

HOUSE BILL 436

E1

8lr2410
CF SB 414

By: ~~Delegates McComas and Waldstreicher~~ McComas, Waldstreicher, DeBoy, Eckardt, Elliott, Frank, George, Haddaway, James, Kipke, Krebs, Levy, McConkey, Miller, Myers, Norman, O'Donnell, Schuh, Shank, Shewell, Sophocleus, Stocksedale, and Wood

Introduced and read first time: January 29, 2008

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 26, 2008

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Possession of Child Pornography – Penalties**

3 FOR the purpose of ~~changing the offense of possession of child pornography from a~~
4 ~~misdemeanor to a felony~~ altering the definition of “sexual conduct” for purposes
5 of certain child pornography provisions to include displaying the genitals of an
6 individual for purposes of sexual arousal or gratification; increasing the
7 penalties for possessing a film, videotape, photograph, or other visual
8 representation depicting a minor engaged in certain activity or in a certain
9 state; making the possession of child pornography a felony under certain
10 circumstances; and generally relating to child pornography.

11 BY repealing and reenacting, with amendments,

12 Article – Criminal Law

13 Section ~~11-201(f)~~ and 11-208

14 Annotated Code of Maryland

15 (2002 Volume and 2007 Supplement)

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

18 **Article – Criminal Law**

19 11-201.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (f) (1) “Sexual conduct” has the meaning stated in § 11–101 of this title.

2 (2) “SEXUAL CONDUCT” INCLUDES THE DISPLAY OF THE
 3 GENITALS OF AN INDIVIDUAL FOR PURPOSES OF SEXUAL AROUSAL OR
 4 GRATIFICATION.

5 11–208.

6 (a) A person may not knowingly possess and intentionally retain a film,
 7 videotape, photograph, or other visual representation showing an actual child under
 8 the age of 16 years:

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

10 (2) engaged in sexual conduct; or

11 (3) in a state of sexual excitement.

12 (b) ~~A (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~
 13 ~~SUBSECTION, A~~ person who violates this section is guilty of a ~~[misdemeanor]~~ ~~FELONY~~
 14 and on conviction is subject to:

15 ~~(1) for a first violation, imprisonment not exceeding 2 5 years or a fine~~
 16 ~~not exceeding \$2,500 or both; and,~~

17 ~~(2) for each subsequent violation, imprisonment not exceeding 5 years~~

18 (2) A PERSON WHO VIOLATES THIS SECTION, HAVING
 19 PREVIOUSLY BEEN CONVICTED UNDER THIS SECTION ONE OR MORE TIMES, IS
 20 GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
 21 EXCEEDING 10 YEARS or a fine not exceeding \$10,000 or both.

22 (c) Nothing in this section may be construed to prohibit a parent from
 23 possessing visual representations of the parent’s own child in the nude unless the
 24 visual representations show the child engaged:

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

26 (2) in sexual conduct and in a state of sexual excitement.

27 (d) It is an affirmative defense to a charge of violating this section that the
 28 person promptly and in good faith:

29 (1) took reasonable steps to destroy each visual representation; or

30 (2) reported the matter to a law enforcement agency.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.