

HOUSE BILL 1245

E3, E1

01r2999

By: **Delegate Wilson**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Conduct by Children Involving Sexually Explicit or Nude**
3 **Images**

4 FOR the purpose of prohibiting a child from knowingly sending, displaying, or publishing
5 to another a sexually explicit or nude image depicting another child under certain
6 circumstances; prohibiting a child from knowingly sending, displaying, or publishing
7 to another a sexually explicit or nude image depicting only himself or herself under
8 certain circumstances; prohibiting a child from knowingly possessing a sexually
9 explicit or nude image depicting another child without the other child’s consent
10 under certain circumstances; providing that a certain child alleged to have violated
11 certain provisions of this Act may be subject only to a certain petition alleging that
12 the child is a child in need of assistance; providing that a certain child alleged to
13 have violated certain provisions of this Act may be subject only to a certain petition
14 that the child is a child in need of supervision; providing for the applicability of
15 certain provisions of this Act; altering certain elements of the crimes of distribution
16 or creation of child pornography and possession of child pornography to exclude from
17 criminal liability a certain minor who is the subject of the pornographic matter;
18 establishing certain exceptions to certain provisions of law relating to the display
19 and exhibition of a certain item to a minor, child pornography, and possession of
20 child pornography; providing for the construction of certain provisions of law relating
21 to possession of a certain visual representation; requiring the State Board of
22 Education, in consultation with any relevant unit of State, county, or local
23 government, to develop and implement a certain program on the risks of possessing,
24 sending, displaying, and publishing certain images; providing for the start and
25 delivery of the program in each public school; defining certain terms; and generally
26 relating to conduct by children involving sexually explicit or nude images.

27 BY adding to

28 Article – Courts and Judicial Proceedings

29 Section 3–8D–101 through 3–8D–105 to be under the new subtitle “Subtitle 8D.

30 Conduct by Children Involving Sexually Explicit or Nude Images”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2013 Replacement Volume and 2019 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Criminal Law
5 Section 11–203, 11–207, and 11–208
6 Annotated Code of Maryland
7 (2012 Replacement Volume and 2019 Supplement)

8 BY adding to
9 Article – Education
10 Section 7–205.3
11 Annotated Code of Maryland
12 (2018 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 – Courts and Judicial Proceedings**

16 **SUBTITLE 8D. CONDUCT BY CHILDREN INVOLVING SEXUALLY EXPLICIT OR NUDE**
17 **IMAGES.**

18 **3–8D–101.**

19 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

21 (B) “CHILD” MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

22 (C) “SEXUAL CONDUCT” HAS THE MEANING STATED IN § 11–101 OF THE
23 CRIMINAL LAW ARTICLE.

24 (D) “SEXUAL EXCITEMENT” HAS THE MEANING STATED IN § 11–101 OF THE
25 CRIMINAL LAW ARTICLE.

26 (E) “SEXUALLY EXPLICIT OR NUDE IMAGE” MEANS AN ELECTRONIC OR
27 DIGITAL PHOTOGRAPH, VIDEO, OR OTHER DEPICTION OF:

28 (1) SEXUAL EXCITEMENT OR SEXUAL CONDUCT; OR

29 (2) THE GENITALS, BUTTOCKS, PUBIC AREA, OR FEMALE BREAST OF
30 A NUDE HUMAN.

31 **3–8D–102.**

1 **THIS SUBTITLE DOES NOT APPLY TO A CHILD WHO POSSESSES, SENDS,**
2 **DISPLAYS, OR PUBLISHES A SEXUALLY EXPLICIT OR NUDE IMAGE:**

3 **(1) THAT THE CHILD KNOWS OR REASONABLY SHOULD KNOW:**

4 **(I) CONSISTS OF, DEPICTS, OR WAS CREATED BECAUSE OF:**

5 1. **AN ACT OF SEXUALLY ASSAULTIVE BEHAVIOR, AS**
6 **DEFINED IN § 10-923 OF THIS ARTICLE;**

7 2. **SEX TRAFFICKING, AS DEFINED IN § 5-701 OF THE**
8 **FAMILY LAW ARTICLE;**

9 3. **A VIOLATION OF § 3-709 OF THE CRIMINAL LAW**
10 **ARTICLE; OR**

11 4. **THE VIOLATION OF A LAW OF ANOTHER STATE, THE**
12 **UNITED STATES, OR A FOREIGN COUNTRY THAT IS EQUIVALENT TO AN OFFENSE**
13 **UNDER ITEMS 1 THROUGH 3 OF THIS ITEM; OR**

