

**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** Senate Bill 87 (First Edition)  
**SHORT TITLE:** No Violent/Obscene Video Games Sales to Minor.  
**SPONSOR(S):** Senator Boseman

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>
<b>GENERAL FUND</b>					
<b>Correction</b>	No substantial impact anticipated; exact amount cannot be determined.				
<b>Judicial</b>	No substantial impact anticipated; exact amount cannot be determined.				
<b>TOTAL EXPENDITURES:</b>	Amount cannot be determined.				
<b>LOCAL GOVERNMENTS:</b>	Amount cannot be determined.				
<b>ADDITIONAL PRISON BEDS: (cumulative)*</b>	Amount cannot be determined.				
<b>POSITIONS: (cumulative)</b>	Amount cannot be determined.				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Local governments.					
<b>EFFECTIVE DATE:</b> December 1, 2007.					
*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 amends Articles 26 and 39 of Chapter 14 of the General Statutes to regulate the dissemination and display of video games that are harmful to minors, including sexually explicit and graphically violent video games. S.B. 87 also amends Chapter 66 by adding new Article 43 to require labeling for graphically violent video games.

Section 1 rewrites G.S. 14-190.13 to define a video game, and to include video games within the definition of “material” considered to be harmful to minors, if such material depicts sexual activity or sexually explicit nudity. Such inclusion is not presumed to affect existing offenses, as video games may qualify as “other visual depictions or representations” under the current definition of “material.” However, S.B. 87 also alters the definition of “sexual activity” (G.S. 14-190.13) to remove the current exemption for “excretory functions.” This change may thereby expand the scope of third degree sexual exploitation of a minor (G.S. 14-190.17A), a Class I felony.

Section 2 creates new G.S. 14-317.1, 14-317.2, 14-317.3, and 14-317.4 to establish definitions for offenses involving video games that are harmful to minors, due to the depiction of “graphic violence,” and to create the following new offenses:

1. Dissemination to a minor a video game that is harmful to minors, or allowance of a minor to operate a video game that is harmful to minors (G.S. 14-317.2) - Class 1 misdemeanor;
2. Failure by a video game retailer or arcade to provide a separate viewing area for video games that are harmful to minors - Class 2 misdemeanor; and,
3. Failure by a video game retailer or arcade to properly notify patrons of, or when requested supply information about, any available video game rating system - Class 3 misdemeanor.

Section 3 creates new G.S. 66-365 to require labeling of graphically violent video games by retailers and arcades, and to require each to also provide information explaining the video game rating system. Failure by either to do so constitutes an “unfair or deceptive act or practice in or affecting commerce” under G.S. 75-1.1.

Section 4 provides for the severability of the act’s provisions, should any provision or its application be held invalid. Section 5 specifies that the act becomes effective December 1, 2007, applying to offenses committed on or after that date.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

*If only one charge were to result for these new and expanded offenses, there would be some fiscal impact. But, given the nature of these proposed offenses and the small number of charges and convictions experienced for similar, existing offenses, this proposal is not expected to generate a substantial fiscal impact.* Specifically, these new and expanded offenses are similar in nature to the provisions of G.S. 14-190.14, G.S. 14-190.15, and G.S. 14-190.17A. Respectively, these statutes prohibit the display and dissemination of harmful materials to minors, the exhibition of harmful performances to minors, and the possession of material depicting the sexual activity of a minor. In FY 2005-06, there were no convictions under G.S. 14-190.14, three convictions under G.S. 14-190.15, and twenty convictions under G.S. 14-190.17A.

### **Department of Correction – Division of Prisons**

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. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.*

Although S.B. 87 could expand the scope of third degree sexual exploitation of a minor, the extent to which additional convictions might result is indeterminate. Furthermore, there is no historical data from which to project the number of convictions that might result for the proposed, new offenses. Consequently, this bill's potential impact on both state prison and local jail populations is unknown. However, current sentencing patterns and the small number of charges and convictions experienced for similar, existing offenses do not suggest any significant impact.

