

HOUSE BILL 5

E1, O4

5lr0669

(PRE-FILED)

By: ~~Delegate Wilson~~ Delegates Wilson, Cardin, Pasteur, Schmidt, Simmons, Phillips, Stinnett, Nkongolo, Arikan, Taylor, Simpson, Grammer, Sample-Hughes, Conaway, Kaufman, and Williams

Requested: September 5, 2024

Introduced and read first time: January 8, 2025

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 3, 2025

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Child ~~Pornography~~ Sexual Abuse Material – Artificial**
3 **Intelligence Software**

4 FOR the purpose of altering the term “child pornography” to be “child sexual abuse
5 material” for purposes of certain criminal offenses; defining “computer-generated
6 image” to include images created through the use of artificial intelligence software
7 as the term pertains to provisions of law related to child ~~pornography~~ sexual abuse
8 material; and generally relating to child ~~pornography and artificial intelligence~~
9 software sexual abuse material.

10 BY repealing and reenacting, with amendments,

11 Article – Courts and Judicial Proceedings

12 Section 10–402(c)(2)(ii)1.F. and 10–406(a)(6)

13 Annotated Code of Maryland

14 (2020 Replacement Volume and 2024 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article – Criminal Law

17 Section 9–801(g)(10), 11–208, and 11–208.1

18 Annotated Code of Maryland

19 (2021 Replacement Volume and 2024 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 2–503(a)(1)(i)4.
Annotated Code of Maryland
(2018 Replacement Volume and 2024 Supplement)

BY repealing and reenacting, with amendments,
Article – Education
Section 23–506.1
Annotated Code of Maryland
(2022 Replacement Volume and 2024 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

10–402.

(c) (2) (ii) It is lawful under this subtitle for an investigative or law
enforcement officer acting in a criminal investigation or any other person acting at the prior
direction and under the supervision of an investigative or law enforcement officer to
intercept a wire, oral, or electronic communication in order to provide evidence:

1. Of the commission of:

F. Child [pornography] SEXUAL ABUSE MATERIAL under §
11–207, § 11–208, or § 11–208.1 of the Criminal Law Article;

10–406.

(a) The Attorney General, State Prosecutor, or any State’s Attorney may apply to
a judge of competent jurisdiction, and the judge, in accordance with the provisions of §
10–408 of this subtitle, may grant an order authorizing the interception of wire, oral, or
electronic communications by investigative or law enforcement officers when the
interception may provide or has provided evidence of the commission of:

(6) Child [pornography] SEXUAL ABUSE MATERIAL under § 11–207, §
11–208, or § 11–208.1 of the Criminal Law Article;

Article – Criminal Law

9–801.

(g) “Underlying crime” means:

(10) a violation of § 11–207 or § 11–208 of this article (child [pornography]
SEXUAL ABUSE MATERIAL);

11–208.

(a) (1) In this section[, “indistinguishable”] **THE FOLLOWING WORDS HAVE
THE MEANINGS INDICATED.**

**(2) “COMPUTER–GENERATED IMAGE” INCLUDES IMAGES CREATED
THROUGH THE USE OF ARTIFICIAL INTELLIGENCE SOFTWARE.**

(3) (I) “INDISTINGUISHABLE from an actual and identifiable child”
means an ordinary person would conclude that the image is of an actual and identifiable
minor.

[(2)] (II) “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)] (III) “Indistinguishable from an actual and identifiable child” does not
include images or items depicting minors that are:

[(i)] 1. drawings;

[(ii)] 2. cartoons;

[(iii)] 3. sculptures; or

[(iv)] 4. paintings.

(b) (1) 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:

(i) engaged as a subject of sadomasochistic abuse;

(ii) engaged in sexual conduct; or

(iii) in a state of sexual excitement.

(2) A person may not knowingly or intentionally access and intentionally
view 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:

(i) engaged as a subject of sadomasochistic abuse;

(ii) engaged in sexual conduct; or

(iii) 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 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.

11-208.1.

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

(2) "Child [pornography] SEXUAL ABUSE MATERIAL" means any electronic image or visual depiction that is unlawful under § 11-207 or § 11-208 of this subtitle.

(3) "Controlled or owned", with respect to a server or other storage device, means to be entirely owned by an interactive computer service provider or to be subject to exclusive management by an interactive computer service provider by agreement or otherwise.

(4) "Interactive computer service provider" means an entity that provides a service that provides or enables computer access via the Internet by multiple users to a computer server or similar device used for the storage of graphics, video, or images.

1 (b) An investigative or law enforcement officer who receives information that an
2 item of alleged child [pornography] SEXUAL ABUSE MATERIAL resides on a server or other
3 storage device controlled or owned by an interactive computer service provider shall:

4 (1) contact the interactive computer service provider that controls or owns
5 the server or other storage device where the item of alleged child [pornography] SEXUAL
6 ABUSE MATERIAL is located;

7 (2) inform the interactive computer service provider of the provisions of
8 this section; and

9 (3) request that the interactive computer service provider voluntarily
10 comply with this section and remove the item of alleged child [pornography] SEXUAL
11 ABUSE MATERIAL from its server or other storage device, if practicable, within 5 business
12 days.

13 (c) (1) If the interactive computer service provider does not voluntarily remove
14 the item of alleged child [pornography] SEXUAL ABUSE MATERIAL within the time period
15 established in subsection (b) of this section, the investigative or law enforcement officer
16 shall apply for a court order of authorization to remove the item of alleged child
17 [pornography] SEXUAL ABUSE MATERIAL in accordance with Title 10, Subtitle 4 of the
18 Courts Article.

