

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 65

(Senator James, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Child Pornography - Prohibitions and Penalties

This bill prohibits a person from violating § 11-207(a)(4) or § 11-208(b)(1) of the Criminal Law Article with (1) 100 or more “images,” counted as specified or (2) any “image” depicting a minor (or an individual indistinguishable from an actual minor) younger than age 13. A person who violates either prohibition is guilty of a felony and on conviction is subject to a maximum penalty of 10 years in prison. A sentence imposed for a violation of these prohibitions may be separate from and consecutive to or concurrent with any other sentence imposed by the court for any other crime based on the acts establishing a violation of § 11-207 or § 11-208 of the Criminal Law Article.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: “Image” means any matter, visual representation, or performance, including photographs, pictures, electronic photographs, computer generated images, videos, electronic videos, film, videotapes, or similar visual representations or video depictions.

To determine the number of images possessed by an individual (1) each photograph, picture, electronic photograph, computer-generated image, or similar visual representation

must be considered as one image and (2) each video, electronic video, film, videotape or similar depiction must be considered as 20 images.

Current Law: Section 11-207(a)(4) of the Criminal Law Article prohibits a person from knowingly promoting, advertising, soliciting, distributing, or possessing with the intent to distribute any matter, visual representation, or performance (1) that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct or (2) in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct. Violators are guilty of a felony punishable by imprisonment for up to 10 years and/or a \$25,000 maximum fine for a first offense. A subsequent violation is a felony punishable by imprisonment for up to 20 years and/or a \$50,000 maximum fine.

Section 11-208(b)(1) of the Criminal Law Article prohibits a person from knowingly possessing and intentionally retaining a film, videotape, photograph, or other visual representation showing an actual child or a computer-generated image that is indistinguishable from an actual and identifiable child younger than age 16 engaged as a subject of sadomasochistic abuse, engaged in sexual conduct, or in a state of sexual excitement. Violators are guilty of a misdemeanor punishable by imprisonment for up to 5 years and/or a \$2,500 maximum fine for a first offense. A subsequent violation is a felony punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine.

Additional Comments: The Department of Public Safety and Correctional Services advises that the Division of Correction received (1) 14 individuals sentenced to one or more counts of violating § 11-207(a)(4) of the Criminal Law Article and (2) 15 individuals sentenced to one or more counts of violating § 11-208(b)(1).

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 899 of 2023.

Designated Cross File: None.

Information Source(s): Baltimore County; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - January 23, 2024
km/aad Third Reader - March 18, 2024
Revised - Amendment(s) - March 18, 2024

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