
By: **Senators Stone, Jimeno, Haines, Green, Mitchell, and Mooney**
Introduced and read first time: February 5, 1999
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Obscene Matter and Matter That is Harmful to Minors -**
3 **Penalties**

4 FOR the purpose of establishing that certain matter, material, or work that appeals
5 or panders to certain prurient interests with respect to certain minors, depicts
6 or describes certain activities that are patently offensive to certain standards,
7 and that reasonably lack certain values is harmful to minors under certain
8 circumstances; prohibiting a person from knowingly providing or exhibiting or
9 offering to provide or exhibit to a minor certain matter that depicts
10 sadomasochistic abuse, sexual conduct, or sexual excitement, and that is
11 harmful to minors or obscene; prohibiting a person from knowingly exhibiting or
12 knowingly selling admission to a minor in a premises exhibiting a motion
13 picture or other presentation that is harmful to minors or obscene; prohibiting a
14 person from knowingly displaying for advertising purposes certain material that
15 is harmful to minors; prohibiting a person from knowingly promoting certain
16 obscene matter into or within the State; authorizing a State Attorney to
17 maintain certain injunctive action to prevent certain promotion, sales, or
18 distribution of certain obscene matter or matter that is harmful to minors under
19 certain circumstances; prohibiting a person from recklessly engaging in certain
20 activities, including sales and distribution of certain matter that is obscene or
21 harmful to certain minors under certain circumstances; prohibiting a person
22 from recklessly displaying or exhibiting certain matter that is obscene or
23 harmful to certain minors under certain circumstances; prohibiting certain
24 persons from willfully, recklessly, or knowingly allowing certain minors to enter
25 or remain in a premises where certain activities relating to certain matter that
26 is obscene or harmful to certain minors under certain circumstances are
27 prohibited or is visible or accessible to a minor under certain circumstances;
28 increasing the age under which certain individuals may be the subject of certain
29 matter or material that depicts the individual engaging in certain activities that
30 a person is prohibited from possessing under certain circumstances; prohibiting
31 a person from knowingly hiring, employing, or using certain minors to do or
32 assist in certain activities relating to certain matter that is obscene or harmful
33 to minors under certain circumstances; establishing and altering certain
34 penalties; defining certain terms; altering certain terms; making stylistic
35 changes; and generally relating to prohibited activities relating to matter that is

1 obscene and harmful to minors.

2 BY repealing and reenacting, with amendments,
3 Article 27 - Crimes and Punishments
4 Section 416A, 416B, 416C, 416D, 416G, 417, 418A, 419, 419B, and 420 through
5 424
6 Annotated Code of Maryland
7 (1996 Replacement Volume and 1998 Supplement)

8 BY repealing and reenacting, without amendments,
9 Article 27 - Crimes and Punishments
10 Section 416E and 416F
11 Annotated Code of Maryland
12 (1996 Replacement Volume and 1998 Supplement)

13 BY repealing
14 Article 27 - Crimes and Punishments
15 Section 418
16 Annotated Code of Maryland
17 (1996 Replacement Volume and 1998 Supplement)

18 BY adding to
19 Article 27 - Crimes and Punishments
20 Section 418
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 1998 Supplement)

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

25 **Article 27 - Crimes and Punishments**

26 416A.

27 The following words and phrases, as used in this subheading, have the
28 meanings indicated:

29 (a) "Advertising purposes" means the purpose of propagandizing in connection
30 with the sale commercially of a product or products, or the offering commercially of a
31 service, or the exhibiting commercially of entertainment.

32 (b) "HARMFUL TO MINORS" MEANS THAT:

33 (1) AN AVERAGE ADULT APPLYING CONTEMPORARY COMMUNITY
34 STANDARDS WOULD FIND THAT THE WORK, TAKEN AS A WHOLE AND WITH RESPECT

1 TO MINORS, INTENTIONALLY APPEALS OR PANDERS TO A PRURIENT INTEREST IN
2 NUDITY, SEX, OR EXCRETION;

3 (2) AN AVERAGE ADULT APPLYING CONTEMPORARY COMMUNITY
4 STANDARDS WOULD FIND THAT THE DEPICTION OR DESCRIPTION OF
5 SADMASOCHISTIC ABUSE, SEXUAL EXCITEMENT, OR SEXUAL CONDUCT IN THE
6 MATERIAL OR PERFORMANCE IS PATENTLY OFFENSIVE TO PREVAILING STANDARDS
7 IN THE ADULT COMMUNITY CONCERNING WHAT IS SUITABLE MATERIAL FOR
8 MINORS; AND

