

HOUSE BILL 27

E4, E2

3lr0328

(PRE-FILED)

By: **Delegate Cluster**

Requested: July 3, 2012

Introduced and read first time: January 9, 2013

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – Child Pornography Offenders – Diminution Credits**
3 **and Parole**

4 FOR the purpose of prohibiting an inmate who is serving a sentence in a State or local
5 correctional facility for committing certain child pornography offenses from
6 earning diminution credits to reduce the inmate's term of confinement, being
7 released on parole in order to undergo certain treatment, being eligible for
8 parole consideration, or receiving certain deductions from the inmate's term of
9 confinement; and generally relating to child pornography offenders.

10 BY repealing and reenacting, without amendments,
11 Article – Criminal Law
12 Section 11–207(a) and (b) and 11–208(a) and (b)
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2012 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Correctional Services
17 Section 3–702, 7–301(a), and 11–502
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2012 Supplement)

20 BY adding to
21 Article – Correctional Services
22 Section 7–301(e)
23 Annotated Code of Maryland
24 (2008 Replacement Volume and 2012 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Criminal Law**

2 11–207.

3 (a) A person may not:

4 (1) cause, induce, solicit, or knowingly allow a minor to engage as a
5 subject in the production of obscene matter or a visual representation or performance
6 that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;7 (2) photograph or film a minor engaging in an obscene act,
8 sadomasochistic abuse, or sexual conduct;9 (3) use a computer to depict or describe a minor engaging in an
10 obscene act, sadomasochistic abuse, or sexual conduct;11 (4) knowingly promote, advertise, solicit, distribute, or possess with
12 the intent to distribute any matter, visual representation, or performance:13 (i) that depicts a minor engaged as a subject in sadomasochistic
14 abuse or sexual conduct; or15 (ii) in a manner that reflects the belief, or that is intended to
16 cause another to believe, that the matter, visual representation, or performance
17 depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or18 (5) use a computer to knowingly compile, enter, transmit, make, print,
19 publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any
20 notice, statement, advertisement, or minor's name, telephone number, place of
21 residence, physical characteristics, or other descriptive or identifying information for
22 the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful
23 sadomasochistic abuse or sexual conduct of or with a minor.24 (b) A person who violates this section is guilty of a felony and on conviction is
25 subject to:26 (1) for a first violation, imprisonment not exceeding 10 years or a fine
27 not exceeding \$25,000 or both; and28 (2) for each subsequent violation, imprisonment not exceeding 20
29 years or a fine not exceeding \$50,000 or both.

30 11–208.

1 (a) A person may not knowingly possess and intentionally retain a film,
2 videotape, photograph, or other visual representation showing an actual child under
3 the age of 16 years:

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

5 (2) engaged in sexual conduct; or

6 (3) in a state of sexual excitement.

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

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

13 Article – Correctional Services

14 3–702.

15 (a) Subject to subsections (b) [and], (c), AND (D) of this section, § 3–711 of
16 this subtitle, and Title 7, Subtitle 5 of this article, an inmate committed to the custody
17 of the Commissioner is entitled to a diminution of the inmate’s term of confinement as
18 provided under this subtitle.

19 (b) An inmate who is serving a sentence for a violation of § 3–303, § 3–304, §
20 3–305, or § 3–306 of the Criminal Law Article involving a victim who is a child under
21 the age of 16 years is not entitled to a diminution of the inmate’s term of confinement
22 as provided under this subtitle.

23 (c) An inmate who is serving a sentence for a violation of § 3–307 of the
24 Criminal Law Article involving a victim who is a child under the age of 16 years is not
25 entitled to a diminution of the inmate’s term of confinement as provided under this
26 subtitle, if the inmate was previously convicted of a violation of § 3–307 of the
27 Criminal Law Article involving a victim who is a child under the age of 16 years.

28 (D) AN INMATE WHO IS SERVING A SENTENCE FOR A VIOLATION OF §
29 11–207 OR § 11–208 OF THE CRIMINAL LAW ARTICLE IS NOT ENTITLED TO A
30 DIMINUTION OF THE INMATE’S TERM OF CONFINEMENT AS PROVIDED UNDER
31 THIS SUBTITLE.

32 7–301.

