

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 736

(Senator Benson)

Judicial Proceedings

Criminal Law - Obscene Matter - Visual Representation of Child

This bill increases, from 16 years to 18 years, the maximum age of a child that may not be depicted in visual representations subject to the prohibitions under § 11-208 of the Criminal Law Article (Possession and Accessing/Viewing of Child Pornography). The bill also increases the existing penalties under § 11-208 and establishes a related civil cause of action. Finally, the bill requires the Office of the Attorney General (OAG) to submit an annual report to the General Assembly on enforcement of § 11-208 and specified related topics.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Potential operational impact on OAG, as discussed below.

Local Effect: Minimal increase in revenues due to the bill's monetary penalties. Expenditures are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

§ 11-208 of the Criminal Law Article – Criminal Prohibitions

Under current law, 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 this visual material. The bill increases, from 16 years to 18 years, the maximum age of a child that may not be depicted in material subject to the prohibitions under § 11-208(b)(1) and (b)(2).

Under current law, 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. The bill increases the penalty for a first offense to imprisonment for up to 10 years and/or a \$25,000 maximum fine. The bill increases the penalty for a subsequent offense to imprisonment for up to 20 years and/or a maximum fine of \$50,000.

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. The bill does not alter this provision.

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. The bill retains this provision.

Civil Cause of Action (New Under the Bill)

Under the bill, a person depicted in a visual representation that is involved in a violation § 11-208 may bring a civil action in a court of competent jurisdiction. The court may award actual damages; punitive damages not exceeding \$250,000; reasonable attorney's fees and costs; and any other appropriate relief. A criminal conviction is not a prerequisite to maintaining this civil action.

Reporting Requirement (New Under the Bill)

Under the bill, on or before December 1 of each year, OAG must submit a report to the General Assembly that includes (1) guidance to law enforcement agencies regarding best practices for detecting computer-generated images that violate § 11-208 of the Criminal Law Article; (2) a discussion of technological developments that affect enforcement of §§ 11-208; and (3) data on charges and prosecutions brought under §§ 11-208 during the preceding one-year period. OAG must make the report publicly

available on its website and may partner with other State agencies or an outside organization to prepare the report.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures:

Incarceration Costs

General fund expenditures increase minimally for the Department of Public Safety and Correction Services as a result of the bill's incarceration penalties. In fiscal 2025, the Division of Correction conducted intake on 22 individuals with sentences for possessing or accessing/viewing child pornography; the average sentence for this group was 34 months. During this time, the Division of Probation and Parole opened 129 cases for individuals with these offenses.

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.

Relevant Offense Data

Exhibit 1 contains information on the number of violations (charges) and guilty dispositions in the District Court and the circuit courts over the last two fiscal years for possessing or accessing/viewing child pornography.

Exhibit 1
Violations and Guilty Dispositions
Possession and Accessing/Viewing Child Pornography
Fiscal 2024 and 2025

	Fiscal 2024		Fiscal 2025	
	<u>Violations</u>	<u>Guilty Dispositions</u>	<u>Violations</u>	<u>Guilty Dispositions</u>
<u>District Court</u>				
Possession of Child Pornography	1,631	9	1,357	22
Accessing/Viewing Child Pornography	79	0	231	0
<u>Circuit Court</u>				
Possession of Child Pornography	2,126	332	1,452	207
Accessing/Viewing Child Pornography	60	0	108	5

Source: Maryland Judiciary

Office of the Attorney General

OAG advises that the bill’s reporting requirement necessitates the hiring of one assistant Attorney General and one investigator, at an estimated cost of \$192,310 in fiscal 2027 and increasing to \$259,475 by fiscal 2031. The Department of Legislative Services advises that workloads related to the reporting requirement are insufficient to justify immediate additional staffing. To the extent OAG’s work volume increases meaningfully as a *direct* result of the bill, OAG can request additional resources through the annual budget process.

Other Impacts Under the Bill

The bill is not anticipated to materially affect the operations or finances of the Maryland State Commission on Criminal Sentencing Policy, Office of the Public Defender, and the Judiciary.

Local Revenues: Revenues increase minimally as a result of the bill’s monetary penalty provisions from cases heard in the circuit courts.

Additional Information

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

Designated Cross File: None.

Information Source(s): Office of the Attorney General; 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 - March 1, 2026
me/aad

Analysis by: Donavan A. Ham

Direct Inquiries to:
(410) 946-5510
(301) 970-5510