

HOUSE BILL 382

E3

1lr1285

HB 1245/20 – JUD

(PRE-FILED)

By: **Delegate Wilson**

Requested: October 29, 2020

Introduced and read first time: January 13, 2021

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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Conduct by Children Involving Sexually Explicit or Nude Images”
Annotated Code of Maryland
(2020 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 11–203, 11–207, and 11–208
Annotated Code of Maryland
(2012 Replacement Volume and 2020 Supplement)

BY adding to
Article – Education
Section 7–205.3
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

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

Article – Courts and Judicial Proceedings

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

3–8D–101.

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

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

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

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

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

(1) SEXUAL EXCITEMENT OR SEXUAL CONDUCT; OR

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

1 **3-8D-102.**

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

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

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

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

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

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

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

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

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

19 **3-8D-103.**

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

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

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

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

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

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

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

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

(1) THE SEXUALLY EXPLICIT OR NUDE IMAGE:

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

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

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

3-8D-104.

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

(1) TOOK REASONABLE STEPS TO DESTROY THE SEXUALLY EXPLICIT

OR NUDE IMAGE; OR

(2) REPORTED THE SEXUALLY EXPLICIT OR NUDE IMAGE TO THE CHILD'S PARENT, GUARDIAN, OR CUSTODIAN.

3-8D-105.

(A) A CHILD ALLEGED TO HAVE VIOLATED THIS SUBTITLE MAY BE SUBJECT ONLY TO A PETITION ALLEGING THAT THE CHILD IS A CHILD IN NEED OF ASSISTANCE UNDER SUBTITLE 8 OF THIS TITLE IF:

(1) THE CHILD IS YOUNGER THAN 13 YEARS OF AGE; OR

(2) THE CHILD IS AT LEAST 13 YEARS OF AGE AND IS NOT ALLEGED TO HAVE VIOLATED § 3-8D-103 OF THIS SUBTITLE.

(B) A CHILD WHO IS AT LEAST 13 YEARS OF AGE AND IS ALLEGED TO HAVE VIOLATED § 3-8D-103 OF THIS SUBTITLE MAY BE SUBJECT ONLY TO A PETITION ALLEGING THAT THE CHILD IS A CHILD IN NEED OF SUPERVISION UNDER SUBTITLE 8A OF THIS TITLE.

Article – Criminal Law

11-203.

(a) (1) In this section the following words have the meanings indicated.

(2) “Distribute” includes to rent.

(3) “Illicit sex” means:

(i) human genitals in a state of sexual stimulation or arousal;

(ii) acts of human masturbation, sexual intercourse, or sodomy; or

(iii) fondling or other erotic touching of human genitals.

(4) “Item” means a:

(i) still picture or photograph;

(ii) book, pocket book, pamphlet, or magazine;

(iii) videodisc, videotape, video game, film, or computer disc; or

(iv) recorded telephone message.

(5) "Obscene" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The provision of services or facilities by a telephone company under a tariff

approved by the Public Service Commission is not a violation of subsection (b) of this section relating to recorded telephone messages.

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

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

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

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

(1) BECAUSE OF:

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

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

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

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

(2) WITHOUT THE CONSENT OF A PERSON DEPICTED.

11-207.

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

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

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

(3) use a computer to depict or describe **ANOTHER WHO IS** 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 **ANOTHER WHO IS** 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 **ANOTHER WHO IS** 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 **ANOTHER WHO IS** 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.

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

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

11–208.

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

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

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

(i) drawings;

(ii) cartoons;

(iii) sculptures; or

(iv) paintings.

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

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

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

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

(2) A PERSON FROM POSSESSING:

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

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

(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.

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

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

1 IS A CHILD IN NEED OF ASSISTANCE OR A PETITION ALLEGING THAT THE MINOR IS A
2 CHILD IN NEED OF SUPERVISION UNDER TITLE 3, SUBTITLE 8D OF THE COURTS
3 ARTICLE.

4 **Article – Education**

5 **7–205.3.**

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

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2021.