33 (a) (1) Except as otherwise provided in this section, the Commission shall
34 request that the Division of Parole and Probation make an investigation for inmates in

1 a local correctional facility and the Division of Correction make an investigation for
2 inmates in a State correctional facility that will enable the Commission to determine
3 the advisability of granting parole to an inmate who:

4 (i) has been sentenced under the laws of the State to serve a
5 term of 6 months or more in a correctional facility; and

6 (ii) has served in confinement one-fourth of the inmate's
7 aggregate sentence.

8 (2) Except as provided in paragraph (3) of this subsection, or as
9 otherwise provided by law or in a predetermined parole release agreement, an inmate
10 is not eligible for parole until the inmate has served in confinement one-fourth of the
11 inmate's aggregate sentence.

12 (3) An inmate may be released on parole at any time in order to
13 undergo drug or alcohol treatment, mental health treatment, or to participate in a
14 residential program of treatment in the best interest of an inmate's expected or
15 newborn child if the inmate:

16 (i) is not serving a sentence for a crime of violence, as defined
17 in § 14-101 of the Criminal Law Article;

18 (ii) is not serving a sentence for a violation of Title 3, Subtitle 6,
19 § 5-608(d), § 5-609(d), § 5-612, § 5-613, § 5-614, § 5-621, § 5-622, [or] § 5-628, §
20 **11-207, OR § 11-208** of the Criminal Law Article; and

21 (iii) has been determined to be amenable to treatment.

22 (4) The Division of Parole and Probation shall complete and submit to
23 the Commission each investigation of an inmate in a local correctional facility required
24 under paragraph (1) of this subsection within 60 days of commitment.

25 **(E) AN INMATE WHO HAS BEEN SENTENCED TO THE DIVISION OF**
26 **CORRECTION FOR A VIOLATION OF § 11-207 OR § 11-208 OF THE CRIMINAL**
27 **LAW ARTICLE IS NOT ELIGIBLE FOR PAROLE CONSIDERATION.**

28 11-502.

29 (a) Except as provided in subsections (b) [and], (c), **AND (D)** of this section,
30 an inmate who has been sentenced to a term of imprisonment shall be allowed
31 deductions from the inmate's term of confinement as provided under this subtitle for
32 any period of presentence or postsentence confinement in a local correctional facility.

33 (b) (1) An inmate who is serving a sentence for a violation of § 3-303, §
34 3-304, § 3-305, or § 3-306 of the Criminal Law Article involving a victim who is a

1 child under the age of 16 years may not be allowed deductions from the inmate's term
2 of confinement as provided under this subtitle for any period of presentence or
3 postsentence confinement in a local correctional facility.

4 (2) This subsection may not be construed to require an inmate to serve
5 a longer sentence of confinement than is authorized by the statute under which the
6 inmate was convicted.

7 (c) (1) An inmate who is serving a sentence for a violation of § 3-307 of
8 the Criminal Law Article involving a victim who is a child under the age of 16 years,
9 who has previously been convicted of violating § 3-307 of the Criminal Law Article
10 involving a victim who is a child under the age of 16 years, may not be allowed
11 deductions from the inmate's term of confinement as provided under this subtitle for
12 any period of presentence or postsentence confinement in a local correctional facility.

13 (2) This subsection may not be construed to require an inmate to serve
14 a longer sentence of confinement than is authorized by the statute under which the
15 inmate was convicted.

16 **(D) (1) AN INMATE WHO IS SERVING A SENTENCE FOR A VIOLATION**
17 **OF § 11-207 OR § 11-208 OF THE CRIMINAL LAW ARTICLE MAY NOT BE**
18 **ALLOWED DEDUCTIONS FROM THE INMATE'S TERM OF CONFINEMENT AS**
19 **PROVIDED UNDER THIS SUBTITLE FOR ANY PERIOD OF PRESENTENCE OR**
20 **POSTSENTENCE CONFINEMENT IN A LOCAL CORRECTIONAL FACILITY.**

21 **(2) THIS SUBSECTION MAY NOT BE CONSTRUED TO REQUIRE AN**
22 **INMATE TO SERVE A LONGER SENTENCE OF CONFINEMENT THAN IS**
23 **AUTHORIZED BY THE STATUTE UNDER WHICH THE INMATE WAS CONVICTED.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2013.