

# SENATE BILL 45

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(PRE-FILED)

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By: **Senator Waldstreicher**

Requested: August 29, 2019

Introduced and read first time: January 8, 2020

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Child Pornography – Distribution, Creation, or Possession by**  
3 **Minor Subject**

4 FOR the purpose of altering certain elements of the crimes of distribution or creation of  
5 child pornography and possession of child pornography to exclude from criminal  
6 liability a certain minor who is the subject of the pornographic matter; and generally  
7 relating to child pornography.

8 BY repealing and reenacting, with amendments,  
9 Article – Criminal Law  
10 Section 11–207 and 11–208  
11 Annotated Code of Maryland  
12 (2012 Replacement Volume and 2019 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 11–207.

17 (a) A person may not:

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

22 (2) photograph or film **ANOTHER WHO IS** a minor engaging in an obscene

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 act, sadomasochistic abuse, or sexual conduct;

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

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

6 (i) that depicts **ANOTHER WHO IS** a minor engaged as a subject in  
7 sadomasochistic abuse or sexual conduct; or

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

34 (ii) oral testimony by a witness to the production of the matter,

1 representation, or performance;

2 (iii) expert medical testimony; or

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

5 11–208.

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

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

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

14 (i) drawings;

15 (ii) cartoons;

16 (iii) sculptures; or

17 (iv) paintings.

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

22 (1) engaged as a subject of sadomasochistic abuse;

23 (2) engaged in sexual conduct; or

24 (3) in a state of sexual excitement.

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

28 (2) A person who violates this section, having previously been convicted  
29 under this section, is guilty of a felony and on conviction is subject to imprisonment not  
30 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, 2020.