9 (3) A REASONABLE PERSON WOULD FIND THAT THE WORK, TAKEN AS A
10 WHOLE, LACKS SERIOUS LITERARY, SCIENTIFIC, EDUCATIONAL, ARTISTIC, OR
11 POLITICAL VALUE FOR MINORS.

12 (C) "Minor" means any person under eighteen years of age.

13 (D) "OBSCENE" MEANS THAT:

14 (1) THE AVERAGE PERSON APPLYING CONTEMPORARY ADULT
15 COMMUNITY STANDARDS WOULD FIND THAT THE WORK, TAKEN AS A WHOLE,
16 APPEALS TO THE PRURIENT INTEREST;

17 (2) THE AVERAGE PERSON APPLYING CONTEMPORARY ADULT
18 COMMUNITY STANDARDS WOULD FIND THAT THE WORK DEPICTS OR DESCRIBES
19 SEXUAL CONDUCT, SEXUAL EXCITEMENT, OR SADMASOCHISTIC ABUSE IN A
20 PATENTLY OFFENSIVE WAY; AND

21 (3) A REASONABLE PERSON WOULD FIND THAT THE WORK, TAKEN AS A
22 WHOLE, LACKS SERIOUS LITERARY, SCIENTIFIC, EDUCATIONAL, ARTISTIC, OR
23 POLITICAL VALUE.

24 [(c)] (E) "Sadomasochistic abuse" means flagellation or torture by or upon a
25 human who is nude, or clad in undergarments, or in a revealing or bizarre costume, or
26 the condition of one who is nude or so clothed and is being fettered, bound, or
27 otherwise physically restrained FOR THE PURPOSE OF SEXUAL ABUSE OR
28 STIMULATION OF ANY PERSON.

29 [(d)] (F) "Sexual conduct" means human masturbation, sexual intercourse,
30 LEWD EXHIBITION OF THE GENITALS, or any touching of or contact, FOR THE
31 PURPOSE OF SEXUAL ABUSE OR STIMULATION OF ANY PERSON, with genitals, pubic
32 areas or buttocks of the human male or female, or the breasts of the female, whether
33 alone or between members of the same or opposite sex, or between humans and
34 animals.

35 [(e)] (G) "Sexual excitement" means the condition of human male or female
36 genitals, or the breasts of the female, when in a state of sexual stimulation, or the
37 sensual experiences of humans engaging in or witnessing sexual conduct or nudity
38 FOR THE PURPOSE OF SEXUAL ABUSE OR STIMULATION OF ANY PERSON.

1 416B.

2 (A) Any person, firm or corporation which knowingly sells, PROVIDES, OR
3 EXHIBITS or offers to sell, PROVIDE, OR EXHIBIT to any minor any of the following is
4 guilty of a misdemeanor:

5 [(a)] (1) Any picture, photograph, drawing, sculpture, motion picture, film or
6 other visual representation or image of a person or portion of the human body that:

7 (I) [depicts] DEPICTS sadomasochistic abuse, sexual conduct or
8 sexual excitement; AND

9 (II) IS HARMFUL TO MINORS; or

10 [(b)] (2) Any book, magazine, paperback, pamphlet or other written or printed
11 matter however reproduced, or any sound recording which:

12 (I) [contains] CONTAINS any matter enumerated in THIS
13 subsection [(a)], or obscenities, or explicit verbal descriptions or narrative accounts of
14 sexual conduct, sexual excitement or sadomasochistic abuse; AND

15 (II) IS HARMFUL TO MINORS.

