
By: **Senators Stone and Hughes (Committee to Revise Article 27 - Crimes and Punishments)**

Introduced and read first time: January 30, 2002

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Obscene Materials - Revision**

3 FOR the purpose of altering certain provisions of law relating to obscene materials;
4 altering certain injunction requirements under certain circumstances; altering
5 certain prohibitions relating to the display or exhibition of obscene materials to
6 a minor under certain circumstances; prohibiting the use of certain electronic
7 medium relating to an obscene act, sadomasochistic abuse, or sexual conduct
8 involving a minor; increasing certain penalties; making conforming changes;
9 expanding certain definitions; repealing certain definitions; defining a certain
10 term; and generally relating to obscene materials.

11 BY repealing and reenacting, with amendments,
12 Article - Criminal Law
13 Section 11-201, 11-202, 11-203, 11-205, 11-206, 11-207, 11-208, 11-209,
14 11-210, and 11-211
15 Annotated Code of Maryland
16 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of
17 2002)

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 11-201.

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

23 (b) "Distribute" means to [transfer possession] SEND, TRANSMIT, TELECAST,
24 BROADCAST, OR CABLECAST, PRODUCE OR PROVIDE MATERIAL FOR THE PURPOSE
25 OF DISTRIBUTION, TRANSFER, OR DISSEMINATE.

26 (c) "Knowingly" means having knowledge of the character and content of the
27 [matter] MATERIAL.

1 [(d) "Matter" means:

2 (1) a book, magazine, newspaper, or other printed or written material;

3 (2) a picture, drawing, photograph, motion picture, or other pictorial
4 representation;

5 (3) a statue or other figure;

6 (4) a recording, transcription, or mechanical, chemical, or electrical
7 reproduction; or

8 (5) any other article, equipment, machine, or material.]

9 (D) (1) "MATERIAL" MEANS ANY:

10 (I) PRINTED, WRITTEN, COMPUTER, OR ELECTRONIC MEDIUM;

11 (II) VISUAL REPRESENTATION;

12 (III) MECHANICAL, CHEMICAL, ELECTRICAL, DIGITAL, OR
13 COMPUTER REPRODUCTION; OR

14 (IV) OTHER ARTICLE, EQUIPMENT, MACHINE, OR OTHER MEDIUM.

15 (2) "MATERIAL" INCLUDES ANY:

16 (I) BOOK, MAGAZINE, OR NEWSPAPER;

17 (II) PICTURE, DRAWING, PHOTOGRAPH, MOTION PICTURE, VIDEO,
18 OR OTHER PICTORIAL REPRESENTATION;

19 (III) STATUE OR OTHER FIGURE; OR

20 (IV) RECORDING OR TRANSCRIPTION.

21 (e) "Sadomasochistic abuse" has the meaning stated in § 11-101 of this title.

22 (f) "Sexual conduct" has the meaning stated in § 11-101 of this title.

23 (g) "Sexual excitement" has the meaning stated in § 11-101 of this title.

24 11-202.

25 (a) A person may not:

26 (1) knowingly send or cause to be sent any obscene [matter] MATERIAL
27 into the State for sale or distribution;

28 (2) knowingly bring or cause to be brought any obscene [matter]
29 MATERIAL into the State for sale or distribution;

1 (3) in the State prepare, publish, print, exhibit, distribute, or offer to
2 distribute any obscene [matter] MATERIAL; or

3 (4) possess any obscene [matter] MATERIAL in the State with the intent
4 to distribute, offer to distribute, or exhibit.

5 (b) A person who violates this section is guilty of a misdemeanor and on
6 conviction is subject to:

7 (1) for a first violation, imprisonment not exceeding 1 year or a fine not
8 exceeding \$1,000 or both; and

9 (2) for each subsequent violation, imprisonment not exceeding 3 years or
10 a fine not exceeding \$5,000 or both.

11 (c) (1) The State's Attorney may maintain an action for an injunction in the
12 circuit court against a person to prevent the POSSESSION WITH INTENT TO
13 DISTRIBUTE, sale, further sale, distribution, further distribution, acquisition, OR
14 publication[, or possession] within the State of any [book, magazine, pamphlet,
15 newspaper, story paper, writing paper, picture, card, drawing, photograph, motion
16 picture film or showing, or any article or instrument the use of which is] obscene
17 MATERIAL.

18 (2) The circuit court may enjoin the sale or distribution of [a book,
19 magazine, motion picture film or showing, or other publication or item] ANY
20 MATERIAL that is prohibited under this section from sale or distribution.

