

Chapter 325

(House Bill 1027)

AN ACT concerning

Criminal Law – Child Pornography

FOR the purpose of altering certain definitions applicable to certain prohibitions against possessing, distributing, and creating child pornography; prohibiting a person from knowingly possessing and intentionally retaining a certain representation showing a computer-generated image that is indistinguishable from an actual and identifiable child under a certain age portrayed in a certain manner; defining a certain term; providing that only certain depictions of sexual conduct apply to a certain offense; applying certain penalties; and generally relating to child pornography.

BY repealing and reenacting, with amendments,
 Article – Criminal Law
 Section 11-101, ~~11-201~~ 11-105(a), and 11-208
 Annotated Code of Maryland
 (2012 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, without amendments,
 Article – Criminal Law
 Section 11-207
 Annotated Code of Maryland
 (2012 Replacement Volume and 2018 Supplement)

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

Article – Criminal Law

11-101.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Advertising purposes” means the purpose of propagandizing in connection with the commercial:
- (1) sale of a product;
 - (2) offering of a service; or
 - (3) exhibition of entertainment.

(c) “Sadomasochistic abuse” means:

is: (1) flagellation or torture committed by or inflicted on an individual who

(i) nude;

(ii) wearing only undergarments; or

(iii) wearing a revealing or bizarre costume; or

who is: (2) binding, fettering, or otherwise physically restraining an individual

(i) nude;

(ii) wearing only undergarments; or

(iii) wearing a revealing or bizarre costume.

(d) “Sexual conduct” means:

(1) human masturbation;

(2) sexual intercourse; [or]

(3) whether alone or with another individual or animal, any touching of or contact with:

(i) the genitals, buttocks, or pubic areas of an individual; or

(ii) breasts of a female individual; **OR**

(4) LASCIVIOUS EXHIBITION OF THE GENITALS OR PUBIC AREA OF ANY PERSON.

(e) “Sexual excitement” means:

(1) the condition of the human genitals when in a state of sexual stimulation;

(2) the condition of the human female breasts when in a state of sexual stimulation; or

(3) the sensual experiences of individuals engaging in or witnessing sexual conduct or nudity.

11-105.

(a) A person may not knowingly display for advertising purposes a picture, photograph, drawing, sculpture, or other visual representation or image of an individual or portion of a human body that:

(1) depicts sadomasochistic abuse;

(2) depicts sexual conduct AS DEFINED BY § 11-101(D)(1), (2), OR (3) OF THIS SUBTITLE;

(3) depicts sexual excitement; or

(4) contains a verbal description or narrative account of sadomasochistic abuse, sexual conduct, or sexual excitement.

~~11-201.~~

~~(a) In this subtitle the following words have the meanings indicated.~~

~~(b) "Distribute" means to transfer possession.~~

~~(c) "Knowingly" means having knowledge of the character and content of the matter.~~

~~(d) "Matter" means:~~

~~(1) a book, magazine, newspaper, or other printed or written material;~~

~~(2) a picture, drawing, photograph, motion picture, or other pictorial representation;~~

~~(3) a statue or other figure;~~

~~(4) a recording, transcription, or mechanical, chemical, [or] electrical, OR DIGITAL reproduction; or~~

~~(5) any other article, equipment, machine, or material.~~

~~(e) "Sadomasochistic abuse" has the meaning stated in § 11-101 of this title.~~

~~(f) "Sexual conduct" has the meaning stated in § 11-101 of this title.~~

~~(g) "Sexual excitement" has the meaning stated in § 11-101 of this title.~~

11-207.

(a) A person may not:

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

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

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

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

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

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

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

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

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

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

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

(ii) In an action brought under this section, the State is not required to identify or produce testimony from the minor who is depicted in the obscene matter or in

any visual representation or performance that depicts the minor engaged as a subject in sadomasochistic abuse or sexual conduct.

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

- (i) observation of the matter depicting the individual;
- (ii) oral testimony by a witness to the production of the matter, representation, or performance;
- (iii) expert medical testimony; or
- (iv) any other method authorized by an applicable provision of law or rule of evidence.

11-208.

(A) (1) IN THIS SECTION, “INDISTINGUISHABLE FROM AN ACTUAL CHILD” MEANS AN ORDINARY PERSON WOULD CONCLUDE THAT THE IMAGE IS OF AN ACTUAL MINOR ENGAGED IN SEXUAL CONDUCT.

(2) “INDISTINGUISHABLE FROM AN ACTUAL CHILD” INCLUDES AN ACTUAL MINOR OR A COMPUTER-GENERATED IMAGE THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR AS AN IDENTIFIABLE CHILD.

(3) “INDISTINGUISHABLE FROM AN ACTUAL CHILD” DOES NOT INCLUDE IMAGES OR ITEMS DEPICTING MINORS THAT ARE:

- (I) DRAWINGS;**
- (II) CARTOONS;**
- (III) SCULPTURES; OR**
- (IV) PAINTINGS.**

~~(A)~~ **(B)** A person may not knowingly possess and intentionally retain 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) engaged as a subject of sadomasochistic abuse;

- (2) engaged in sexual conduct; or
- (3) in a state of sexual excitement.

~~(C)~~ **(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)~~ **(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)~~ **(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, 2019.

Approved by the Governor, April 30, 2019.