16 (B) ANY PERSON, FIRM OR CORPORATION WHICH KNOWINGLY SELLS,
17 PROVIDES, OR EXHIBITS OR OFFERS TO SELL, PROVIDE, OR EXHIBIT TO ANY MINOR
18 ANY OF THE FOLLOWING IS GUILTY OF A FELONY:

19 (1) ANY PICTURE, PHOTOGRAPH, DRAWING, SCULPTURE, MOTION
20 PICTURE, FILM, OR OTHER VISUAL REPRESENTATION OR IMAGE OF A PERSON OR
21 PORTION OF THE HUMAN BODY THAT:

22 (I) DEPICTS SADOMASOCHISTIC ABUSE, SEXUAL CONDUCT, OR
23 SEXUAL EXCITEMENT; AND

24 (II) IS OBSCENE; OR

25 (2) ANY BOOK, MAGAZINE, PAPERBACK, PAMPHLET, OR OTHER WRITTEN
26 OR PRINTED MATTER HOWEVER REPRODUCED, OR ANY SOUND RECORDING WHICH:

27 (I) CONTAINS ANY MATTER ENUMERATED IN SUBSECTION (A) OF
28 THIS SECTION, OR OBSCENITIES, OR EXPLICIT VERBAL DESCRIPTIONS OR
29 NARRATIVE ACCOUNTS OF SEXUAL CONDUCT, SEXUAL EXCITEMENT, OR
30 SADOMASOCHISTIC ABUSE; AND

31 (II) IS OBSCENE.

32 416C.

33 Any person, firm or corporation which, for a monetary consideration or other
34 valuable commodity or service, knowingly exhibits to a minor who is unaccompanied
35 by his parent or guardian, or knowingly sells to a minor an admission ticket or other

1 means to gain entrance to, or knowingly admits a minor who is unaccompanied by his
2 parent or guardian to premises where there is exhibited a motion picture show or
3 other presentation, whether animated or live, which in whole or in part depicts or
4 reveals sexual conduct, sexual excitement or sadomasochistic abuse, or which
5 includes obscenities or explicit verbal descriptions or narrative accounts of sexual
6 conduct[.]:

7 (1) IN A MANNER THAT IS HARMFUL TO MINORS is guilty of a
8 misdemeanor; OR

9 (2) IN A MANNER THAT IS OBSCENE IS GUILTY OF A FELONY.

10 416D.

11 (a) Any person, firm or corporation is guilty of a misdemeanor if it knowingly
12 displays for advertising purposes any picture, photograph, drawing, sculpture or
13 other visual representation or image of a person or portion of the human body that
14 depicts sadomasochistic abuse, sexual conduct or sexual excitement, or any verbal
15 description or narrative account of these activities or items THAT IS HARMFUL TO
16 MINORS.

17 (b) Any person, firm or corporation is guilty of a misdemeanor, if it knowingly
18 permits any such display on premises owned, rented or managed by it.

19 416E.

20 Any person who operates or is employed in a sales, cashier or managerial
21 capacity in any retail establishment, and who knowingly permits a minor
22 unaccompanied by his parent or guardian to enter or remain on any premises on
23 which there is shown, displayed or depicted any item or activity detailed in
24 subsections (a) and (b) of § 416B, is guilty of a misdemeanor.

25 416F.

26 Any employee of a person operating premises on which a public display in
27 violation of this subheading takes place, and who is on the premises at the time of the
28 violation, is presumed to have been the operator of the premises at the time the
29 violation occurred.

30 416G.

31 (A) Any person, firm or corporation [which violates] THAT IS GUILTY OF A
32 MISDEMEANOR UNDER the provisions of this subtitle shall, upon conviction, be
33 subject to a fine [of up to one thousand dollars (\$1,000) or imprisonment for up to six
34 (6) months] NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR
35 BOTH.

36 (B) ANY PERSON, FIRM, OR CORPORATION THAT IS GUILTY OF A FELONY
37 UNDER THE PROVISIONS OF THIS SUBTITLE ON CONVICTION SHALL BE SUBJECT TO

1 A FINE NOT EXCEEDING \$50,000 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR
2 BOTH.

3 417.

4 (A) [As used in this subtitle,] IN THIS SUBHEADING THE FOLLOWING WORDS
5 HAVE THE MEANINGS INDICATED.