14 **(II) WAS CREATED OR PRODUCED WITHOUT THE CONSENT OF A**
15 **PERSON DEPICTED IN THE SEXUALLY EXPLICIT OR NUDE IMAGE; OR**

16 **(2) THE POSSESSION, TRANSMISSION, DISPLAY, OR PUBLICATION OF**
17 **WHICH IS DIRECTLY RELATED TO THE FINANCIAL GAIN OF ANY PERSON.**

18 **3-8D-103.**

19 **(A) A CHILD MAY NOT KNOWINGLY SEND, DISPLAY, OR PUBLISH TO**
20 **ANOTHER A SEXUALLY EXPLICIT OR NUDE IMAGE DEPICTING ANOTHER CHILD**
21 **UNLESS:**

22 **(1) (I) EACH PERSON DEPICTED IN THE SEXUALLY EXPLICIT OR**
23 **NUDE IMAGE GAVE THE CHILD PERMISSION TO SEND, DISPLAY, OR PUBLISH THE**
24 **SEXUALLY EXPLICIT OR NUDE IMAGE; OR**

25 **(II) NO PERSON DEPICTED IN THE SEXUALLY EXPLICIT OR NUDE**
26 **IMAGE HAD A REASONABLE EXPECTATION THAT THE SEXUALLY EXPLICIT OR NUDE**
27 **IMAGE WOULD REMAIN PRIVATE;**

28 **(2) THE SEXUALLY EXPLICIT OR NUDE IMAGE:**

1 (I) WAS SOLICITED OR REQUESTED BY EACH PERSON WHO
2 RECEIVED, OBSERVED, OR OTHERWISE VIEWED THE SEXUALLY EXPLICIT OR NUDE
3 IMAGE; OR

4 (II) WAS SENT, DISPLAYED, OR PUBLISHED UNDER
5 CIRCUMSTANCES IN WHICH EACH PERSON WHO RECEIVED, OBSERVED, OR
6 OTHERWISE VIEWED THE SEXUALLY EXPLICIT OR NUDE IMAGE AGREED TO RECEIVE,
7 OBSERVE, OR OTHERWISE VIEW THE SEXUALLY EXPLICIT OR NUDE IMAGE; AND

8 (3) NO PERSON WHO RECEIVED, OBSERVED, OR OTHERWISE VIEWED
9 THE SEXUALLY EXPLICIT OR NUDE IMAGE SUFFERED EMOTIONAL DISTRESS FROM
10 RECEIVING, OBSERVING, OR OTHERWISE VIEWING THE SEXUALLY EXPLICIT OR
11 NUDE IMAGE.

12 (B) A CHILD MAY NOT KNOWINGLY SEND, DISPLAY, OR PUBLISH TO
13 ANOTHER A SEXUALLY EXPLICIT OR NUDE IMAGE DEPICTING ONLY THE CHILD
14 UNLESS:

15 (1) THE SEXUALLY EXPLICIT OR NUDE IMAGE:

16 (I) WAS SOLICITED OR REQUESTED BY EACH PERSON WHO
17 RECEIVED, OBSERVED, OR OTHERWISE VIEWED THE SEXUALLY EXPLICIT OR NUDE
18 IMAGE; OR

19 (II) WAS SENT, DISPLAYED, OR PUBLISHED UNDER
20 CIRCUMSTANCES IN WHICH EACH PERSON WHO RECEIVED, OBSERVED, OR
21 OTHERWISE VIEWED THE SEXUALLY EXPLICIT OR NUDE IMAGE AGREED TO RECEIVE,
22 OBSERVE, OR OTHERWISE VIEW THE SEXUALLY EXPLICIT OR NUDE IMAGE; AND

23 (2) NO PERSON WHO RECEIVED, OBSERVED, OR OTHERWISE VIEWED
24 THE SEXUALLY EXPLICIT OR NUDE IMAGE SUFFERED EMOTIONAL DISTRESS FROM
25 RECEIVING, OBSERVING, OR OTHERWISE VIEWING THE SEXUALLY EXPLICIT OR
26 NUDE IMAGE.

