

HOUSE BILL 424

E2

01r0131

By: **Chair, Judiciary Committee (By Request – Departmental – Public Safety and Correctional Services)**

Introduced and read first time: January 29, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Indecent Exposure and Possession of Child Pornography – Offender**
3 **Registration**

4 FOR the purpose of providing that the possession of a certain digital image showing an
5 actual child under a certain age in certain circumstances is a criminal offense;
6 repealing a certain provision that provides that it is an affirmative defense to a
7 certain violation if a person takes reasonable steps to destroy a certain visual
8 representation; altering the definition of “offender” to require a person to
9 register on a certain offender registry if they are ordered to register by the court
10 and if the person has been convicted of the offense of indecent exposure if the
11 offense occurred in the presence of an individual under a certain age or a certain
12 offense relating to the possession of certain visual representations; and
13 generally relating to indecent exposure and child pornography.

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Law
16 Section 11–107 and 11–207
17 Annotated Code of Maryland
18 (2002 Volume and 2009 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 11–208
22 Annotated Code of Maryland
23 (2002 Volume and 2009 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Criminal Procedure
26 Section 11–701(h)
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Replacement Volume and 2009 Supplement)

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

4 **Article – Criminal Law**

5 11–107.

6 A person convicted of indecent exposure is guilty of a misdemeanor and is
7 subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

8 11–207.

9 (a) A person may not:

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

13 (2) photograph or film a minor engaging in an obscene act,
14 sadomasochistic abuse, or sexual conduct;

15 (3) use a computer to depict or describe a minor engaging in an
16 obscene act, sadomasochistic abuse, or sexual conduct;

17 (4) knowingly promote, distribute, or possess with the intent to
18 distribute any matter, visual representation, or performance that depicts a minor
19 engaged as a subject in sadomasochistic abuse or sexual conduct; or

20 (5) use a computer to knowingly compile, enter, transmit, make, print,
21 publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any
22 notice, statement, advertisement, or minor's name, telephone number, place of
23 residence, physical characteristics, or other descriptive or identifying information for
24 the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful
25 sadomasochistic abuse or sexual conduct of or with a minor.

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

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

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

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

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

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

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

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

13 (iii) expert medical testimony; or

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

16 11-208.

17 (a) A person may not knowingly possess and intentionally retain a film,
18 videotape, photograph, **DIGITAL IMAGE**, or other visual representation showing an
19 actual child under the age of 16 years:

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

21 (2) engaged in sexual conduct; or

22 (3) in a state of sexual excitement.

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

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

29 (c) Nothing in this section may be construed to prohibit a parent from
30 possessing visual representations of the parent's own child in the nude unless the
31 visual representations show the child engaged:

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

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

2 (d) It is an affirmative defense to a charge of violating this section that the
3 person promptly and in good faith[:

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

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

6 Article – Criminal Procedure

7 11–701.

8 (h) “Offender” means a person who is ordered by a court to register under
9 this subtitle and who:

10 (1) has been convicted of violating § 3–503 of the Criminal Law
11 Article;

12 (2) has been convicted of violating § 3–502 of the Criminal Law Article
13 or the fourth degree sexual offense statute under § 3–308 of the Criminal Law Article,
14 if the victim is under the age of 18 years;

15 (3) has been convicted of the common law crime of false imprisonment,
16 if the victim is under the age of 18 years and the person is not the victim’s parent;

17 (4) has been convicted of a crime that involves soliciting a person
18 under the age of 18 years to engage in sexual conduct;

19 (5) has been convicted of violating [the child pornography statute
20 under] § 11–207 OR § 11–208 of the Criminal Law Article;

21 (6) has been convicted of violating any of the prostitution and related
22 crimes statutes under Title 11, Subtitle 3 of the Criminal Law Article if the intended
23 prostitute or victim is under the age of 18 years;

24 (7) has been convicted of a crime that involves conduct that by its
25 nature is a sexual offense against a person under the age of 18 years;

26 (8) **HAS BEEN CONVICTED OF THE COMMON LAW OFFENSE OF**
27 **INDECENT EXPOSURE, IF THE OFFENSE OCCURRED IN THE PRESENCE OF AN**
28 **INDIVIDUAL UNDER THE AGE OF 18 YEARS;**

29 (9) has been convicted of an attempt to commit a crime listed in items
30 (1) through [(7)] (8) of this subsection; or

1 ~~[(9)] (10)~~ has been convicted in another state or in a federal, military,
2 or Native American tribal court of a crime that, if committed in this State, would
3 constitute one of the crimes listed in items (1) through ~~[(8)] (9)~~ of this subsection.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2010.