6 (B) "HARMFUL TO MINORS" MEANS THAT:

7 (1) AN AVERAGE ADULT APPLYING CONTEMPORARY COMMUNITY
8 STANDARDS WOULD FIND THAT THE WORK, TAKEN AS A WHOLE AND WITH RESPECT
9 TO MINORS, INTENTIONALLY APPEALS OR PANDERS TO A PRURIENT INTEREST IN
10 NUDITY, SEX, OR EXCRETION;

11 (2) AN AVERAGE ADULT APPLYING CONTEMPORARY COMMUNITY
12 STANDARDS WOULD FIND THAT THE DEPICTION OR DESCRIPTION OF
13 SADOMASOCHISTIC ABUSE, SEXUAL EXCITEMENT, OR SEXUAL CONDUCT IN THE
14 MATERIAL OR PERFORMANCE IS PATENTLY OFFENSIVE TO PREVAILING STANDARDS
15 IN THE ADULT COMMUNITY CONCERNING WHAT IS SUITABLE MATERIAL FOR
16 MINORS; AND

17 (3) A REASONABLE PERSON WOULD FIND THAT THE WORK, TAKEN AS A
18 WHOLE, LACKS SERIOUS LITERARY, SCIENTIFIC, EDUCATIONAL, ARTISTIC, OR
19 POLITICAL VALUE FOR MINORS.

20 [(1)] (C) "Matter" means any book, magazine, newspaper, or other
21 printed or written material or any picture, drawing, photograph, motion picture, or
22 other pictorial representation or any statue or other figure, or any recording,
23 transcription or mechanical, chemical or electrical reproduction or any other articles,
24 equipment, machines or materials.

25 (D) "OBSCENE" MEANS THAT:

26 (1) THE AVERAGE PERSON APPLYING CONTEMPORARY ADULT
27 COMMUNITY STANDARDS WOULD FIND THAT THE WORK, TAKEN AS A WHOLE,
28 APPEALS TO THE PRURIENT INTEREST;

29 (2) THE AVERAGE PERSON APPLYING CONTEMPORARY ADULT
30 COMMUNITY STANDARDS WOULD FIND THAT THE WORK DEPICTS OR DESCRIBES
31 SEXUAL CONDUCT, SEXUAL EXCITEMENT, OR SADOMASOCHISTIC ABUSE IN A
32 PATENTLY OFFENSIVE WAY; AND

33 (3) A REASONABLE PERSON WOULD FIND THAT THE WORK, TAKEN AS A
34 WHOLE, LACKS SERIOUS LITERARY, SCIENTIFIC, EDUCATIONAL, ARTISTIC, OR
35 POLITICAL VALUE.

36 [(2)] (E) "Person" means any individual, partnership, firm, association,
37 corporation, or other legal entity.

1 [(3)] (F) "Distribute" means to transfer possession of, whether with or without
2 consideration.

3 [(4)] (G) "Knowingly" means having knowledge of the character and content of
4 the subject matter.

5 (H) "PROMOTE" MEANS TO:

6 (1) MANUFACTURE, ISSUE, SELL, RENT, PROVIDE, LEND, CONSIGN,
7 MAIL, DELIVER, TRANSFER, TRANSMIT, PUBLISH, DISTRIBUTE, DISSEMINATE,
8 PRESENT, EXHIBIT, OR ADVERTISE;

9 (2) OFFER OR AGREE TO MANUFACTURE, ISSUE, SELL, RENT, PROVIDE,
10 LEND, CONSIGN, MAIL, DELIVER, TRANSFER, TRANSMIT, PUBLISH, DISTRIBUTE,
11 DISSEMINATE, PRESENT, EXHIBIT, OR ADVERTISE;

12 (3) MANUFACTURE, ISSUE, SELL, RENT, PROVIDE, LEND, CONSIGN,
13 MAIL, DELIVER, TRANSFER, TRANSMIT, PUBLISH, DISTRIBUTE, DISSEMINATE,
14 PRESENT, EXHIBIT, OR ADVERTISE ANY MATTER FOR THE PURPOSE OF RESALE OR
15 COMMERCIAL REDISTRIBUTION; OR

16 (4) OFFER OR AGREE TO MANUFACTURE, ISSUE, SELL, RENT, PROVIDE,
17 LEND, CONSIGN, MAIL, DELIVER, TRANSFER, TRANSMIT, PUBLISH, DISTRIBUTE,
18 DISSEMINATE, PRESENT, EXHIBIT, OR ADVERTISE ANY MATTER FOR THE PURPOSE
19 OF RESALE OR COMMERCIAL REDISTRIBUTION.

