Department of Legislative Services

Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 221 (Senator James)
Judicial Proceedings Judiciary

Criminal Law - Child Pornography - Prohibitions and Penalties

This bill prohibits a person from violating child pornography – related prohibitions under § 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 due to the bill's incarceration penalties. 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.

Under § 11-208, "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 (DPSCS) due to the bill's incarceration penalty. During fiscal 2025, the Division of Correction conducted intake on 18 individuals with sentences for promotion or distribution of child pornography under § 11-207(a)(4); the average sentence for this group was 4.5 years. DPSCS did not provide data on intakes for individuals sentenced under § 11-208(b)(1) for possession of child pornography, which has a shorter maximum sentence. Information is not available on the number of images involved in these cases.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at $5,838 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced incarcerated individuals and for (1) incarcerated individuals who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced incarcerated individuals confined in a local detention center between 12 and 18 months; and (3) incarcerated individuals who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 545 and HB 364 of 2025 and SB 65 of 2024.

Designated Cross File: HB 670 (Delegate Moreno, *et al.*) - Judiciary.

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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