

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 8039

BILL NUMBER: HB 1642

DATE PREPARED: Jan 18, 1999

BILL AMENDED:

SUBJECT: Obscenity and matter harmful to minors.

FISCAL ANALYST: Mark Bucherl

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FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill makes it a Class D Felony (or a Class C or a Class B Felony under certain circumstances) for a person to knowingly or intentionally send or bring into Indiana or send or take out of Indiana obscene matter for sale or distribution. It makes it a Class A Misdemeanor (or a Class D or Class C Felony under certain circumstances) for a person to knowingly or intentionally distribute, offer to distribute, send, bring, or exhibit to another person obscene matter for a noncommercial purpose or while acting within the scope of the person's employment with no financial interest in the obscene matter. It makes it a Class D Felony (or a Class C or Class B Felony under certain circumstances) for a person to knowingly or intentionally distribute, offer to distribute, send, bring, or exhibit to another person obscene matter while exercising ownership or managerial control over the obscene matter.

This bill makes it a Class A Misdemeanor (or a Class D or Class C Felony under certain circumstances) for a person to knowingly or intentionally engage in, participate in, manage, produce, sponsor, present, exhibit, photograph, film, or videotape any obscene performance for a noncommercial purpose or while acting within the scope of the person's employment with no financial interest in the obscene performance. It makes it a Class D Felony (or a Class C or Class B Felony under certain circumstances) for a person to knowingly or intentionally engage in, participate in, manage, produce, sponsor, present, exhibit, photograph, film, or videotape any obscene performance while exercising ownership or managerial control over the obscene performance. It also makes it a Class A Misdemeanor for a person to knowingly or intentionally sell or distribute or display for sale or distribution to any person matter that is harmful to minors within 500 feet of the nearest property line of a school, library, licensed day care center, church, or facility used to provide activities for persons less than sixteen (16) years of age after school hours.

This bill lowers the penalty for certain acts of disseminating matter harmful to minors or engaging in certain conduct harmful to minors from a Class D Felony to a Class A Misdemeanor, except for persons with certain prior convictions. It also makes the offense a Class D Felony if the person has a prior unrelated conviction.

Effective Date: July 1, 1999.

Explanation of State Expenditures: *Criminal Charge:* This bill makes it a Class D Felony (or a Class C or a Class B Felony under certain circumstances) for the following:

- (1) A person to knowingly or intentionally send or bring into Indiana or send or take out of Indiana obscene matter for sale or distribution.
- (2) A person to knowingly or intentionally distribute, offer to distribute, send, bring, or exhibit to another person obscene matter while exercising ownership or managerial control over the obscene matter.
- (3) A person to knowingly or intentionally engage in, participate in, manage, produce, sponsor, present, exhibit, photograph, film, or videotape any obscene performance while exercising ownership or managerial control over the obscene performance.

This bill makes it a Class A Misdemeanor (or a Class D or Class C Felony under certain circumstances) for the following:

- (1) A person to knowingly or intentionally distribute, offer to distribute, send, bring, or exhibit to another person obscene matter for a noncommercial purpose or while acting within the scope of the person's employment with no financial interest in the obscene matter.
- (2) A person to knowingly or intentionally engage in, participate in, manage, produce, sponsor, present, exhibit, photograph, film, or videotape any obscene performance for a noncommercial purpose or while acting within the scope of the person's employment with no financial interest in the obscene performance.

This bill makes it a Class A Misdemeanor for a person to knowingly or intentionally sell or distribute or display for sale or distribution to any person matter that is harmful to minors within 500 feet of the nearest property line of a school, library, licensed day care center, church, or facility used to provide activities for persons less than sixteen (16) years of age after school hours.

This bill lowers the penalty for certain acts of disseminating matter harmful to minors or engaging in certain conduct harmful to minors from a Class D Felony to a Class A Misdemeanor, except for persons with certain prior convictions.

It also makes the offense a Class D Felony if the person has a prior unrelated conviction.

Criminal Penalty: A Class D Felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A Misdemeanor depending upon mitigating and aggravating circumstances. The average length of stay in DOC facilities for all Class D Felony offenders is approximately seven months.

A Class C Felony is punishable by a prison term ranging from 2 to 8 years depending upon mitigating and aggravating circumstances. The average length of stay in DOC facilities for all Class C Felony offenders is approximately one year, seven months.

A Class B Felony is punishable by a prison term ranging from 6 to 20 years depending upon mitigating and aggravating circumstances. The average length of stay in DOC facilities for all Class B Felony offenders is approximately three years, two months.

The average expenditure to house an adult offender was \$20,500 in FY 97. Individual facility expenditures range from \$11,000 to \$27,000. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually or \$5 daily per prisoner.

Explanation of State Revenues: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class D, C or B Felony is \$10,000. The maximum fine for a Class A Misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, county or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed, and if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement

Information Sources: Indiana Sheriffs Association, Department of Correction.