20 [418.

21 Any person who knowingly sends or causes to be sent, or brings or causes to be
22 brought, into this State for sale or distribution, or in this State prepares, publishes,
23 prints, exhibits, distributes, or offers to distribute, or has in his possession with intent
24 to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a
25 misdemeanor.]

26 418.

27 (A) A PERSON MAY NOT KNOWINGLY PROMOTE OBSCENE MATTER INTO OR
28 WITHIN THE STATE.

29 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
30 PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION
31 IS SUBJECT TO A FINE NOT EXCEEDING \$100,000 OR IMPRISONMENT NOT EXCEEDING
32 3 YEARS OR BOTH.

33 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
34 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$10,000
35 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH, IF THE PERSON IS:

1 (I) ACTING WITHIN THE SCOPE OF EMPLOYMENT AND IS AN
2 EMPLOYEE WITHOUT MANAGERIAL RESPONSIBILITY OR ANY FINANCIAL INTEREST
3 OTHER THAN WAGES IN THE OBSCENE MATTER; OR

4 (II) NOT ACTING FOR COMPENSATION.

5 418A.

6 The circuit courts of the counties have jurisdiction to enjoin the PROMOTION,
7 sale, or distribution of any book, magazine, or any other publication or article
8 (including a motion picture film or showing) which is prohibited from PROMOTION,
9 sale, or distribution, as hereinafter specified.

10 1. The State's attorneys of the counties in which a person[,
11 firm or corporation] PROMOTES, sells, or distributes or is about to PROMOTE, sell, or
12 distribute or has in his possession with intent to PROMOTE, sell, or distribute or is
13 about to acquire possession with intent to PROMOTE, sell, or distribute any book,
14 magazine, pamphlet, newspaper, story paper, writing paper, picture, card, drawing or
15 photograph (including a motion picture film or showing) or any article or instrument
16 of use which is obscene [, within the meaning of § 418 of this article] OR HARMFUL TO
17 MINORS may maintain an action for an injunction against such person[, firm or
18 corporation] in the circuit court of the counties to prevent the sale or further sale or
19 the distribution or further distribution or the PROMOTION, acquisition, [publication]
20 PUBLICATION, or possession FOR SALE OR DISTRIBUTION within this State of any
21 book, magazine, pamphlet, newspaper, story paper, writing paper, picture, card,
22 drawing or photograph (including a motion picture film or showing), or any article or
23 instrument of use which is obscene OR HARMFUL TO MINORS.

24 2. The person[, firm, or corporation] sought to be enjoined is
25 entitled to a trial of the issues within one day after joinder of issue and a decision
26 shall be rendered by the court within two days after the conclusion of the trial.

27 3. In the event that an order or judgment be entered in favor
28 of the State's attorney and against the person[, firm or corporation] sought to be
29 enjoined, such final order or judgment shall contain a provision directing the person[,
30 firm or corporation] to surrender to such peace officer as the court may direct or to
31 the sheriff of the county in which the action was brought any of the matter described
32 in this section and such sheriff or officer shall be directed to seize and [destroy the
33 same] DISPOSE OF THE MATTER AS DIRECTED BY THE COURT.

34 4. In any action brought pursuant to the provisions of this
35 section, the State's attorney is not required to file any bond before the issuance of an
36 injunction order provided for by this section, is not liable for costs and is not liable for
37 damages sustained by reason of the injunction order in cases where judgment is
38 rendered in favor of the person[, firm or corporation sought to be enjoined].

39 5. Every person[, firm or corporation] who PROMOTES, sells,
40 [distributes] DISTRIBUTES, or acquires possession with intent to PROMOTE, [sell]
41 SELL, or distribute any of the matter described in this section, after the service upon

1 him of a summons and complaint in an action brought by the State's Attorney
2 pursuant to this section is chargeable with knowledge of the contents thereof.

3 419.