27 3-8D-104.

28 A CHILD MAY NOT KNOWINGLY POSSESS A SEXUALLY EXPLICIT OR NUDE
29 IMAGE DEPICTING ANOTHER CHILD WITHOUT THE OTHER CHILD'S CONSENT UNLESS
30 THE CHILD, WITHIN 72 HOURS AFTER INITIALLY VIEWING THE SEXUALLY EXPLICIT
31 OR NUDE IMAGE:

32 (1) TOOK REASONABLE STEPS TO DESTROY THE SEXUALLY EXPLICIT
33 OR NUDE IMAGE; OR

1 (5) "Obscene" means:

2 (i) that the average adult applying contemporary community
3 standards would find that the work, taken as a whole, appeals to the prurient interest;

4 (ii) that the work depicts sexual conduct specified in subsection (b)
5 of this section in a way that is patently offensive to prevailing standards in the adult
6 community as a whole with respect to what is suitable material; and

7 (iii) that the work, taken as a whole, lacks serious artistic,
8 educational, literary, political, or scientific value.

9 (6) "Partially nude figure" means a figure with:

10 (i) less than completely and opaquely covered human genitals, pubic
11 region, buttocks, or female breast below a point immediately above the top of the areola; or

12 (ii) human male genitals in a discernibly turgid state, even if
13 completely and opaquely covered.

14 (b) (1) **[A] EXCEPT AS PROVIDED UNDER SUBSECTION (E) OF THIS**
15 **SECTION, A person may not willfully or knowingly display or exhibit to a minor an item:**

16 (i) the cover or content of which is principally made up of an obscene
17 description or depiction of illicit sex; or

18 (ii) that consists of an obscene picture of a nude or partially nude
19 figure.

20 (2) A person may not willfully or knowingly engage in the business of
21 displaying, exhibiting, selling, showing, advertising for sale, or distributing to a minor an
22 item:

23 (i) the cover or content of which is principally made up of an obscene
24 description or depiction of illicit sex; or

25 (ii) that consists of an obscene picture of a nude or partially nude
26 figure.

27 (3) If a newsstand or other place of business is frequented by minors, the
28 owner, operator, franchisee, manager, or an employee with managerial responsibility may
29 not openly and knowingly display at the place of business an item whose sale, display,
30 exhibition, showing, or advertising is prohibited by paragraph (2) of this subsection.

31 (c) The provision of services or facilities by a telephone company under a tariff
32 approved by the Public Service Commission is not a violation of subsection (b) of this section

1 relating to recorded telephone messages.

2 (d) A person who violates this section is guilty of a misdemeanor and on conviction
3 is subject to:

4 (1) for a first violation, imprisonment not exceeding 1 year or a fine not
5 exceeding \$1,000 or both; and

6 (2) for each subsequent violation, imprisonment not exceeding 3 years or a
7 fine not exceeding \$5,000 or both.

8 (E) **A MINOR MAY NOT BE FOUND TO HAVE VIOLATED THIS SECTION FOR**
9 **DISPLAYING OR EXHIBITING AN ITEM TO ANOTHER MINOR UNLESS THE ITEM**
10 **CONSISTS OF OR IS PRINCIPALLY MADE UP OF A DEPICTION OR OBSCENE PICTURE**
11 **CREATED OR OTHERWISE PRODUCED:**

12 (1) **BECAUSE OF:**

13 (I) **AN ACT OF SEXUALLY ASSAULTIVE BEHAVIOR, AS DEFINED**
14 **IN § 10-923 OF THE COURTS ARTICLE;**

15 (II) **SEX TRAFFICKING, AS DEFINED IN § 5-701 OF THE FAMILY**
16 **LAW ARTICLE;**

17 (III) **A VIOLATION OF § 3-709 OF THIS ARTICLE;**

18 (IV) **THE VIOLATION OF A LAW OF ANOTHER STATE, THE UNITED**
19 **STATES, OR A FOREIGN COUNTRY THAT IS EQUIVALENT TO AN OFFENSE UNDER**
20 **ITEMS (I) THROUGH (III) OF THIS ITEM; OR**

21 (2) **WITHOUT THE CONSENT OF A PERSON DEPICTED.**

22 11-207.

