

SENATE BILL 226

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3lr2244
CF HB 233

By: **Senator Salling**

Introduced and read first time: January 23, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Child Pornography – Accessing With Intent to View**

3 FOR the purpose of prohibiting a person from knowingly or intentionally accessing a
4 certain visual representation of a child under the age of 16 years with intent to view
5 the visual representation; and generally relating to accessing child pornography with
6 an intent to view.

7 BY repealing and reenacting, with amendments,
8 Article – Criminal Law
9 Section 11–208
10 Annotated Code of Maryland
11 (2021 Replacement Volume and 2022 Supplement)

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

14 **Article – Criminal Law**

15 11–208.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (i) drawings;
- 2 (ii) cartoons;
- 3 (iii) sculptures; or
- 4 (iv) paintings.

5 (b) A person may not knowingly possess and intentionally retain, **OR**
6 **KNOWINGLY OR INTENTIONALLY ACCESS WITH INTENT TO VIEW**, a film, videotape,
7 photograph, or other visual representation showing an actual child or a
8 computer-generated image that is indistinguishable from an actual and identifiable child
9 under the age of 16 years:

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

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

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

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

- 22 (1) as a subject of sadomasochistic abuse; or
- 23 (2) in sexual conduct and in a state of sexual excitement.

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

- 26 (1) took reasonable steps to destroy each visual representation; or
- 27 (2) reported the matter to a law enforcement agency.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2023.