

HOUSE BILL 858

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CF SB 674

By: **Delegates McDermott, Afzali, Arentz, Aumann, Cane, Cluster, Dwyer, Eckardt, Frank, Haddaway–Riccio, Hough, Jacobs, Luedtke, Otto, Parrott, Schulz, Smigiel, Szeliga, and Valentino–Smith**

Introduced and read first time: February 5, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Probation – Sexual Crimes Involving a Minor**

3 FOR the purpose of adding certain sexual crimes involving a minor to a list of crimes
4 for which a court may order probation for a time longer than the sentence
5 imposed subject to certain limitations; repealing a certain requirement that a
6 certain defendant consent in writing to a certain order of probation; and
7 generally relating to probation.

8 BY repealing and reenacting, without amendments,
9 Article – Criminal Law
10 Section 3–324, 11–207, and 11–208
11 Annotated Code of Maryland
12 (2012 Replacement Volume and 2013 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Procedure
15 Section 6–222(a)
16 Annotated Code of Maryland
17 (2008 Replacement Volume and 2013 Supplement)

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

20 **Article – Criminal Law**

21 3–324.

22 (a) In this section, “solicit” means to command, authorize, urge, entice,
23 request, or advise a person by any means, including:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (1) in person;
- 2 (2) through an agent or agency;
- 3 (3) over the telephone;
- 4 (4) through any print medium;
- 5 (5) by mail;
- 6 (6) by computer or Internet; or
- 7 (7) by any other electronic means.

8 (b) A person may not, with the intent to commit a violation of § 3-304, §
9 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article,
10 knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in
11 activities that would be unlawful for the person to engage in under § 3-304, § 3-306,
12 or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article.

13 (c) A violation of this section is considered to be committed in the State for
14 purposes of determining jurisdiction if the solicitation:

- 15 (1) originated in the State; or
- 16 (2) is received in the State.

17 (d) A person who violates this section is guilty of a felony and on conviction is
18 subject to imprisonment not exceeding 10 years or a fine not exceeding \$25,000 or
19 both.

20 11-207.

21 (a) A person may not:

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

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

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

1 (4) knowingly promote, advertise, solicit, distribute, or possess with
2 the intent to distribute any matter, visual representation, or performance:

3 (i) that depicts a minor engaged as a subject in sadomasochistic
4 abuse or sexual conduct; or

5 (ii) in a manner that reflects the belief, or that is intended to
6 cause another to believe, that the matter, visual representation, or performance
7 depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or

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

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

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

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

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

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

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

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

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

32 (iii) expert medical testimony; or

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

1 11-208.

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

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

6 (2) engaged in sexual conduct; or

7 (3) in a state of sexual excitement.

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

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

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

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

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

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

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

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

23 **Article – Criminal Procedure**

24 6-222.

25 (a) A circuit court or the District Court may:

26 (1) impose a sentence for a specified time and provide that a lesser
27 time be served in confinement;

28 (2) suspend the remainder of the sentence; and

1 (3) (i) order probation for a time longer than the sentence but,
2 subject to subsections (b) and (c) of this section, not longer than:

3 1. 5 years if the probation is ordered by a circuit court;
4 or

5 2. 3 years if the probation is ordered by the District
6 Court; or

7 (ii) if a defendant **IS** convicted of sexual abuse of a minor under
8 § 3–602 of the Criminal Law Article or a crime involving a minor under § 3–303, §
9 3–304, § 3–305, § 3–306, [or] § 3–307, **§ 3–324, § 11–207, OR § 11–208** of the
10 Criminal Law Article, [consents in writing,] order probation for a time longer than the
11 sentence that was imposed on the defendant, but not longer than:

12 1. 10 years if the probation is ordered by a circuit court;
13 or

14 2. 6 years if the probation is ordered by the District
15 Court.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2014.