

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 228

SHORT TITLE: Parental Control of Minors' Videos

SPONSOR(S): Representative Hensley

FISCAL IMPACT: Expenditures: Increase ( ) Decrease ( )  
Revenues: Increase ( ) Decrease ( )  
No Impact ( )  
No Estimate Available (X)

FUND AFFECTED: General Fund (X) Highway Fund ( ) Local Fund ( )  
Other Fund ( )

BILL SUMMARY: Adds new G.S. 14-190.21 creating offense of commercially disseminating a sadistic video movie harmful to minors, which occurs if a person, knowing the character or content of the video movie, sells, rents, or otherwise distributes for consideration a sadistic video movie harmful to a minor. Defines relevant terms; provides that mistake of age is not a defense; and makes the following affirmative defenses: (1) defendant was the minor's parent or legal guardian; (2) before disseminating the video, defendant requested and received a drivers license or other i.d. indicating that the minor was at least 18 years of age and defendant reasonably believed the minor was at least 18; (3) dissemination was made with prior written consent of the recipient's parent or guardian. Violation is made a misdemeanor, punishable by imprisonment for up to 6 months, a fine of up to \$500, or both. Includes severability clause.

EFFECTIVE DATE: October 1, 1993; applicable to all offenses occurring on or after that date.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department;  
Department of Correction

FISCAL IMPACT

FY 93-94    FY 94-95    FY 95-96    FY 96-97    FY 97-98

EXPENDITURES

RECURRING

NON-RECURRING No Estimate Available

REVENUES/RECEIPTS

RECURRING

NON-RECURRING

POSITIONS:

**ASSUMPTIONS AND METHODOLOGY:** Based on available information, it is impossible to predict the fiscal impact that this bill would have on the Judicial Department or the Department of Correction. Estimates of the number of cases that might be filed under the proposed legislation are unavailable since it is impossible to predict how certain provisions in the bill may be interpreted and applied. There are, however, some indications that the fiscal impact would not be significant. These indications and the uncertainties surrounding certain provisions of the bill are explained in the following narrative provided by the Administrative Office of the Courts.

"This bill would create the misdemeanor offense of commercially disseminating "a sadistic video movie harmful to minors" (defendants must know the character of content of the video, and defenses include having the written consent of a parent or guardian). Definitions in the bill require that "contemporary community standards" be applied from the perspective of a "reasonable adult" with regard to whether a sadistic video "has a predominant tendency to appeal to a morbid interest of minors in violence," and whether the video is "patently offensive to prevailing standards in the adult community concerning what is suitable for minors." In addition, the video when viewed as a whole, must be one that a reasonable adult would find lacks serious literary, artistic, political, or scientific value for minors. Although application of such community standards has precedent in case and statutory law regarding obscenity, it is extremely speculative to predict how such standards might be interpreted and applied in various areas of the State.

"There are, however, some indications that the fiscal impact from this bill would not be substantial. First, the bill only prohibits commercial dissemination of sadistic videos. Since it is likely that most defendants would be businesses, it can be expected that few defendants would be indigent, and that the bill would probably not lead to substantial increased costs for public defenders or for the indigent defense fund.

"In addition, it is possible that some charges under the bill would not be new cases. Some sadistic videos probably include depictions of sexual conduct that could be prosecuted under existing obscenity laws, and some defendants who disseminated sadistic videos to minors may simultaneously be subject to prosecution for dissemination of other, obscene videos. In such instances, this bill would result in additional charges, but not new cases. Since dissemination of obscenity offenses are felonies, prosecutors may prefer such charges to the misdemeanor offense under this bill. Dissemination of obscenity to a person under age 16 is a Class I felony (G.S. 14-190.7), and dissemination to a person under age 13 is a Class H felony (G.S. 14-190.8). The bill defines "minor" as a person under age 18. Dissemination of obscenity to a person age 16 or over is a Class J felony under G.S. 14-190.1.

"The fact that relatively few obscenity cases have been filed is some indication that there may be relatively few cases filed involving sadistic videos. In calendar 1992, there was a total

of approximately 42 obscenity charges filed and 18 obscenity convictions statewide, against persons of all ages; there were fewer individual defendants, since some instances probably involved multiple charges against a single defendant. A district attorney who prosecuted several obscenity cases before 1992 reported that none involved adequate proof of dissemination to minors.

"Despite all of these considerations, depending on how community standards are interpreted and applied in assessing what videos have sadistic violence harmful to minors, there could be many new cases. It may be that the increasing violence in society, particularly by minors, is leading to a community consensus against extreme violence in videos sold or rented to minors, a consensus that may be stronger and more widespread than in the area of obscenity. In addition, although cases under this bill would be misdemeanors, the cases that are filed would probably be very costly. It seems likely that business defendants will want the issues to be tried, both at the district court level and by a jury on appeal to superior court. A district attorney reported that obscenity cases have required extensive use of expert witnesses, and that the trials are hotly contested and very time-consuming. Appeals to the Court of Appeals and requests for review by the Supreme Court can also be expected."

Hence, although current legislation involving the dissemination of obscene videos would suggest that this bill would not have significant fiscal impact, the uncertainty of public reaction and the elevated costs that could be associated with trials for new filings covered by this bill deter an estimate that would otherwise be "no impact".

**SOURCES OF DATA:** Administrative Office of the Courts

**TECHNICAL CONSIDERATIONS:** None.

**FISCAL RESEARCH DIVISION**

733-4910

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**DATE:** 06-MAY-93

**[FRD#003]**



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