

# SENATE BILL 65

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4lr1438

(PRE-FILED)

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By: **Senator James**

Requested: November 1, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

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**

19 11–207.

20 (a) A person may not:

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (iii) expert medical testimony; or

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

6 11–208.

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

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

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

15 (i) drawings;

16 (ii) cartoons;

17 (iii) sculptures; or

18 (iv) paintings.

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

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

24 (ii) engaged in sexual conduct; or

25 (iii) in a state of sexual excitement.

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

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

1 (ii) engaged in sexual conduct; or

2 (iii) in a state of sexual excitement.

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

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

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

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

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

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

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

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

18 **11-208.2.**

19 (A) (1) IN THIS SECTION, "IMAGE" MEANS ANY MATTER, VISUAL  
20 REPRESENTATION, OR PERFORMANCE, INCLUDING PHOTOGRAPHS, PICTURES,  
21 ELECTRONIC PHOTOGRAPHS, COMPUTER GENERATED IMAGES, VIDEOS,  
22 ELECTRONIC VIDEOS, FILM, VIDEOTAPES, OR SIMILAR VISUAL REPRESENTATIONS  
23 OR VIDEO DEPICTIONS.

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

26 (I) EACH PHOTOGRAPH, PICTURE, ELECTRONIC PHOTOGRAPH,  
27 COMPUTER GENERATED IMAGE, OR SIMILAR VISUAL REPRESENTATION SHALL BE  
28 DEEMED TO BE ONE IMAGE; AND

29 (II) EACH VIDEO, ELECTRONIC VIDEO, FILM, VIDEOTAPE, OR  
30 SIMILAR VIDEO DEPICTION SHALL BE DEEMED TO BE TWENTY IMAGES.

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

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

6           **(3) A SENTENCE IMPOSED UNDER THIS SUBSECTION SHALL BE**  
7 **SEPARATE FROM AND CONSECUTIVE TO A SENTENCE IMPOSED FOR ANY CRIME**  
8 **BASED ON THE ACT ESTABLISHING A VIOLATION OF § 11-207 OR § 11-208 OF THIS**  
9 **SUBTITLE.**

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

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

16          **(3) A SENTENCE IMPOSED UNDER THIS SUBSECTION SHALL BE**  
17 **SEPARATE FROM AND CONSECUTIVE TO A SENTENCE IMPOSED FOR ANY CRIME**  
18 **BASED ON THE ACTS ESTABLISHING A VIOLATION OF § 11-207 OR § 11-208 OF THIS**  
19 **SUBTITLE.**

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