

SENATE BILL 899

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3lr2974
CF 3lr1762

By: **Senator James**

Introduced and read first time: February 15, 2023

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Child Pornography – Prohibitions**

3 FOR the purpose of prohibiting an individual from intentionally retaining a certain number
4 of visual representations of child pornography or child pornography that depicts an
5 individual who is or is indistinguishable from a minor under a certain age; and
6 generally relating to child pornography.

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

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

14 **Article – Criminal Law**

15 11–208.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (i) drawings;
- 2 (ii) cartoons;
- 3 (iii) sculptures; or
- 4 (iv) paintings.

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

- 9 (1) engaged as a subject of sadomasochistic abuse;
- 10 (2) engaged in sexual conduct; or
- 11 (3) in a state of sexual excitement.

12 **(C) (1) A PERSON MAY NOT RETAIN 100 OR MORE VISUAL**
13 **REPRESENTATIONS THAT CONSTITUTE A VIOLATION OF SUBSECTION (B) OF THIS**
14 **SECTION.**

15 **(2) FOR PURPOSES OF DETERMINING THE NUMBER OF VISUAL**
16 **REPRESENTATIONS UNDER THIS SUBSECTION:**

17 **(I) EACH PHOTOGRAPH, PICTURE, ELECTRONIC PHOTOGRAPH,**
18 **COMPUTER-GENERATED IMAGE, OR SIMILAR VISUAL REPRESENTATION SHALL BE**
19 **CONSIDERED TO BE ONE VISUAL REPRESENTATION; AND**

20 **(II) EACH VIDEO, ELECTRONIC VIDEO, FILM, VIDEOTAPE, OR**
21 **SIMILAR DEPICTION SHALL BE CONSIDERED TO CONTAIN 20 VISUAL**
22 **REPRESENTATIONS.**

23 **(D) (1) A PERSON MAY NOT INTENTIONALLY RETAIN A VISUAL**
24 **REPRESENTATION THAT CONSTITUTES A VIOLATION OF SUBSECTION (B) OF THIS**
25 **SECTION THAT DEPICTS OR IS INDISTINGUISHABLE FROM A MINOR UNDER THE AGE**
26 **OF 5 YEARS.**

27 **(2) FOR PURPOSES OF THIS SUBSECTION, THE TRIER OF FACT MAY**
28 **DETERMINE THAT THE INDIVIDUAL IN THE VISUAL REPRESENTATION IS OR IS**
29 **INDISTINGUISHABLE FROM A MINOR UNDER THE AGE OF 5 YEARS BY:**

30 **(I) OBSERVATION OF THE MATTER DEPICTING THE**
31 **INDIVIDUAL;**

1 **(II) ORAL TESTIMONY BY A WITNESS TO THE PRODUCTION OF**
2 **THE MATTER, REPRESENTATION, OR PERFORMANCE;**

3 **(III) EXPERT MEDICAL TESTIMONY; OR**

4 **(IV) ANY OTHER METHOD AUTHORIZED BY AN APPLICABLE**
5 **PROVISION OF LAW OR RULE OF EVIDENCE.**

6 **[(c)] (E)** (1) Except as provided in paragraph (2) of this subsection, a person
7 who violates **SUBSECTION (B) OF** this section is guilty of a misdemeanor and on conviction
8 is subject to imprisonment not exceeding 5 years or a fine not exceeding \$2,500 or both.

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

12 **(3) (I) A PERSON WHO VIOLATES SUBSECTION (C) OF THIS**
13 **SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO**
14 **IMPRISONMENT NOT EXCEEDING 10 YEARS.**

15 **(II) A SENTENCE IMPOSED UNDER THIS PARAGRAPH SHALL BE**
16 **CONSECUTIVE TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED**
17 **FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF SUBSECTION**
18 **(C) OF THIS SECTION.**

19 **(4) (I) A PERSON WHO VIOLATES SUBSECTION (D) OF THIS**
20 **SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO**
21 **IMPRISONMENT NOT EXCEEDING 10 YEARS.**

22 **(II) A SENTENCE IMPOSED UNDER THIS PARAGRAPH SHALL BE**
23 **CONSECUTIVE TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED**
24 **FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF SUBSECTION**
25 **(D) OF THIS SECTION.**

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

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

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

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

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

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

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