19 (2) The application for a court order shall:

20 (i) identify the item of alleged child [pornography] SEXUAL ABUSE
21 MATERIAL discovered on the server or other storage device controlled or owned by an
22 interactive computer service provider;

23 (ii) provide its location on the server or other storage device in the
24 form of an Internet protocol (IP) address or uniform resource locator (URL);

25 (iii) state the grounds for the issuance of the order;

26 (iv) verify that the item of alleged child [pornography] SEXUAL
27 ABUSE MATERIAL resides on the server or other storage device controlled or owned by the
28 interactive computer service provider;

29 (v) describe the steps taken to obtain voluntary compliance of the
30 interactive computer service provider with this section;

31 (vi) inform the interactive computer service provider of its right to
32 request a hearing on the application; and

33 (vii) state the name and title of the affiant.

1 (3) The investigative or law enforcement officer shall serve the application
2 on the interactive computer service provider.

3 (4) The interactive computer service provider has the right to request a
4 hearing before the court imposes any penalty under this section.

5 (d) The court shall review the application and testimony, if offered, and, upon a
6 finding of probable cause, issue an order that:

7 (1) an item of child [pornography] **SEXUAL ABUSE MATERIAL** resides on
8 a server or other storage device controlled or owned by the interactive computer service
9 provider or is accessible to persons located in the State;

10 (2) there is probable cause to believe that the item violates § 11–207 or §
11 11–208 of this subtitle;

12 (3) the interactive computer service provider shall remove the item
13 residing on a server or other storage device controlled or owned by the interactive computer
14 service provider within 5 business days after receiving the order, if practicable;

15 (4) failure of the interactive computer service provider to comply with the
16 court's order is a violation of this section;

17 (5) the removal of the item on the server or other storage device controlled
18 or owned by the interactive computer service provider may not unreasonably interfere with
19 a request by a law enforcement agency to preserve records or other evidence;

20 (6) the process of removal shall be conducted in a manner that prevents the
21 removal of images, information, or data not otherwise subject to removal under this section;
22 and

23 (7) provides the interactive computer service provider notice and
24 opportunity for a hearing before the court imposes any penalty under this section.

25 (e) (1) The Office of the State's Attorney shall serve the court's order on the
26 interactive computer service provider.

27 (2) The order shall be accompanied by:

28 (i) the application made under subsection (c) of this section;

29 (ii) notification requiring the interactive computer service provider
30 to remove the item residing on a server or other storage device controlled or owned by the
31 interactive computer service provider, if practicable, within 5 business days after receiving
32 the order;

(iii) notification of the criminal penalties for failure to remove the item of child [pornography] **SEXUAL ABUSE MATERIAL**;

(iv) notification of the right to appeal the court's order; and

(v) contact information for the Office of the State's Attorney.

(f) An interactive computer service provider who is served with a court order under subsection (e) of this section shall remove the item of child [pornography] **SEXUAL ABUSE MATERIAL** that is the subject of the order within 5 business days after receiving the court order, if practicable.

(g) (1) An interactive computer service provider may petition the court for relief for cause from an order issued under subsection (d) of this section.

(2) The petition may be based on considerations of:

(i) the cost or technical feasibility of compliance with the order; or

(ii) the inability of the interactive computer service provider to comply with the order without also removing data, images, or information that are not subject to this section.

(h) (1) (i) Subject to subparagraph (ii) of this paragraph, an interactive computer service provider shall report the location of an item of child [pornography] **SEXUAL ABUSE MATERIAL** to the State Police if the item of child [pornography] **SEXUAL ABUSE MATERIAL**:

1. resides on a server or other storage device that is:

A. controlled or owned by the interactive computer service provider; and

B. located in the State; or

2. based on information apparent to the provider at the time of the report or discovery of an item of child [pornography] **SEXUAL ABUSE MATERIAL**, pertains to a subscriber or user of the interactive computer service who resides in the State.

(ii) Subparagraph (i) of this paragraph does not apply to an interactive computer service provider if:

1. federal law expressly provides for or permits the referral of a report of an item of child [pornography] **SEXUAL ABUSE MATERIAL** to a state or local law enforcement agency; and

2-503.

(a) (1) A police officer or other employee or agent of a law enforcement agency may not, in the furtherance of a criminal investigation:

(i) use facial recognition technology to investigate a crime other than the commission of or the attempt to commit:

4. a child [pornography] SEXUAL ABUSE MATERIAL offense under § 11-207 of the Criminal Law Article;

Article – Education

23-506.1.

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

(2) “Child [pornography] SEXUAL ABUSE MATERIAL” means a violation of § 11-207 of the Criminal Law Article.

(3) “Obscene” has the meaning stated in § 11-203 of the Criminal Law Article.

(b) On or before January 1, 2001, each county or board of trustees of a county library shall:

(1) Adopt and implement policies and procedures to prevent minors from obtaining access through the library, by means of the Internet, the World Wide Web, Usenet, or any other interactive computer service to materials that are obscene or constitute child [pornography] SEXUAL ABUSE MATERIAL; and

(2) Submit the policies and procedures required under this section to the State Librarian for review.

(c) The State Librarian or a designee of the State Librarian shall regularly monitor the county libraries to determine whether each library is complying with the policies and procedures adopted for preventing a minor from obtaining Internet access to obscene materials through the library.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.