

HOUSE BILL 9

E1

9lr0414

(PRE-FILED)

By: **Delegates Waldstreicher and McComas**

Requested: July 11, 2008

Introduced and read first time: January 14, 2009

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 17, 2009

CHAPTER _____

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; providing
9 that the jurisdiction of the District Court is concurrent with that of the circuit
10 court in a criminal case in which a person is charged with a second or
11 subsequent offense of possession of child pornography; and generally relating to
12 child pornography.

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Law
15 Section 11–201(f) and 11–208
16 Annotated Code of Maryland
17 (2002 Volume and 2008 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Courts and Judicial Proceedings
20 Section 4–301 and 4–302(a) and (d)
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2008 Supplement)

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 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 11–201.

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

6 (2) **“SEXUAL CONDUCT” INCLUDES THE DISPLAY OF THE**
7 **GENITALS OF AN INDIVIDUAL FOR PURPOSES OF SEXUAL AROUSAL OR**
8 **GRATIFICATION.**

9 11–208.

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

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

14 (2) engaged in sexual conduct; or

15 (3) in a state of sexual excitement.

16 (b) (1) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
17 **SUBSECTION, 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 [2] **5** years or a
20 fine not exceeding \$2,500 or both[; and].

21 (2) [for each subsequent violation, imprisonment not exceeding 5
22 years] **A PERSON WHO VIOLATES THIS SECTION, HAVING PREVIOUSLY BEEN**
23 **CONVICTED UNDER THIS SECTION, IS GUILTY OF A FELONY AND ON CONVICTION**
24 **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS** or a fine not exceeding
25 \$10,000 or both.

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

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

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

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

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

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

5 **Article – Courts and Judicial Proceedings**

6 4–301.

7 (a) Except as provided in §§ 3–803, 3–8A–03, and 4–302 of this article, the
8 District Court has exclusive original jurisdiction in a criminal case in which a person
9 at least 16 years old or a corporation is charged with violation of the vehicle laws, or
10 the State Boat Act, or regulations adopted pursuant to the vehicle laws or State Boat
11 Act.

12 (b) Except as provided in § 4–302 of this subtitle, the District Court also has
13 exclusive original jurisdiction in a criminal case in which a person at least 18 years old
14 or a corporation is charged with:

15 (1) Commission of a common-law or statutory misdemeanor
16 regardless of the amount of money or value of the property involved;

17 (2) Violation of § 7–104, § 7–105, § 7–107, or § 7–108 of the Criminal
18 Law Article, whether a felony or a misdemeanor;

19 (3) Violation of a county, municipal, or other ordinance, if the violation
20 is not a felony;

21 (4) Criminal violation of a State, county, or municipal rule or
22 regulation, if the violation is not a felony;

23 (5) Doing or omitting to do any act made punishable by a fine,
24 imprisonment, or other penalty as provided by the particular law, ordinance, rule, or
25 regulation defining the violation if the violation is not a felony;

26 (6) Violation of § 8–103 of the Criminal Law Article, whether a felony
27 or a misdemeanor;

28 (7) Violation of §§ 8–203 through 8–209 of the Criminal Law Article,
29 whether a felony or misdemeanor;

30 (8) Forgery or violation of Title 8, Subtitle 6 of the Criminal Law
31 Article, whether a felony or misdemeanor;

32 (9) Violation of Title 27, Subtitle 4 of the Insurance Article, whether a
33 felony or a misdemeanor;

- 1 (10) Violation of § 9–1106 of the Labor and Employment Article;
- 2 (11) Violation of § 8–301 of the Criminal Law Article, whether a felony
3 or misdemeanor;
- 4 (12) Violation of § 2–209 of the Criminal Law Article;
- 5 (13) Violation of Title 2, Subtitle 5 of the Criminal Law Article;
- 6 (14) Violation of Title 11, Subtitle 5 of the Financial Institutions
7 Article;
- 8 (15) Violation of §§ 10–604 through 10–608 of the Criminal Law Article,
9 whether a felony or misdemeanor;
- 10 (16) Violation of Title 7, Subtitle 3, Part III of the Criminal Law Article,
11 whether a felony or misdemeanor;
- 12 (17) Violation of § 20–102 of the Transportation Article, whether a
13 felony or misdemeanor;
- 14 (18) Violation of § 8–801 of the Criminal Law Article;
- 15 (19) Violation of § 8–604 of the Criminal Law Article;
- 16 (20) Violation of Title 8, Subtitle 2, Part II of the Criminal Law Article;
- 17 (21) Violation of §§ 16–801 through 16–804 of the Election Law Article;
- 18 (22) Violation of § 3–203(c) of the Criminal Law Article; [or]
- 19 **(23) VIOLATION OF § 11–208 OF THE CRIMINAL LAW ARTICLE AS A**
20 **SECOND OR SUBSEQUENT OFFENSE; OR**
- 21 ~~[(23)]~~**(24)** Violation of § 11–303(b) of the Criminal Law Article.

22 4–302.

23 (a) Except as provided in § 4–301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13),
24 (14), (15), (16), (17), (18), (19), (20), (21), (22), [and] (23), AND (24) of this subtitle, the
25 District Court does not have jurisdiction to try a criminal case charging the
26 commission of a felony.

27 (d) (1) Except as provided in paragraph (2) of this subsection, the
28 jurisdiction of the District Court is concurrent with that of the circuit court in a
29 criminal case;

1 (i) In which the penalty may be confinement for 3 years or more
2 or a fine of \$2,500 or more; or

3 (ii) That is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9),
4 (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), [and] (23), AND (24)
5 of this subtitle.

6 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a
7 circuit court does not have jurisdiction to try a case charging a violation of § 5-601 or §
8 5-620 of the Criminal Law Article.

9 (ii) A circuit court does have jurisdiction to try a case charging a
10 violation of § 5-601 or § 5-620 of the Criminal Law Article if the defendant:

11 1. Properly demands a jury trial;

12 2. Appeals as provided by law from a final judgment
13 entered in the District Court; or

14 3. Is charged with another offense arising out of the
15 same circumstances that is within a circuit court's jurisdiction.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.