

SENATE BILL 736

E1

(9lr1774)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by ~~Senator Lee~~ Senators Lee, Zirkin, Smith, Carter, Cassilly, Hester, Hough, Ready, Waldstreicher, Washington, and West

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Child Pornography**

3 FOR the purpose of altering certain definitions applicable to certain prohibitions against
4 possessing, distributing, and creating child pornography; ~~altering certain definitions~~
5 ~~applicable to certain prohibitions against possessing, distributing, and creating child~~
6 ~~pornography;~~ prohibiting a person from knowingly possessing and intentionally
7 retaining a certain representation showing a computer-generated image that is
8 indistinguishable from an actual and identifiable child under a certain age portrayed
9 in a certain manner; defining a certain term; providing that only certain depictions
10 of sexual conduct apply to a certain offense; applying certain penalties; and generally
11 relating to child pornography.

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 Section ~~11-101, 11-105(a), 11-201, and 11-101, 11-201, and~~ 11-208
 2 Annotated Code of Maryland
 3 (2012 Replacement Volume and 2018 Supplement)

4 BY repealing and reenacting, without amendments,
 5 Article – Criminal Law
 6 Section 11-207
 7 Annotated Code of Maryland
 8 (2012 Replacement Volume and 2018 Supplement)

9 ~~BY repealing and reenacting, without amendments,~~
 10 ~~Article – Criminal Law~~
 11 ~~Section 11-207~~
 12 ~~Annotated Code of Maryland~~
 13 ~~(2012 Replacement Volume and 2018 Supplement)~~

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

16 **Article – Criminal Law**

17 11-101.

18 (a) In this subtitle the following words have the meanings indicated.

19 (b) “Advertising purposes” means the purpose of propagandizing in connection
 20 with the commercial:

21 (1) sale of a product;

22 (2) offering of a service; or

23 (3) exhibition of entertainment.

24 (c) “Sadomasochistic abuse” means:

25 (1) flagellation or torture committed by or inflicted on an individual who is:

26 (i) nude;

27 (ii) wearing only undergarments; or

28 (iii) wearing a revealing or bizarre costume; or

29 (2) binding, fettering, or otherwise physically restraining an individual who
 30 is:

- 1 (i) nude;
2 (ii) wearing only undergarments; or
3 (iii) wearing a revealing or bizarre costume.

4 (d) “Sexual conduct” means:

5 (1) human masturbation;

6 (2) sexual intercourse; [or]

7 (3) whether alone or with another individual or animal, any touching of or
8 contact with:

9 (i) the genitals, buttocks, or pubic areas of an individual; or

10 (ii) breasts of a female individual; OR

11 (4) LASCIVIOUS EXHIBITION OF THE GENITALS OR PUBIC AREA OF ANY
12 PERSON.

13 (e) “Sexual excitement” means:

14 (1) the condition of the human genitals when in a state of sexual
15 stimulation;

16 (2) the condition of the human female breasts when in a state of sexual
17 stimulation; or

18 (3) the sensual experiences of individuals engaging in or witnessing sexual
19 conduct or nudity.

20 11-105.

21 (a) A person may not knowingly display for advertising purposes a picture,
22 photograph, drawing, sculpture, or other visual representation or image of an individual or
23 portion of a human body that:

24 (1) depicts sadomasochistic abuse;

25 (2) depicts sexual conduct AS DEFINED BY § 11-101(D)(1), (2), OR (3)
26 OF THIS SUBTITLE;

27 (3) depicts sexual excitement; or

1 (4) contains a verbal description or narrative account of sadomasochistic
 2 abuse, sexual conduct, or sexual excitement.

3 ~~11-201.~~

4 (a) In this subtitle the following words have the meanings indicated.

5 (b) "Distribute" means to transfer possession.

6 (c) "Knowingly" means having knowledge of the character and content of the
 7 matter.

8 (d) "Matter" means:

9 (1) a book, magazine, newspaper, or other printed or written material;

10 (2) a picture, drawing, photograph, motion picture, or other pictorial
 11 representation;

12 (3) a statue or other figure;

13 (4) a recording, transcription, or mechanical, chemical, [or] electrical, OR
 14 DIGITAL reproduction; or

15 (5) any other article, equipment, machine, or material.

16 (e) "Sadomasochistic abuse" has the meaning stated in § 11-101 of this title.

17 (f) "Sexual conduct" has the meaning stated in § 11-101 of this title.

18 (g) "Sexual excitement" has the meaning stated in § 11-101 of this title.

19 11-207.