4 (a) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (2) "DESCRIPTIONS OR DEPICTIONS OF ILLICIT SEX" MEANS:

7 (I) HUMAN GENITALS IN A STATE OF SEXUAL STIMULATION OR
8 AROUSAL;

9 (II) ACTS OF HUMAN MASTURBATION, SEXUAL INTERCOURSE, OR
10 SODOMY; OR

11 (III) FONDLING OR OTHER EROTIC TOUCHING OF HUMAN
12 GENITALS.

13 (3) "DISTRIBUTING" INCLUDES RENTING.

14 (4) "NUDE OR PARTIALLY DENUDED FIGURES" MEANS:

15 (I) LESS THAN COMPLETELY AND OPAQUELY COVERED HUMAN
16 GENITALS, PUBIC REGION, BUTTOCKS, OR FEMALE BREAST BELOW A POINT
17 IMMEDIATELY ABOVE THE TOP OF THE AREOLA; OR

18 (II) HUMAN MALE GENITALS IN A DISCERNIBLY TURGID STATE,
19 EVEN IF COMPLETELY AND OPAQUELY COVERED.

20 (B) (1) A person may not willfully, RECKLESSLY, OR knowingly engage in the
21 business of displaying, exhibiting, selling, showing, advertising for sale, or
22 distributing to any person under the age of 18 years any still picture, photograph,
23 book, pocket book, pamphlet, magazine, videodisc, videotape, film, computer disc OR
24 IMAGE, or recorded OR LIVE telephone messages the cover or content of which [is
25 principally made up of obscene] CONTAINS descriptions or depictions of illicit sex[, or
26 which consists of obscene pictures of] OR nude or partially denuded figures AND THAT
27 ARE HARMFUL TO MINORS.

28 (2) A person may not willfully, RECKLESSLY, or knowingly display or
29 exhibit to any person under the age of 18 years any still picture, photograph, book,
30 pocket book, pamphlet, magazine, videodisc, videotape, film, computer disc OR
31 IMAGE, or recorded OR LIVE telephone messages the cover or content of which [is
32 principally made up of obscene] CONTAINS descriptions or depictions of illicit sex[,]
33 or [which consists of obscene pictures of] nude or partially denuded figures AND
34 THAT ARE HARMFUL TO MINORS.

35 (3) The provision of services or facilities by a telephone company
36 pursuant to tariffs approved by the Public Service Commission is not a violation of the

1 provisions of paragraph (1) of this subsection that relate to recorded telephone
2 messages.

3 (4) An owner, operator, franchisee, manager, or any employee with
4 managerial responsibility of a newsstand or any other place of business may not
5 [openly and knowingly display at the newsstand or other place of business, if it is
6 frequented by] WILLFULLY, RECKLESSLY, OR KNOWINGLY ALLOW persons under the
7 age of 18 years[,] TO ENTER OR REMAIN IN ANY PART OF A PREMISES WHERE:

8 (I) [any] ANY of the items whose sale, display, exhibition, showing,
9 [or] advertising, OR DISTRIBUTION is prohibited by paragraph (1) of this subsection;
10 OR

11 (II) ANY OF THE ITEMS UNDER PARAGRAPH (1) OF THIS
12 SUBSECTION ARE ON DISPLAY OR WOULD BE VISIBLE OR ACCESSIBLE TO A PERSON
13 UNDER THE AGE OF 18 YEARS.

14 [(5)] (C) [Violation of this section is a misdemeanor] A PERSON WHO
15 VIOLATES THE PROVISIONS OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
16 CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT
17 EXCEEDING 1 YEAR OR BOTH.

18 [(b) In this section the following words have the meanings indicated:

19 (1) "Descriptions or depictions of illicit sex" shall mean:

20 (i) Human genitals in a state of sexual stimulation or arousal;

21 (ii) Acts of human masturbation, sexual intercourse, or sodomy; or

22 (iii) Fondling or other erotic touching of human genitals.

23 (2) "Distributing" includes renting.

24 (3) "Nude or partially denuded figures" means:

25 (i) Less than completely and opaquely covered human genitals,
26 pubic region, buttocks, or female breast below a point immediately above the top of
27 the areola; or

28 (ii) Human male genitals in a discernibly turgid state, even if
29 completely and opaquely covered.

