

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 899
(Senator James)
Judicial Proceedings

Criminal Law - Child Pornography - Prohibitions

This bill prohibits a person from (1) retaining 100 or more visual representations that constitute a violation of possessing child pornography under § 11-208 of the Criminal Law Article and (2) intentionally retaining a visual representation that constitutes a violation of possessing child pornography under § 11-208 that depicts or is indistinguishable from a minor younger than age five. A person who violates either prohibition is guilty of a misdemeanor punishable by imprisonment for up to 10 years. A sentence imposed for a violation of these prohibitions must be consecutive to and not concurrent with any other sentence imposed by the court for any crime based on the act establishing the violation.

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: To determine the number of visual representations, each photograph, picture, electronic photograph, computer-generated image, or similar visual representation is considered as one visual representation, and each video, electronic video, film, videotape or similar depiction is considered to contain 20 visual representations.

To determine if the individual in a visual representation is or is indistinguishable from a minor younger than age five, the trier of fact may (1) observe the matter depicting the

individual; (2) receive oral testimony by a witness to the production of the matter, representation, or performance; (3) receive expert medical testimony; or (4) use any other method authorized by an applicable provision of law or rule of evidence.

Current Law: A person may not knowingly possess and intentionally retain 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 reports that during fiscal 2022 the Division of Corrections received seven individuals who were sentenced to one or more offenses under § 11-208 of the Criminal Law Article.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Frederick and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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