictions due to this bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and three additional beds in the second year.
- The projected average annual operating cost for one prison bed in FY 2006-07 is \$24,740.

## **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because the offenses would be new and no data exists regarding the number of instances in which retailers presently disseminate harmful video games to minors, AOC cannot estimate the number of new charges that might result from the misdemeanors created by this bill. Likewise, expanding the scope of Third Degree Sexual Exploitation of a Minor could result in some additional Class I felony charges for the offense, but the specific number cannot be determined, as the offense would include conduct not previously covered.

During calendar year 2004, AOC data indicates that 54 defendants were charged with Class I felonies under G.S. 14-190.17A for Third Degree Sexual Exploitation of a Minor. No defendants were charged under G.S. 14-190.14 for displaying harmful materials to minors, and two defendants were charged under G.S. 14-190.15 for disseminating harmful material to minors or exhibiting harmful performances to minors.

AOC estimates the cost to process one criminal charge by offense class and settlement method as shown in Table 1 below. Based on prior-year data, the majority of any new charges resulting from this bill that are not dismissed are likely to be settled by plea. *As retailers would be expected to comply with the provisions of this bill, AOC anticipates that few new misdemeanor charges will result from this legislation.*

**Table 1: Estimated Per Charge Settlement Costs**

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	Indigent Defense	Total	
Class I Felony	\$3,904	\$1,931	\$5,835	\$330
Class 1 Misdemeanor	\$1,891	\$1,333	\$3,224	\$284
Class 2 Misdemeanor	\$1,373	\$949	\$2,322	\$268
Class 3 Misdemeanor	\$1,373	\$949	\$2,322	\$272

Violation of Section 3 of this bill (failure to label graphically violent video games as to their content) would constitute an unfair practice under G.S. 75-1.1. Under present law, the Attorney General and designated district attorneys may file a bill of indictment before a grand jury for an alleged violation of Chapter 75. A civil penalty of up to \$5000 may be assessed for every instance in which a violation is found to have occurred. Proceeds from civil penalties are remitted to the Civil Penalty and Forfeiture Fund, which must be used exclusively for the public school system as required by the State Constitution. Because no data exists regarding the frequency with which retailers might violate the labeling requirements of this bill, AOC cannot estimate the number of bills of indictment that might be sent to a grand jury as a result of this legislation.

**SOURCES OF DATA:** Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

**TECHNICAL CONSIDERATIONS:** None

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Fiscal Research Division



**DATE:** July 5, 2005

**Signed Copy Located in the NCGA Principal Clerk's Offices**