

SENATE BILL 65

E1

4lr1438

(PRE-FILED)

By: ~~Senator James~~ Senators James, Smith, Waldstreicher, Carter, McKay, Kelly, Charles, Sydnor, West, Muse, and Folden

Requested: November 1, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 12, 2024

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Child Pornography – Prohibitions and Penalties**

3 FOR the purpose of prohibiting a person from possessing certain child pornography under
4 certain circumstances; and generally relating to child pornography prohibitions and
5 penalties.

6 BY repealing and reenacting, without amendments,

7 Article – Criminal Law

8 Section 11–207 and 11–208

9 Annotated Code of Maryland

10 (2021 Replacement Volume and 2023 Supplement)

11 BY adding to

12 Article – Criminal Law

13 Section 11–208.2

14 Annotated Code of Maryland

15 (2021 Replacement Volume and 2023 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

17 That the Laws of Maryland read as follows:

18 **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.



1 11-207.

2 (a) A person may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (iii) expert medical testimony; or

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

10 11–208.

11 (a) (1) In this section, “indistinguishable from an actual and identifiable child”
12 means an ordinary person would conclude that the image is of an actual and identifiable
13 minor.

14 (2) “Indistinguishable from an actual and identifiable child” includes a
15 computer-generated image that has been created, adapted, or modified to appear as an
16 actual and identifiable child.

17 (3) “Indistinguishable from an actual and identifiable child” does not
18 include images or items depicting minors that are:

19 (i) drawings;

20 (ii) cartoons;

21 (iii) sculptures; or

22 (iv) paintings.

23 (b) (1) A person may not knowingly possess and intentionally retain a film,
24 videotape, photograph, or other visual representation showing an actual child or a
25 computer-generated image that is indistinguishable from an actual and identifiable child
26 under the age of 16 years:

27 (i) engaged as a subject of sadomasochistic abuse;

28 (ii) engaged in sexual conduct; or

29 (iii) in a state of sexual excitement.

1 (2) A person may not knowingly or intentionally access and intentionally
2 view a film, videotape, photograph, or other visual representation showing an actual child
3 or a computer-generated image that is indistinguishable from an actual and identifiable
4 child under the age of 16 years:

5 (i) engaged as a subject of sadomasochistic abuse;

6 (ii) engaged in sexual conduct; or

7 (iii) in a state of sexual excitement.

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

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

14 (d) Nothing in this section may be construed to prohibit a parent from possessing
15 visual representations of the parent's own child in the nude unless the visual
16 representations show the child engaged:

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

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

19 (e) It is an affirmative defense to a charge of violating this section that the person
20 promptly and in good faith:

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

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

23 **11-208.2.**

24 (A) (1) IN THIS SECTION, "IMAGE" MEANS ANY MATTER, VISUAL
25 REPRESENTATION, OR PERFORMANCE, INCLUDING PHOTOGRAPHS, PICTURES,
26 ELECTRONIC PHOTOGRAPHS, COMPUTER GENERATED IMAGES, VIDEOS,
27 ELECTRONIC VIDEOS, FILM, VIDEOTAPES, OR SIMILAR VISUAL REPRESENTATIONS
28 OR VIDEO DEPICTIONS.

29 (2) FOR THE PURPOSES OF DETERMINING THE NUMBER OF IMAGES
30 IN POSSESSION OF AN INDIVIDUAL IN VIOLATION OF THIS SECTION:

1 **(I) EACH PHOTOGRAPH, PICTURE, ELECTRONIC PHOTOGRAPH,**
2 **COMPUTER GENERATED IMAGE, OR SIMILAR VISUAL REPRESENTATION SHALL BE**
3 **DEEMED TO BE ONE IMAGE; AND**

4 **(II) EACH VIDEO, ELECTRONIC VIDEO, FILM, VIDEOTAPE, OR**
5 **SIMILAR VIDEO DEPICTION SHALL BE DEEMED TO BE TWENTY IMAGES.**

6 **(B) (1) A PERSON MAY NOT VIOLATE § 11-207(A)(4) OR § 11-208(B)(1) OF**
7 **THIS SUBTITLE WITH 100 OR MORE IMAGES.**

8 **(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A**
9 **FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10**
10 **YEARS.**

11 **(3) A SENTENCE IMPOSED UNDER THIS SUBSECTION ~~SHALL~~ MAY BE**
12 **SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE**
13 **IMPOSED FOR ANY OTHER CRIME BASED ON THE ACT ESTABLISHING A VIOLATION**
14 **OF § 11-207 OR § 11-208 OF THIS SUBTITLE.**

15 **(C) (1) A PERSON MAY NOT VIOLATE § 11-207(A)(4) OR § 11-208(B)(1) OF**
16 **THIS SUBTITLE WITH ANY IMAGE DEPICTING A MINOR OR AN INDIVIDUAL**
17 **INDISTINGUISHABLE FROM AN ACTUAL MINOR YOUNGER THAN 13 YEARS OF AGE.**

18 **(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A**
19 **FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10**
20 **YEARS.**

21 **(3) A SENTENCE IMPOSED UNDER THIS SUBSECTION ~~SHALL~~ MAY BE**
22 **SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE**
23 **IMPOSED FOR ANY OTHER CRIME BASED ON THE ACTS ESTABLISHING A VIOLATION**
24 **OF § 11-207 OR § 11-208 OF THIS SUBTITLE.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2024.