

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 545

(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 100 or more “images,” counted as specified. The bill also prohibits a person from violating § 11-207(a)(4) or § 11-208(b)(1) or (2) with any “image” depicting a minor or an individual indistinguishable from an actual and identifiable child younger than age 13. Violators are guilty of a felony punishable by imprisonment for up to 10 years. 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: Minimal increase in general fund expenditures, most likely in the out-years, due to the bill’s incarceration penalty. Revenues are not affected.

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 video 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. Section 11-208(b)(2) contains a similar prohibition that applies to knowingly or intentionally accessing and intentionally viewing these materials.

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 person who has previously been convicted under § 11-208 is guilty of a felony punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine.

Section 11-208 does not prohibit a parent from possessing visual representations of the parent's own child in the nude unless the visual representations show the child engaged as a subject of sadomasochistic abuse or in sexual conduct and in a state of sexual excitement.

It is an affirmative defense to a charge of violating § 11-208 that the person promptly and in good faith (1) took reasonable steps to destroy each visual representation or (2) reported the matter to a law enforcement agency.

“Indistinguishable from an actual and identifiable child” means an ordinary person would conclude that the image is of an actual and identifiable minor. “Indistinguishable from an actual and identifiable child” includes a computer-generated image that has been created, adapted, or modified to appear as an actual and identifiable child. It does not include images or items depicting minors that are drawings, cartoons, sculptures, or paintings.

State Expenditures: General fund expenditures increase minimally for the Department of Public Safety and Correctional Services due to the bill's incarceration penalty. Given the existing penalties for the underlying offenses, any such increase is most likely to occur in the out-years, as individuals conclude sentences imposed under existing statute and commence serving consecutive sentences imposed under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 65 of 2024.

Designated Cross File: HB 364 (Delegates Simpson and Acevero) - Judiciary.

Information Source(s): Anne Arundel, Charles, and Garrett 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 Legislative Services

Fiscal Note History: First Reader - February 2, 2025
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