

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 365  
Criminal Law – Child Pornography and Exhibition and Display of  
Obscene Items to Minors  
**DATE:** January 29, 2020  
(2/11)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 365. This bill would amend Courts and Judicial Proceedings Article, Title 3-8A, concerning children alleged to be delinquent and Criminal Law Article, Title 11, Subtitle 2, concerning obscene matter.

The Judiciary believes this bill is unwieldy and, in multiple places, appears to blend criminal and civil law requirements which may create confusion. For example, in § 11-212(c), the bill cites a violation as a “civil offense” but then refers to a “mandatory sentence” for such a violation.

Also, at § 11-212(e)(7)(i), the bill gives the State the burden of proving “guilt of the defendant by a preponderance of the evidence,” which is typically a standard of proof in civil actions, not criminal ones. Further, the standard of proof in a juvenile court delinquency proceeding is beyond a reasonable doubt.

In addition, § 11-212(e)(7)(ii) requires the application of “evidentiary standards as prescribed by law or rule of the trial of a criminal case.” The bill creates more confusion where, under subsection (e) of § 11-212, the case is transferred from the District Court to the Circuit Court but under § 11-212(e)(8)(i) the “defendant is liable for the costs of the proceeding in the District Court.”

Further, generally citations involving juveniles are governed under Courts and Judicial Proceedings Title 3-8A. This bill does not amend the citation language in Title 3-8A and appears to treat juveniles receiving this type of citation differently from juveniles who receive other types of citations. For example, the bill does not address intake officer receipt or diversion of the citation. Juvenile court citations are also not developed by the District Court.

cc. Hon. Susan Lee  
Judicial Council  
Legislative Committee  
Kelley O'Connor