

CHAPTER 596

(House Bill 285)

AN ACT concerning

Criminal Law - Possession of Child Pornography - Penalty

FOR the purpose of altering ~~the age of an individual relating to~~ a provision of law to make the offense of knowingly possessing a film, videotape, photograph, or other visual representation showing ~~a certain depiction of an individual under a certain age; altering the penalty for the offense of knowingly possessing a film, videotape, photograph, or other visual representation showing~~ apply only to a certain depiction of an individual actual child under a certain age; providing for a certain affirmative defense to a charge under this Act; altering a certain criminal penalty; and generally relating to child pornography.

BY repealing and reenacting, with amendments,

Article - Criminal Law

Section 11-208

Annotated Code of Maryland

(2002 Volume and 2006 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Criminal Law

11-208.

(a) A person may not knowingly possess AND INTENTIONALLY RETAIN a film, videotape, photograph, or other visual representation ~~depicting~~ SHOWING an ~~individual~~ ACTUAL CHILD under the age of ~~[16]~~ 17 years:

- (1) engaged as a subject of sadomasochistic abuse;
- (2) engaged in sexual conduct; or
- (3) in a state of sexual excitement.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) for a first violation, imprisonment not exceeding [1 year] ~~5~~ **2** **YEARS** or a fine not exceeding \$2,500 or both; and

(2) for each subsequent violation, imprisonment not exceeding [2] ~~10~~ **5** years or a fine not exceeding [\$5,000] **\$10,000** or both.

(c) Nothing in this section may be construed to prohibit a parent from possessing visual representations of the parent's own child in the nude unless the visual representations ~~depict~~ **SHOW** the child engaged:

(1) as a subject of sadomasochistic abuse; or

(2) in sexual conduct and in a state of sexual excitement.

(D) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING THIS SECTION 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

Approved by the Governor, May 17, 2007.