

SENATE BILL 736

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CF 9lr2072

By: **Senator Lee**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

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; prohibiting a person from
5 knowingly possessing and intentionally retaining a certain representation showing
6 a computer-generated image that is indistinguishable from an actual child under a
7 certain age portrayed in a certain manner; applying certain penalties; and generally
8 relating to child pornography.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Law
11 Section 11–101, 11–201, and 11–208
12 Annotated Code of Maryland
13 (2012 Replacement Volume and 2018 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Law
16 Section 11–207
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2018 Supplement)

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

21 **Article – Criminal Law**

22 11–101.

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

24 (b) “Advertising purposes” means the purpose of propagandizing in connection

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 with the commercial:

- 2 (1) sale of a product;
- 3 (2) offering of a service; or
- 4 (3) exhibition of entertainment.

5 (c) "Sadomasochistic abuse" means:

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

- 8 (i) nude;
- 9 (ii) wearing only undergarments; or
- 10 (iii) wearing a revealing or bizarre costume; or

11 (2) binding, fettering, or otherwise physically restraining an individual
12 who is:

- 13 (i) nude;
- 14 (ii) wearing only undergarments; or
- 15 (iii) wearing a revealing or bizarre costume.

16 (d) "Sexual conduct" means:

- 17 (1) human masturbation;
- 18 (2) sexual intercourse; [or]
- 19 (3) whether alone or with another individual or animal, any touching of or
20 contact with:

- 21 (i) the genitals, buttocks, or pubic areas of an individual; or
- 22 (ii) breasts of a female individual; **OR**

23 **(4) LASCIVIOUS EXHIBITION OF THE GENITALS OR PUBIC AREA OF**
24 **ANY PERSON.**

25 (e) "Sexual excitement" means:

- 26 (1) the condition of the human genitals when in a state of sexual

1 stimulation;

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

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

6 11–201.

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

8 (b) “Distribute” means to transfer possession.

9 (c) “Knowingly” means having knowledge of the character and content of the
10 matter.

11 (d) “Matter” means:

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

13 (2) a picture, drawing, photograph, motion picture, or other pictorial
14 representation;

15 (3) a statue or other figure;

16 (4) a recording, transcription, or mechanical, chemical, [or] electrical, OR
17 **DIGITAL** reproduction; or

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

19 (e) “Sadomasochistic abuse” has the meaning stated in § 11–101 of this title.

20 (f) “Sexual conduct” has the meaning stated in § 11–101 of this title.

21 (g) “Sexual excitement” has the meaning stated in § 11–101 of this title.

22 11–207.

23 (a) A person may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (iii) expert medical testimony; or

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

4 11-208.

5 (a) A person may not knowingly possess and intentionally retain a film,
6 videotape, photograph, or other visual representation showing an actual child **OR A**
7 **COMPUTER-GENERATED IMAGE THAT IS INDISTINGUISHABLE FROM AN ACTUAL**
8 **CHILD** under the age of 16 years:

9 (1) engaged as a subject of sadomasochistic abuse;

10 (2) engaged in sexual conduct; or

11 (3) in a state of sexual excitement.

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

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

18 (c) Nothing in this section may be construed to prohibit a parent from possessing
19 visual representations of the parent's own child in the nude unless the visual
20 representations show the child engaged:

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

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

23 (d) It is an affirmative defense to a charge of violating this section that the person
24 promptly and in good faith:

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

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

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