

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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 27, 2023

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Child Pornography – Accessing ~~With Intent to View~~ and**
3 **Intentionally Viewing**

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

8 BY repealing and reenacting, with amendments,

9 Article – Criminal Law

10 Section 11–208

11 Annotated Code of Maryland

12 (2021 Replacement Volume and 2022 Supplement)

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

15 **Article – Criminal Law**

16 11–208.

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

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

4 (3) "Indistinguishable from an actual and identifiable child" does not
 5 include images or items depicting minors that are:

- 6 (i) drawings;
- 7 (ii) cartoons;
- 8 (iii) sculptures; or
- 9 (iv) paintings.

10 (b) ~~(1)~~ A person may not knowingly possess and intentionally retain, ~~OR~~
 11 ~~KNOWINGLY OR INTENTIONALLY ACCESS WITH INTENT TO VIEW,~~ a film, videotape,
 12 photograph, or other visual representation showing an actual child or a
 13 computer-generated image that is indistinguishable from an actual and identifiable child
 14 under the age of 16 years:

- 15 ~~(1)~~ **(I)** engaged as a subject of sadomasochistic abuse;
- 16 ~~(2)~~ **(II)** engaged in sexual conduct; or
- 17 ~~(3)~~ **(III)** in a state of sexual excitement.

18 **(2) A PERSON MAY NOT KNOWINGLY OR INTENTIONALLY ACCESS AND**
 19 **INTENTIONALLY VIEW A FILM, VIDEOTAPE, PHOTOGRAPH, OR OTHER VISUAL**
 20 **REPRESENTATION SHOWING AN ACTUAL CHILD OR A COMPUTER-GENERATED**
 21 **IMAGE THAT IS INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE CHILD**
 22 **UNDER THE AGE OF 16 YEARS:**

- 23 **(I) ENGAGED AS A SUBJECT OF SADMASOCHISTIC ABUSE;**
- 24 **(II) ENGAGED IN SEXUAL CONDUCT; OR**
- 25 **(III) IN A STATE OF SEXUAL EXCITEMENT.**

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

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

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

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.