

# HOUSE BILL 9

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9lr0414

(PRE-FILED)

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By: **Delegates Waldstreicher and McComas**

Requested: July 11, 2008

Introduced and read first time: January 14, 2009

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

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

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

10 BY repealing and reenacting, with amendments,  
11 Article – Criminal Law  
12 Section 11–201(f) and 11–208  
13 Annotated Code of Maryland  
14 (2002 Volume and 2008 Supplement)

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

17 **Article – Criminal Law**

18 11–201.

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

20 (2) **“SEXUAL CONDUCT” INCLUDES THE DISPLAY OF THE**  
21 **GENITALS OF AN INDIVIDUAL FOR PURPOSES OF SEXUAL AROUSAL OR**  
22 **GRATIFICATION.**

23 11–208.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

5 (2) engaged in sexual conduct; or

6 (3) in a state of sexual excitement.

7 (b) (1) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
8 **SUBSECTION, A** person who violates this section is guilty of a misdemeanor and on  
9 conviction is subject to[:

10 (1) for a first violation,] imprisonment not exceeding [2] **5** years or a  
11 fine not exceeding \$2,500 or both[; and].

12 (2) [for each subsequent violation, imprisonment not exceeding 5  
13 years] **A PERSON WHO VIOLATES THIS SECTION, HAVING PREVIOUSLY BEEN**  
14 **CONVICTED UNDER THIS SECTION, IS GUILTY OF A FELONY AND ON CONVICTION**  
15 **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS** or a fine not exceeding  
16 \$10,000 or both.

17 (c) Nothing in this section may be construed to prohibit a parent from  
18 possessing visual representations of the parent's own child in the nude unless the  
19 visual representations show the child engaged:

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

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

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

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

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

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2009.