

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 45
Judiciary

(Delegate Kullen)

Judicial Proceedings

Tattooing, Branding, and Body Piercing - Parental Consent

This bill prohibits the tattooing, branding, or body piercing of a minor without the prior written consent of a parent or legal guardian. Written consent must take place in the presence of the person, or his or her employee, intending to tattoo, brand, or pierce the minor. A violator is subject to civil penalties ranging from \$300 for a first offense and \$3,000 for multiple violations. Ear piercing is excluded from the scope of the bill.

Fiscal Summary

State Effect: Minimal increase in general fund revenues due to the bill's penalty provisions. No effect on expenditures. Enforcement can be handled with existing resources.

Local Effect: None. Enforcement can be handled with existing resources.

Small Business Effect: Potential minimal.

Analysis

Current Law: Tattooing and body piercing are regulated under Code of Maryland Regulations (COMAR) provisions applicable to the Department of Health and Mental Hygiene (DHMH).

An individual who performs a skin-penetrating body adornment procedure must disclose the risks of the procedure, obtain the client's written consent for the performance of the procedure, and retain the consent on file for three years. In the case of a minor, the

consent of a parent or guardian is required. The COMAR provisions do not establish any penalties for individuals who perform a skin-penetrating body adornment procedure upon a minor.

The Public Local Laws of Worcester County establish more rigorous requirements for individuals who perform body adornment procedures in the county. To work as a tattoo artist in Worcester County, a person must be licensed by the county and operate under the supervision of a physician or osteopath. Minors (younger than age 18) may not be tattooed in the county but are permitted to undergo body piercing with direct parental supervision and consent. Additionally, a violator may be fined between \$50 and \$1,000 and/or imprisoned for up to 180 days.

Neither the State COMAR provisions nor the Public Local Laws of Worcester County apply to the piercing of an ear lobe using a properly disinfected ear piercing gun. (*See* COMAR: 10.06.01.06 H and 10.06.01.02; Public Local Laws of Worcester County: PH 1-103 and 1-107.)

Background: According to the National Conference of State Legislatures, 38 states have statutes similar to the proposed legislation. All 38 states prohibit body piercing of minors without parental or guardian consent; 28 of these states prohibit the tattooing of minors without parental or guardian consent; and 10 of the states forbid the tattooing of minors (regardless of parental consent). Most state laws establish monetary penalties, prison time, or both for violators. The 12 other states without related statutes require parental consent by regulation.

According to DHMH, no recourse can be taken when a minor undergoes a body adornment procedure without parental consent. DHMH can only send an inspector to ensure that health regulations are followed at the site. COMAR provisions do not require individuals in this industry to be licensed.

Without proper precautions as specified in COMAR, infection or illness can result from skin-penetrating body adornment procedures. However, DHMH reports that compliance with these procedures is widespread, so no significant public health concerns result from these practices within the State.

The Department of Labor, Licensing, and Regulation advises that it has no jurisdiction over tattooing, except to prohibit licensees from performing cosmetic tattooing (*e.g.*, permanent make-up).

Additional Information

Prior Introductions: Several bills introduced in 1997 and 1998 contained provisions requiring the consent of a parent or guardian for the tattooing and/or body piercing of a minor. All failed. In 1997, HB 41, HB 80, and HB 386 each received an unfavorable report from the Environmental Matters Committee; HB 476 had no further action taken after a hearing before that same committee; SB 5 and SB 67 each received an unfavorable report from the Judicial Proceedings Committee; and SB 284 received an unfavorable report from the Economic and Environmental Affairs Committee. In 1998, HB 254 received an unfavorable report from the Economic Matters Committee and SB 218 was withdrawn.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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