

HOUSE BILL 623

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CF 0lr2668

By: **Delegates Lopez, Attar, Atterbeary, Gilchrist, Kipke, Lehman, Love, Mosby, Palakovich Carr, Qi, Queen, Smith, Solomon, and Stewart**

Introduced and read first time: January 29, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Possession of Child Pornography – Penalty**

3 FOR the purpose of reclassifying, as a felony instead of a misdemeanor, a certain offense
4 relating to possession of child pornography; and generally relating to possession of
5 child pornography.

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Law
8 Section 11–208
9 Annotated Code of Maryland
10 (2012 Replacement Volume and 2019 Supplement)

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

13 **Article – Criminal Law**

14 11–208.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- (i) drawings;
- (ii) cartoons;
- (iii) sculptures; or
- (iv) paintings.

(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) [(1) Except as provided in paragraph (2) of this subsection, a] 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) 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) 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, 2020.