

Chapter 759

(Senate Bill 226)

AN ACT concerning

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

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

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

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

Article – Criminal Law

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.

(b) **(1)** A person may not knowingly possess and intentionally retain, ~~OR KNOWINGLY OR INTENTIONALLY ACCESS WITH INTENT TO VIEW,~~ 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)~~ **(I)** engaged as a subject of sadomasochistic abuse;
- ~~(2)~~ **(II)** engaged in sexual conduct; or
- ~~(3)~~ **(III)** in a state of sexual excitement.

(2) A PERSON MAY NOT KNOWINGLY OR INTENTIONALLY ACCESS AND INTENTIONALLY VIEW 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:

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 16, 2023.