

HOUSE BILL 858

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CF SB 674

By: **Delegates McDermott, Afzali, Arentz, Aumann, Cane, Cluster, Dwyer, Eckardt, Frank, Haddaway–Ricchio, 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

AN ACT concerning

Criminal Procedure – Probation – Sexual Crimes Involving a Minor

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

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

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

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

Article – Criminal Law

3–324.

(a) In this section, “solicit” means to command, authorize, urge, entice, 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) in person;
- (2) through an agent or agency;
- (3) over the telephone;
- (4) through any print medium;
- (5) by mail;
- (6) by computer or Internet; or
- (7) by any other electronic means.

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

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

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

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

11–207.

(a) A person may not:

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

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

(3) use a computer to depict or describe 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 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 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 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.

11-208.

(a) A person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual 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.

(b) (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.

(c) 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.

(d) 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.

Article – Criminal Procedure

6-222.

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

- (1) impose a sentence for a specified time and provide that a lesser time be served in confinement;
- (2) suspend the remainder of the sentence; and

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

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

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

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

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

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

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