20 (a) A person may not:

21 (1) cause, induce, solicit, or knowingly allow a minor to engage as a subject
 22 in the production of obscene matter or a visual representation or performance that depicts a
 23 minor engaged as a subject in sadomasochistic abuse or sexual conduct;

24 (2) photograph or film a minor engaging in an obscene act, sadomasochistic
 25 abuse, or sexual conduct;

26 (3) use a computer to depict or describe a minor engaging in an obscene act,
 27 sadomasochistic abuse, or sexual conduct;

1 (4) knowingly promote, advertise, solicit, distribute, or possess with the
2 intent to distribute any matter, visual representation, or performance:

3 (i) that depicts a minor engaged as a subject in sadomasochistic
4 abuse or sexual conduct; or

5 (ii) in a manner that reflects the belief, or that is intended to cause
6 another to believe, that the matter, visual representation, or performance depicts a minor
7 engaged as a subject of sadomasochistic abuse or sexual conduct; or

8 (5) use a computer to knowingly compile, enter, transmit, make, print,
9 publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice,
10 statement, advertisement, or minor's name, telephone number, place of residence, physical
11 characteristics, or other descriptive or identifying information for the purpose of engaging
12 in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or
13 sexual conduct of or with a minor.

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

16 (1) for a first violation, imprisonment not exceeding 10 years or a fine not
17 exceeding \$25,000 or both; and

18 (2) for each subsequent violation, imprisonment not exceeding 20 years or a
19 fine not exceeding \$50,000 or both.

20 (c) (1) (i) This paragraph applies only if the minor's identity is unknown or
21 the minor is outside the jurisdiction of the State.

22 (ii) In an action brought under this section, the State is not required
23 to identify or produce testimony from the minor who is depicted in the obscene matter or in
24 any visual representation or performance that depicts the minor engaged as a subject in
25 sadomasochistic abuse or sexual conduct.

26 (2) The trier of fact may determine whether an individual who is depicted
27 in an obscene matter, or any visual representation or performance as the subject in
28 sadomasochistic abuse or sexual conduct, was a minor by:

29 (i) observation of the matter depicting the individual;

30 (ii) oral testimony by a witness to the production of the matter,
31 representation, or performance;

32 (iii) expert medical testimony; or

33 (iv) any other method authorized by an applicable provision of law or
34 rule of evidence.

1 ~~11-101.~~

2 ~~(a) In this subtitle the following words have the meanings indicated.~~

3 ~~(b) "Advertising purposes" means the purpose of propagandizing in connection~~
 4 ~~with the commercial:~~

5 ~~(1) sale of a product;~~

6 ~~(2) offering of a service; or~~

7 ~~(3) exhibition of entertainment.~~

8 ~~(c) "Sadomasochistic abuse" means:~~

9 ~~(1) flagellation or torture committed by or inflicted on an individual who~~
 10 ~~is:~~

11 ~~(i) nude;~~

12 ~~(ii) wearing only undergarments; or~~

13 ~~(iii) wearing a revealing or bizarre costume; or~~

14 ~~(2) binding, fettering, or otherwise physically restraining an individual~~
 15 ~~who is:~~

16 ~~(i) nude;~~

17 ~~(ii) wearing only undergarments; or~~

18 ~~(iii) wearing a revealing or bizarre costume.~~

19 ~~(d) "Sexual conduct" means:~~

20 ~~(1) human masturbation;~~

21 ~~(2) sexual intercourse; [or]~~

22 ~~(3) whether alone or with another individual or animal, any touching of or~~
 23 ~~contact with:~~

24 ~~(i) the genitals, buttocks, or pubic areas of an individual; or~~

25 ~~(ii) breasts of a female individual; OR~~

1 ~~(4) LASCIVIOUS EXHIBITION OF THE GENITALS OR PUBIC AREA OF~~
2 ~~ANY PERSON.~~

3 ~~(c) "Sexual excitement" means:~~

4 ~~(1) the condition of the human genitals when in a state of sexual~~
5 ~~stimulation;~~

6 ~~(2) the condition of the human female breasts when in a state of sexual~~
7 ~~stimulation; or~~

8 ~~(3) the sensual experiences of individuals engaging in or witnessing sexual~~
9 ~~conduct or nudity.~~

10 ~~11-201.~~

11 ~~(a) In this subtitle the following words have the meanings indicated.~~

12 ~~(b) "Distribute" means to transfer possession.~~

13 ~~(c) "Knowingly" means having knowledge of the character and content of the~~
14 ~~matter.~~

15 ~~(d) "Matter" means:~~

16 ~~(1) a book, magazine, newspaper, or other printed or written material;~~

17 ~~(2) a picture, drawing, photograph, motion picture, or other pictorial~~
18 ~~representation;~~

19 ~~(3) a statue or other figure;~~

20 ~~(4) a recording, transcription, or mechanical, chemical, [or] electrical, OR~~
21 ~~DIGITAL reproduction; or~~

22 ~~(5) any other article, equipment, machine, or material.~~

23 ~~(e) "Sadomasochistic abuse" has the meaning stated in § 11-101 of this title.~~

