

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 2 (Fourth Edition)

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

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: (cumulative)</b>  | 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  |                   |                           |                   |                   |
| <i>*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.</i> |   |                   |                           |                   |                   |

**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, including sexually explicit and graphically violent games. The bill provides for two new offenses, punishable as Class 1 misdemeanors: 1) disseminating to a minor a graphically violent video game that is harmful to minors, and 2) allowing a minor to operate a graphically violent video game that is harmful to

minors in a video arcade. This legislation would also require that every video game retailer and video arcade operator post a sign notifying customers that a video game rating system is available and have information available to explain the rating system. Failure to comply with either of these provisions would be a Class 3 misdemeanor. Retailers and video arcade operators would, furthermore, be required to provide a separate viewing area for video games with content that is harmful to minors. Failure to provide such an area would be punishable as a Class 2 misdemeanor. The third section 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.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

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 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 there were four convictions under G.S. 14-190.15.

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, the Sentencing Commission has no historical data from which to project the impact that this bill might have on prison population. Active sentences of less than ninety days are served in county jails. For the offense classes impacted by this bill, only Class 1 misdemeanants falling in Prior Conviction Level III are eligible for sentences longer than ninety days, and many eligible offenders receive shorter sentences. Consequently, any convictions resulting from this legislation are not expected to significantly impact prison population.

In FY 2003-04, 19 percent of Class 1, 15 percent of Class 2, and 23 percent of Class 3 misdemeanants received active sentences. DOC reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per offender per day. Sentences for Class 1 and Class 2 misdemeanors may exceed thirty days and in FY 2003-04 averaged 43 and 23 days respectively. Because Class 3 misdemeanors carry a maximum sentence of twenty days, local jails would incur the cost of housing all Class 3 misdemeanants.

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.

**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 this bill would create new criminal offenses and no data exists regarding the number of instances in which retailers presently disseminate to minors video games which are harmful to minors, AOC cannot estimate the number of charges that might result from this legislation. During calendar year 2004, AOC data indicates that no defendants were charged under G.S. 14-190.14 for displaying harmful materials to minors and that 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 misdemeanor charge by class and settlement method as shown in Table 1 below. Based on prior-year data, the majority of any new cases 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 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 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

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Aaron Paul and Chloe Gossage

**APPROVED BY:** James D. Johnson, Director  
Fiscal Research Division



**DATE:** April 20, 2005

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