

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1212 (Delegate McComas)
Economic Matters

Criminal Law - Obscene Material - Device Filters

This bill (1) requires, beginning on January 1, 2026, each “device” (tablets or smartphones manufactured on or after January 1, 2026) activated in the State to enable a filter to prevent minors from accessing obscene material; (2) prohibits a person other than a parent or legal guardian of a minor from deactivating or uninstalling the filter; (3) subjects a manufacturer of a device to civil and criminal liability for failure to comply with the bill’s device filter requirements; (4) authorizes the Attorney General to take certain actions against persons who violate the bill’s provisions; and (5) authorizes parents or legal guardians of minors to file a private cause of action against manufacturers or persons who disable filters, as specified.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from civil and criminal penalties. General fund expenditures may increase for the Office of the Attorney General (OAG) to implement the bill, as discussed below.

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Required Filters

Beginning on January 1, 2026, each device activated in the State must:

- determine the age of the user during activation and account set-up;
- enable an existing filter for minor users, at which point the filter must be set to the on position when the user is a minor;
- prevent a minor from accessing obscene material through each Internet browser or search engine on the device via mobile data networks, wired Internet networks, and wireless Internet networks;
- notify the minor user of the device when the filter blocks the device from accessing a website;
- allow parents or legal guardians of minor users to disable the filter or unblock a website after providing reasonable age verification; and
- allow parents or legal guardians of minor users to create a password that can be used to reactivate the filter at any time.

Except for a parent or legal guardian, a person may not deactivate or uninstall the filter for a minor under the care and control of the parent or guardian.

“Filter” means software installed on a device that can prevent the device from accessing or displaying obscene material through Internet browsers or search engines.

“Minor” means an individual younger than age 18 who is not emancipated, married, or a member of the armed forces of the United States.

“Obscene” has the meaning stated in § 11-203 of the Criminal Law Article (see “Current Law” section below).

Manufacturer Liability

Beginning January 1, 2026, a manufacturer of a device must be subject to civil and criminal liability if a device is activated in the State, the device does not enable a required filter (as described above) on activation, and a minor accesses obscene material on the device. However, this does not apply to a manufacturer that makes a good faith effort to provide a device that, on activation of the device in the State, automatically enables a generally accepted and commercially reasonable filter that blocks obscene material on all Internet

browsers or search engines accessed on the device. These liability provisions may not be construed to create a cause of action against the retailer of a device.

Disabling a Filter – Civil and Criminal Liability

Except for a minor's parent or legal guardian, any person is civilly liable for disabling the filter on a device in the possession of the minor if the minor accesses obscene material. With respect to criminal liability, beginning on January 1, 2026, a person (other than a parent or legal guardian) who disables the filter on a device in the possession of a minor is subject to a fine up to \$5,000 for a first offense and imprisonment for up to one year and/or a \$50,000 maximum fine for a subsequent offense.

Actions by the Attorney General

If the Attorney General has reason to believe that a person violated or is violating the bill's provisions, the Attorney General, acting in public interest, may file a civil cause of action in the name of the State against the person to:

- enjoin an action that constitutes a violation of the bill by the issuance of a temporary restraining order or preliminary or permanent injunction;
- recover from the alleged violator a civil penalty of up to \$5,000 per violation with a maximum total of \$50,000 in aggregate, as determined by the court;
- recover from the alleged violator the Attorney General's reasonable expenses, investigative costs, and attorney's fees; or
- obtain other appropriate relief.

For purposes of assessing a penalty, a manufacturer is considered to have committed a separate violation for each device manufactured on or after January 1, 2026, that violates the provisions of the bill. The Attorney General may issue subpoenas to a person and conduct hearings in aid of an investigation or inquiry in addition to other powers conferred on the Attorney General by the bill. Also, the Attorney General may seek the revocation of a license or certificate authorizing a manufacturer to engage in business in the State.

Parents and Legal Guardians – Private Causes of Action

Any parent or legal guardian of a minor who accesses obscene material in violation of the bill may file a private cause of action against a manufacturer who fails to comply with the bill. A prevailing plaintiff may recover specified types of damages; other relief as the court considers appropriate, including reasonable court costs and expenses; and reasonable attorney's fees.

A parent or legal guardian of a minor who accesses obscene material in violation of the bill's provisions may file a private cause of action in a court of competent jurisdiction against a person who disables the filter from a device that results in the child being exposed to obscene content.

Class Action Lawsuits

The bill may not be construed to preclude the bringing of a class action lawsuit against a manufacturer when its conduct in violation of the bill is knowing and willful.

Current Law: Section 11-203 of the Criminal Law Article prohibits a person from willfully or knowingly displaying or exhibiting or engaging in the business of displaying, exhibiting, selling, showing, advertising for sale, or distributing to a minor an "item" (1) the cover or content of which is principally made up of an obscene description or depiction of illicit sex or (2) that consists of an obscene picture of a nude or partially nude figure. If a newsstand or other place of business is frequented by minors, the owner, operator, franchisee, manager, or an employee with managerial responsibility may not openly and knowingly display at the place of business an item whose sale, display, exhibition, showing, or advertising is prohibited as specified above.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$1,000 maximum fine for a first violation and imprisonment for up to three years and/or a \$5,000 maximum fine for each subsequent violation.

Under § 11-203, "obscene" means (1) that the average adult applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (2) that the work depicts specified sexual conduct in a way that is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material; and (3) that the work, taken as a whole, lacks serious artistic, educational, literary, political, or scientific value. An "item" means a still picture, photograph, book, pocket book, pamphlet, magazine, videodisc, videotape, video game, film, computer disc, or recorded telephone message.

State Expenditures:

Office of the Attorney General

OAG did not respond to a request for information on the fiscal and operational impact of the bill on the office. Regardless, general fund expenditures may increase if OAG cannot absorb additional workloads under the bill with existing budgeted resources. *For illustrative purposes only*, the cost associated with one assistant Attorney General to litigate cases and one investigator with technical expertise to investigate whether the devices and

manufacturers are complying with the requirements is \$124,898 in fiscal 2026 (which accounts for a January 1, 2026 effective date to align with the bill's provisions) and increases to \$245,197 by fiscal 2030.

Other Impacts

The bill's penalty provisions are not anticipated to materially affect incarceration expenditures. The bill is not anticipated to materially affect the workload of the Judiciary or the Office of the Public Defender.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1311 of 2024.

Designated Cross File: None.

Information Source(s): 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 Legislative Services

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