30 (4) "Obscene" means:

31 (i) That the average adult applying contemporary community
32 standards would find that the work, taken as a whole, appeals to the prurient
33 interest;

1 (ii) That the work depicts the sexual conduct specified in subsection
2 (a) of this section in a way that is patently offensive to prevailing standards in the
3 adult community as a whole with respect to what is suitable material; and

4 (iii) That the work, taken as a whole, lacks serious literary,
5 scientific, educational, artistic, or political value.]

6 419B.

7 (a) A person may not knowingly possess any film, videotape, photograph, or
8 other visual representation depicting an individual under the age of [16] 18 years
9 engaged as a subject of sadomasochistic abuse or in sexual conduct, or in a state of
10 sexual excitement, as those terms are defined under § 416A of this article.

11 (b) Nothing in this section may be construed to prohibit a parent from
12 possessing visual representations of the parent's own child in the nude unless the
13 visual representations depict the child engaged as a subject of sadomasochistic abuse
14 or in sexual conduct and in a state of sexual excitement.

15 (c) (1) For a first offense a person who violates this section is guilty of a
16 misdemeanor and on conviction is subject to a fine not exceeding [\$2,500] \$10,000 or
17 imprisonment not exceeding [1 year] 2 YEARS or both.

18 (2) For a second or subsequent offense a person who violates this section
19 is guilty of a [misdemeanor] FELONY and on conviction is subject to a fine not
20 exceeding [\$5,000] \$25,000 or imprisonment not exceeding [2] 5 years or both.

21 420.

22 Every person, who with knowledge that a person is a minor under 18 years of
23 age, and who, while in possession of such facts that he should reasonably know that
24 the person is a minor under 18 years of age, hires, employs, or uses such minor to do
25 or assist in doing any of the acts described in §§ 416A THROUGH 416F OF THIS ARTICLE
26 OR § 418 OR § 419 OF THIS SUBHEADING, is guilty of a [misdemeanor] FELONY AND
27 ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$25,000 OR IMPRISONMENT
28 NOT EXCEEDING 3 YEARS OR BOTH.

29 421.

30 Every person who knowingly ADVERTISES, writes or creates advertising [or],
31 solicits anyone to publish such [advertising] ADVERTISING, or otherwise [promote]
32 PROMOTES the sale [or], distribution, OR ADVERTISING of matter represented or held
33 out by him to be obscene, is guilty of a misdemeanor.

34 422.

35 Every person who, knowingly, as a condition to a sale, allocation, consignment,
36 or delivery for resale of any paper, magazine, book, periodical, publication or other
37 merchandise, requires that the purchaser or consignee receive any obscene matter OR
38 MATTER THAT IS HARMFUL TO MINORS or who denies or threatens to deny a

1 franchise, revokes or threatens to revoke, or imposes any penalty, financial or
2 otherwise, by reason of the failure of any person to accept obscene matter OR MATTER
3 THAT IS HARMFUL TO MINORS, or by reason of the return of such obscene matter OR
4 MATTER THAT IS HARMFUL TO MINORS, is guilty of a misdemeanor.

5 423.

6 (a) The prohibitions and penalties imposed in this subtitle shall not extend to
7 persons having bona fide scientific, educational, governmental, artistic, news, or
8 other similar justification for possessing or distributing such matter, or to
9 distributions thereof pursuant to such justification.

10 (b) A justification is not bona fide under this section with regard to depictions
11 of individuals under the age of [16] 18 years engaging in sexual conduct OR
12 SADOWASOCHISTIC ABUSE, if a reasonable person would find that a dominant
13 purpose of the depiction is to arouse or gratify sexual desire in either the perpetrator,
14 individual under the age of [16] 18 years, or viewer.

15 424.

16 (A) [Violation] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBHEADING, A
17 FIRST OFFENSE VIOLATION of this subtitle is punishable upon conviction by a fine not
18 to exceed [\$1,000] \$10,000 or by imprisonment not to exceed one year, or both [unless
19 otherwise provided].

20 (B) [Any] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBHEADING, A
21 SECOND OR subsequent conviction of a violation of this subtitle is punishable by a
22 fine not to exceed [\$5,000] \$25,000 or by imprisonment not to exceed three years, or
23 both [unless otherwise provided].

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1999.