21 (3) After being served a summons and complaint in an action by the
22 State's Attorney under this section, a [person who sells, distributes, or acquires the
23 enjoined material] DEFENDANT is chargeable with knowledge of the contents of the
24 materials described in this section.

25 (4) The [defendant] PERSON is entitled to a trial of the issues within 1
26 day after joinder of issue.

27 (5) The court shall render a decision within 2 days after the conclusion of
28 the trial.

29 (6) If an order or judgment is entered in favor of the State's Attorney, the
30 final order or judgment shall [contain provisions] PROVIDE FOR:

31 (i) [directing] the person to surrender the obscene [matter]
32 MATERIAL to the [peace] LAW ENFORCEMENT officer designated by the court [or the
33 county sheriff]; [and]

34 (ii) [directing the peace officer or county sheriff to seize and destroy
35 the obscene matter] THE STORAGE OF THE OBSCENE MATERIAL PENDING FURTHER
36 JUDICIAL PROCEEDINGS; AND

37 (III) THE SEIZURE AND DESTRUCTION OF THE OBSCENE MATERIAL.

- 1 (7) In an action brought under this section, the State's Attorney is not:
2 (i) required to file a bond before an injunction order is issued;
3 (ii) liable for costs; or
4 (iii) liable for damages sustained because of the injunction order if
5 judgment is rendered in favor of the defendant.

6 11-203.

- 7 (a) (1) In this section the following words have the meanings indicated.

8 (2) "Distribute" includes to rent.

9 (3) "Illicit sex" means:

- 10 (i) human genitals in a state of sexual stimulation or arousal;
11 (ii) acts of human masturbation, sexual intercourse, or sodomy; or
12 (iii) fondling or other erotic touching of human genitals.

13 [(4) "Item" means a:

- 14 (i) still picture or photograph;
15 (ii) book, pocket book, pamphlet, or magazine;
16 (iii) videodisc, videotape, film, or computer disc; or
17 (iv) recorded telephone message.]

18 [(5)] (4) "Obscene" means:

- 19 (i) that the average adult applying contemporary community
20 standards would find that the work, taken as a whole, appeals to the prurient
21 interest;
22 (ii) that the work depicts sexual conduct specified in subsection (b)
23 of this section in a way that is patently offensive to prevailing standards in the adult
24 community as a whole with respect to what is suitable material; and
25 (iii) that the work, taken as a whole, lacks serious artistic,
26 educational, literary, political, or scientific value.

27 [(6)] (5) "Partially nude figure" means a figure with:

- 28 (i) less than completely and opaquely covered human genitals,
29 pubic region, buttocks, or female breast below a point immediately above the top of
30 the areola; or

1 (ii) human male genitals in a discernibly turgid state, even if
2 completely and opaquely covered.

3 (b) (1) A person may not [willfully or] knowingly display or exhibit to a
4 minor [an item] ANY MATERIAL OR LIVE OR RECORDED AUDIO MESSAGE:

5 (i) the cover or content of which is principally made up of an
6 obscene description or depiction of illicit sex; or

7 (ii) that consists of an obscene picture of a nude or partially nude
8 figure.

9 (2) A person may not [willfully or] knowingly engage in the business of
10 displaying, exhibiting, selling, showing, advertising for sale, or distributing to a
11 minor [an item] ANY MATERIAL OR LIVE OR RECORDED AUDIO MESSAGE:

12 (i) the cover or content of which is principally made up of an
13 obscene description or depiction of illicit sex; or

14 (ii) that consists of an obscene picture of a nude or partially nude
15 figure.

16 (3) If a newsstand or other place of business is frequented by minors, the
17 owner, operator, franchisee, manager, or an employee with managerial responsibility
18 may not openly and knowingly display at the place of business [an item] ANY
19 MATERIAL OR LIVE OR RECORDED AUDIO MESSAGE whose sale, display, exhibition,
20 showing, or advertising is prohibited by paragraph (2) of this subsection.

21 (c) The provision of services or facilities by a telephone company under a tariff
22 approved by the Public Service Commission is not a violation of subsection (b) of this
23 section relating to [recorded telephone] AUDIO messages.

24 (d) A person who violates this section is guilty of a misdemeanor and on
25 conviction is subject to:

26 (1) for a first violation, imprisonment not exceeding 1 year or a fine not
27 exceeding \$1,000 or both; and

28 (2) for each subsequent violation, imprisonment not exceeding 3 years or
29 a fine not exceeding \$5,000 or both.

30 11-205.

