

# SENATE BILL 308

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71r1971

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By: **Senator Stone**

Introduced and read first time: January 31, 2007

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Child Pornography – Mandatory Minimum Sentences**

3 FOR the purpose of altering a certain penalty for a person who is convicted of the  
4 felony of causing, inducing, or knowingly allowing a minor to engage in certain  
5 child pornography, photographing or filming certain child pornography, using a  
6 computer to depict or describe certain child pornography, knowingly promoting,  
7 distributing, or possessing with intent to distribute certain child pornography,  
8 or using a computer to knowingly compile, enter, transmit, make, print, publish,  
9 reproduce, cause, allow, buy, sell, receive, exchange, or disseminate certain  
10 descriptive or identifying information for the purpose of engaging in,  
11 facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse  
12 or sexual conduct of or with a minor; prohibiting a court from imposing less  
13 than a certain minimum sentence for a person convicted of a certain felony;  
14 prohibiting a court from imposing less than a certain minimum sentence for  
15 each subsequent conviction of a person for a certain felony; providing that a  
16 person convicted of a certain felony or a subsequent conviction of a certain  
17 felony is not eligible for parole for a certain period; and generally relating to  
18 penalties for child pornography.

19 BY repealing and reenacting, with amendments,  
20 Article – Criminal Law  
21 Section 11–207  
22 Annotated Code of Maryland  
23 (2002 Volume and 2006 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Law**

4 11–207.

5 (a) A person may not:

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

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

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

13 (4) knowingly promote, distribute, or possess with the intent to  
14 distribute any matter, visual representation, or performance that depicts a minor  
15 engaged as a subject in sadomasochistic abuse or sexual conduct; or

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

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

24 [(1)] (I) for a first violation, imprisonment **FOR NOT LESS THAN 5**  
25 **YEARS AND** not exceeding 10 years or a fine not exceeding \$25,000 or both; and

26 [(2)] (II) for each subsequent violation, imprisonment **FOR NOT LESS**  
27 **THAN 10 YEARS AND** not exceeding 20 years or a fine not exceeding \$50,000 or both.

28 (2) **NOTWITHSTANDING § 14–102 OF THIS ARTICLE, THE COURT**  
29 **MAY NOT IMPOSE LESS THAN THE MANDATORY MINIMUM SENTENCE OF 5 YEARS**  
30 **FOR A FIRST VIOLATION OR 10 YEARS FOR EACH SUBSEQUENT VIOLATION.**

1           **(3) THE COURT MAY NOT SUSPEND ANY PART OF THE**  
2 **MANDATORY MINIMUM SENTENCE OF 5 YEARS FOR A FIRST VIOLATION OR 10**  
3 **YEARS FOR EACH SUBSEQUENT VIOLATION.**

4           **(4) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL**  
5 **SERVICES ARTICLE, A PERSON SENTENCED UNDER THIS SECTION IS NOT**  
6 **ELIGIBLE FOR PAROLE IN LESS THAN 5 YEARS FOR A FIRST VIOLATION OR 10**  
7 **YEARS FOR EACH SUBSEQUENT VIOLATION.**

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

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

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

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

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

20                   (iii) expert medical testimony; or

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

23           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2007.