

SB0736/682711/1

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL 736
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after “of” insert “altering certain definitions applicable to certain prohibitions against possessing, distributing, and creating child pornography;”; in line 8, after “term;” insert “providing that only certain depictions of sexual conduct apply to a certain offense;”; in line 11, after “Section” insert “11–101, 11–105(a), 11–201, and”; and after line 13, insert:

“BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 11–207
Annotated Code of Maryland
(2012 Replacement Volume and 2018 Supplement)”.

AMENDMENT NO. 2

On page 2, after line 1, insert:

“11–101.

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

(b) “Advertising purposes” means the purpose of propagandizing in connection with the commercial:

(1) sale of a product;

(2) offering of a service; or

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(3) exhibition of entertainment.

(c) “Sadomasochistic abuse” means:

(1) flagellation or torture committed by or inflicted on an individual who

is:

(i) nude;

(ii) wearing only undergarments; or

(iii) wearing a revealing or bizarre costume; or

(2) binding, fettering, or otherwise physically restraining an individual

who is:

(i) nude;

(ii) wearing only undergarments; or

(iii) wearing a revealing or bizarre costume.

(d) “Sexual conduct” means:

(1) human masturbation;

(2) sexual intercourse; [or]

(3) whether alone or with another individual or animal, any touching of
or contact with:

(i) the genitals, buttocks, or pubic areas of an individual; or

(ii) breasts of a female individual; OR

(4) LASCIVIOUS EXHIBITION OF THE GENITALS OR PUBIC AREA OF ANY PERSON.

(e) “Sexual excitement” means:

(1) the condition of the human genitals when in a state of sexual stimulation;

(2) the condition of the human female breasts when in a state of sexual stimulation; or

(3) the sensual experiences of individuals engaging in or witnessing sexual conduct or nudity.

11-105.

(a) A person may not knowingly display for advertising purposes a picture, photograph, drawing, sculpture, or other visual representation or image of an individual or portion of a human body that:

(1) depicts sadomasochistic abuse;

(2) depicts sexual conduct AS DEFINED BY § 11-101(D)(1), (2), OR (3) OF THIS SUBTITLE;

(3) depicts sexual excitement; or

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(4) contains a verbal description or narrative account of sadomasochistic abuse, sexual conduct, or sexual excitement.

11-201.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Distribute” means to transfer possession.
- (c) “Knowingly” means having knowledge of the character and content of the matter.
- (d) “Matter” means:
 - (1) a book, magazine, newspaper, or other printed or written material;
 - (2) a picture, drawing, photograph, motion picture, or other pictorial representation;
 - (3) a statue or other figure;
 - (4) a recording, transcription, or mechanical, chemical, [or] electrical, OR DIGITAL reproduction; or
 - (5) any other article, equipment, machine, or material.
- (e) “Sadomasochistic abuse” has the meaning stated in § 11-101 of this title.
- (f) “Sexual conduct” has the meaning stated in § 11-101 of this title.
- (g) “Sexual excitement” has the meaning stated in § 11-101 of this title.

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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

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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.”.