23 (a) **[A] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,** A person
24 may not:

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

29 (2) photograph or film **ANOTHER WHO IS** a minor engaging in an obscene
30 act, sadomasochistic abuse, or sexual conduct;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (iii) expert medical testimony; or

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

4 **(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A MINOR MAY**
5 **NOT BE FOUND TO HAVE VIOLATED THIS SECTION FOR CONDUCT THAT VIOLATES §**
6 **3-8D-103 OF THE COURTS ARTICLE.**

7 **(2) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO PROHIBIT**
8 **A PROSECUTION OR PROCEEDING ALLEGING A DELINQUENT ACT AGAINST A MINOR**
9 **WHO IS INELIGIBLE TO BE THE SUBJECT OF A PETITION ALLEGING THAT THE MINOR**
10 **IS A CHILD IN NEED OF ASSISTANCE OR A PETITION ALLEGING THAT THE MINOR IS A**
11 **CHILD IN NEED OF SUPERVISION UNDER TITLE 3, SUBTITLE 8D OF THE COURTS**
12 **ARTICLE.**

13 11-208.

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

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

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

22 (i) drawings;

23 (ii) cartoons;

24 (iii) sculptures; or

25 (iv) paintings.

26 (b) **[A] EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, A person**
27 **may not knowingly possess and intentionally retain a film, videotape, photograph, or other**
28 **visual representation showing ANOTHER WHO IS an actual child or a computer-generated**
29 **image that is indistinguishable from ANOTHER WHO IS an actual and identifiable child**
30 **under the age of 16 years:**

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

32 (2) engaged in sexual conduct; or

1 (3) in a state of sexual excitement.

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

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

8 (d) Nothing in this section may be construed to prohibit:

9 (1) a parent from possessing visual representations of the parent's own
10 child in the nude unless the visual representations show the child engaged:

11 [(1)] (I) as a subject of sadomasochistic abuse; or

12 [(2)] (II) in sexual conduct and in a state of sexual excitement; OR

13 (2) A PERSON FROM POSSESSING:

14 (I) A VISUAL REPRESENTATION DESCRIBED UNDER
15 SUBSECTION (B) OF THIS SECTION SHOWING ONLY THE PERSON WHO POSSESSES
16 THE VISUAL REPRESENTATION; OR

17 (II) A COMPUTER-GENERATED IMAGE DESCRIBED UNDER
18 SUBSECTION (B) OF THIS SECTION THAT IS INDISTINGUISHABLE FROM THE PERSON
19 WHO POSSESSES THE COMPUTER-GENERATED IMAGE.

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

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

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

24 (F) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A MINOR MAY
25 NOT BE FOUND TO HAVE VIOLATED THIS SECTION FOR CONDUCT THAT VIOLATES §
26 3-8D-103 OF THE COURTS ARTICLE.

27 (2) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO PROHIBIT
28 A PROSECUTION OR PROCEEDING ALLEGING A DELINQUENT ACT AGAINST A MINOR
29 WHO IS INELIGIBLE TO BE THE SUBJECT OF A PETITION ALLEGING THAT THE MINOR
30 IS A CHILD IN NEED OF ASSISTANCE OR A PETITION ALLEGING THAT THE MINOR IS A

1 CHILD IN NEED OF SUPERVISION UNDER TITLE 3, SUBTITLE 8D OF THE COURTS
2 ARTICLE.

3 Article – Education

4 7-205.3.

5 (A) THE STATE BOARD SHALL, IN CONSULTATION WITH ANY RELEVANT
6 UNIT OF STATE, COUNTY, OR LOCAL GOVERNMENT, DEVELOP AND IMPLEMENT A
7 PROGRAM ON THE RISKS OF POSSESSING, SENDING, DISPLAYING, AND PUBLISHING
8 SEXUALLY EXPLICIT OR NUDE IMAGES, AS DEFINED IN § 3-8D-101 OF THE COURTS
9 ARTICLE.

10 (B) THE PROGRAM SHALL BE STARTED IN THE SIXTH GRADE AND
11 DELIVERED THROUGH THE TWELFTH GRADE IN EACH PUBLIC SCHOOL.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2020.