31 (a) A person may not knowingly:

32 (1) write or create advertising or otherwise promote the sale or
33 distribution of [matter] MATERIAL the person represents or holds out to be obscene;
34 or

35 (2) solicit the publication of advertising that promotes the sale or
36 distribution of [matter] MATERIAL the person represents or holds out to be obscene.

1 (b) A person who violates this section is guilty of a misdemeanor and on
2 conviction is subject to:

3 (1) for a first violation, imprisonment not exceeding 1 year or a fine not
4 exceeding \$1,000 or both; and

5 (2) for each subsequent violation, imprisonment not exceeding 3 years or
6 a fine not exceeding \$5,000 or both.

7 11-206.

8 (a) (1) A person may not knowingly require a purchaser or consignee to
9 receive obscene [matter] MATERIAL as a condition to a sale, allocation, consignment,
10 or delivery for resale of [a paper, magazine, book, periodical, publication,] MATERIAL
11 or other merchandise.

12 (2) In response to a person's return of or failure to accept obscene
13 [matter] MATERIAL, a person may not knowingly:

14 (i) deny or revoke a franchise;

15 (ii) threaten to deny or revoke a franchise; or

16 (iii) impose a financial or other penalty.

17 (b) A person who violates this section is guilty of a misdemeanor and on
18 conviction is subject to:

19 (1) for a first violation, imprisonment not exceeding 1 year or a fine not
20 exceeding \$1,000 or both; and

21 (2) for each subsequent violation, imprisonment not exceeding 3 years or
22 a fine not exceeding \$5,000 or both.

23 11-207.

24 (a) A person may not:

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

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

31 (3) use a computer OR OTHER ELECTRONIC MEDIUM to depict or describe
32 a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;

1 (4) knowingly promote, distribute or possess with the intent to distribute
2 any [matter, visual representation,] MATERIAL or performance that depicts a minor
3 engaged as a subject in sadomasochistic abuse or sexual conduct; or

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

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

13 (1) for a first violation, imprisonment for 10 years or a fine not exceeding
14 \$25,000 or both; and

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

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

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

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

28 (i) observation of the [matter] MATERIAL depicting the individual;

29 (ii) oral testimony by a witness to the production of the [matter,
30 representation,] MATERIAL or performance;

31 (iii) expert medical testimony; or

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

34 11-208.

35 (a) A person may not knowingly possess [a film, videotape, photograph, or
36 other visual representation] ANY MATERIAL depicting an individual under the age of
37 16 years:

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

2 (2) engaged in sexual conduct; or

3 (3) in a state of sexual excitement.

4 (b) A person who violates this section is guilty of a misdemeanor and on
5 conviction is subject to:

6 (1) for a first violation, imprisonment not exceeding 1 year or a fine not
7 exceeding \$2,500 or both; and

8 (2) for each subsequent violation, imprisonment not exceeding [2] 3
9 years or a fine not exceeding \$5,000 or both.

10 (c) Nothing in this section may be construed to prohibit a parent from
11 possessing visual representations of the parent's own child in the nude unless the
12 visual representations depict the child engaged:

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

14 (2) in sexual conduct [and] OR in a state of sexual excitement.

15 11-209.

16 (a) A person may not hire, employ, or use an individual, if the person knows,
17 [and] OR possesses facts under which the person should reasonably know, that the
18 individual is a minor, to do or assist in doing an act described in § 11-203 of this
19 subtitle.

20 (b) A person who violates this section is guilty of a misdemeanor and on
21 conviction is subject to:

22 (1) for a first violation, imprisonment not exceeding 1 year or a fine not
23 exceeding \$1,000 or both; and

24 (2) for each subsequent violation, imprisonment not exceeding 3 years or
25 a fine not exceeding \$5,000 or both.

26 11-210.

27 (a) (1) A person having a bona fide scientific, educational, governmental,
28 artistic, news, or other similar justification for possessing or distributing prohibited
29 [matter] MATERIAL is not subject to the prohibitions and penalties imposed by this
30 subtitle.

31 (2) A distribution made in accordance with a bona fide scientific,
32 educational, governmental, artistic, news, or other similar justification is not subject
33 to the prohibitions and penalties imposed by this subtitle.

1 (b) A justification is not bona fide under this section if a reasonable person
2 would find that a dominant purpose of the depiction of an individual under the age of
3 16 years engaging in sexual conduct is to arouse or gratify sexual desire in either the
4 violator, the individual under the age of 16 years, or the viewer.

5 11-211.

6 When the conviction of a person for a violation of this subtitle becomes final, the
7 court may order the destruction of any [matter] MATERIAL or advertisement that
8 was the basis of the person's conviction and that remains in the possession or under
9 the control of the court, the State, or a law enforcement unit.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2002.