Misdemeanants sentenced to active punishment typically serve the designated term of incarceration within a local jail. However, most active sentences for felony convictions are served in state prison.<sup>1</sup> *Thus, any new active sentence for third degree sexual exploitation of a minor (G.S. 14-190.17A), resulting from the proposed definition change, will be served within a state facility. Conversely, any new active sentence for the proposed misdemeanor offenses will be served within a local jail. The potential impact on local jails is unknown.*

In FY 2005-06, 15% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months; most Class I convictions (85%) resulted in community and intermediate sentences, primarily special, intensive, and general supervised probation. *Accordingly, assuming that twelve convictions were to occur annually, the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; four additional beds in the second year; and 2 new employees in the second year.*

Assuming this threshold and inmate assignment to medium custody, the construction of four prison beds within a new, stand alone facility could cost the State \$272,160 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$168,480.<sup>2</sup> These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$28,250 in FY 2008-09, and \$116,390 in FY 2009-10.<sup>3</sup>

In FY 2005-06, 20 percent of Class 1, 17 percent of Class 2, and 23 percent of Class 3 misdemeanor convictions resulted in active sentences; most convictions resulted in non-active sentences (e.g. community and intermediate punishments, primarily special, intensive, and general supervised probation). The average estimated times served for active Class 1, 2, and 3 misdemeanor sentences were 31, 13, and 3 days, respectively. Because the maximum term of incarceration for Class 3 misdemeanors is twenty days, local jails would incur all potential housing costs for incarcerated Class 3 misdemeanants. However, to the extent that convictions for the proposed Class 1 and 2 misdemeanor offenses result in active sentences longer than thirty days, the Department of Correction may assume additional costs for county reimbursements.

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<sup>1</sup> Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

<sup>2</sup> New, "stand alone" institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC). "Add-on" facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody "add-on" is built adjacent to an existing perimeter. "Add-on" facilities employ the same EOC custody configurations as "stand alone" (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

<sup>3</sup> Impact on incarcerated population is assumed to begin in FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

**Department of Correction – Division of Community Corrections**

*Assuming that future convictions for the new and/or expanded offenses were to occur, the Division of Community Corrections (DCC) would assume additional costs for offenders placed under its jurisdiction. It is not known exactly how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.*

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

**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 such 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.

There is no historical charge data from which to project the potential number of charges for the proposed offenses. Thus, the Administrative Office of the Courts cannot estimate this bill’s impact on the court system. Nevertheless, prior year charge data for similar, existing offenses provide some indication of potential impact. During calendar year 2006, four (4) defendants were charged under G.S. 14-190.14, twelve (12) defendants were charged under G.S. 14-190.15, and seventy-six (76) defendants were charged under G.S. 14-190.17A.

*Given these relatively low charge frequencies, Fiscal Research does not anticipate a substantial impact for the courts.* In addition, the Administrative Office of the Courts expects that retailers and arcades would largely comply with the provisions of this bill. Table 1 depicts estimated court-time costs for disposal of Class I felony, and Classes 1, 2, and 3 misdemeanor charges.<sup>4</sup> Actual costs may vary with time requirements and disposition.

<b>Table 1. Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08</b>					
<b>Offense Class</b>	<b>Settled via Trial</b>				<b>Settled via Guilty Plea</b>
	<i>Jury</i>	<i>Court/Attorney</i>	<i>Indigent Defense</i>	<i>Total</i>	<i>Total</i>
<i>Class I Felony</i>	\$640	\$4,410	\$1,930	\$6,980	* \$298
<i>Class 1 Misdemeanor</i>	-	\$2,434	\$1,268	\$3,702	\$243
<i>Class 2 Misdemeanor</i>	-	\$1,821	\$949	\$2,770	\$230
<i>Class 3 Misdemeanor</i>	-	\$1,821	\$949	\$2,770	\$226

\* Estimated cost of Class I felony plea in District Court is \$270.

<sup>4</sup> Cost estimates are based on projected court-time requirements for judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings.

S.B. 87 (Section 3) also provides that failure by a retailer or arcade to label graphically violent video games constitutes an “unfair practice” under G.S. 75-1.1. Current G.S. 75-12 authorizes the Attorney General and designated district attorneys to send bills of indictment before any grand jury in any county in which a violation of Chapter 75 is alleged. The court may impose a civil penalty of up to \$5,000 for every violation found. Proceeds from civil penalties are remitted to the Civil Penalty and Forfeiture Fund, and are used exclusively for the public school system, as required by the State Constitution.

There is no data from which to estimate how frequently retailers and arcades might violate proposed G.S. 66-365. Thus, the Administrative Office of the Courts cannot estimate the number of bills of indictment that might be sent to a grand jury as a result of this legislation, nor can it estimate the number of superior court actions enforcing or contesting the imposition of civil penalties.

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

**TECHNICAL CONSIDERATIONS:** None

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