24 ~~(f) "Sexual conduct" has the meaning stated in § 11-101 of this title.~~

25 ~~(g) "Sexual excitement" has the meaning stated in § 11-101 of this title.~~

26 ~~11-207.~~

27 ~~(a) A person may not:~~

1 ~~(1) cause, induce, solicit, or knowingly allow a minor to engage as a subject~~
2 ~~in the production of obscene matter or a visual representation or performance that depicts~~
3 ~~a minor engaged as a subject in sadomasochistic abuse or sexual conduct;~~

4 ~~(2) photograph or film a minor engaging in an obscene act, sadomasochistic~~
5 ~~abuse, or sexual conduct;~~

6 ~~(3) use a computer to depict or describe a minor engaging in an obscene act,~~
7 ~~sadomasochistic abuse, or sexual conduct;~~

8 ~~(4) knowingly promote, advertise, solicit, distribute, or possess with the~~
9 ~~intent to distribute any matter, visual representation, or performance:~~

10 ~~(i) that depicts a minor engaged as a subject in sadomasochistic~~
11 ~~abuse or sexual conduct; or~~

12 ~~(ii) in a manner that reflects the belief, or that is intended to cause~~
13 ~~another to believe, that the matter, visual representation, or performance depicts a minor~~
14 ~~engaged as a subject of sadomasochistic abuse or sexual conduct; or~~

15 ~~(5) use a computer to knowingly compile, enter, transmit, make, print,~~
16 ~~publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice,~~
17 ~~statement, advertisement, or minor's name, telephone number, place of residence, physical~~
18 ~~characteristics, or other descriptive or identifying information for the purpose of engaging~~
19 ~~in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or~~
20 ~~sexual conduct of or with a minor.~~

21 ~~(b) A person who violates this section is guilty of a felony and on conviction is~~
22 ~~subject to:~~

23 ~~(1) for a first violation, imprisonment not exceeding 10 years or a fine not~~
24 ~~exceeding \$25,000 or both; and~~

25 ~~(2) for each subsequent violation, imprisonment not exceeding 20 years or~~
26 ~~a fine not exceeding \$50,000 or both.~~

27 ~~(e) (1) (i) This paragraph applies only if the minor's identity is unknown~~
28 ~~or the minor is outside the jurisdiction of the State.~~

29 ~~(ii) In an action brought under this section, the State is not required~~
30 ~~to identify or produce testimony from the minor who is depicted in the obscene matter or in~~
31 ~~any visual representation or performance that depicts the minor engaged as a subject in~~
32 ~~sadomasochistic abuse or sexual conduct.~~

~~(2) The trier of fact may determine whether an individual who is depicted in an obscene matter, or any visual representation or performance as the subject in sadomasochistic abuse or sexual conduct, was a minor by:~~

- ~~(i) observation of the matter depicting the individual;~~
- ~~(ii) oral testimony by a witness to the production of the matter, representation, or performance;~~
- ~~(iii) expert medical testimony; or~~
- ~~(iv) any other method authorized by an applicable provision of law or rule of evidence.~~

11–208.

(A) (1) IN THIS SECTION, “INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE CHILD” MEANS AN ORDINARY PERSON WOULD CONCLUDE THAT THE IMAGE IS OF AN ACTUAL AND IDENTIFIABLE MINOR.

(2) “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.

(3) “INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE CHILD” DOES NOT INCLUDE IMAGES OR ITEMS DEPICTING MINORS THAT ARE:

- (I) DRAWINGS;**
- (II) CARTOONS;**
- (III) SCULPTURES; OR**
- (IV) PAINTINGS.**

~~(a)~~ **(B)** A person may not knowingly possess and intentionally retain 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** under the age of 16 years:

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

1 ~~(C)~~ **(C)** (1) Except as provided in paragraph (2) of this subsection, a person
 2 who violates this section is guilty of a misdemeanor and on conviction is subject to
 3 imprisonment not exceeding 5 years or a fine not exceeding \$2,500 or both.

4 (2) A person who violates this section, having previously been convicted
 5 under this section, is guilty of a felony and on conviction is subject to imprisonment not
 6 exceeding 10 years or a fine not exceeding \$10,000 or both.

7 ~~(D)~~ **(D)** Nothing in this section may be construed to prohibit a parent from
 8 possessing visual representations of the parent's own child in the nude unless the visual
 9 representations show the child engaged:

10 (1) as a subject of sadomasochistic abuse; or

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

12 ~~(E)~~ **(E)** It is an affirmative defense to a charge of violating this section that the
 13 person promptly and in good faith:

14 (1) took reasonable steps to destroy each visual representation; or

15 (2) reported the matter to a law enforcement agency.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 17 October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.