

HOUSE BILL 534

E1

9lr0504

By: **Delegate Simmons**

Introduced and read first time: February 5, 2009

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Child Pornography – Matter Reflecting Belief That a Minor Is Depicted in a**
3 **Certain Manner**

4 FOR the purpose of prohibiting a person from knowingly promoting, advertising,
5 presenting, soliciting, distributing, or possessing with the intent to distribute
6 any matter, purported matter, visual representation, or performance that
7 reflects the belief, or is intended to cause another to believe, that the matter
8 depicts a minor engaged as a subject of sadomasochistic abuse or sexual
9 conduct; expanding a certain provision of the child pornography laws so as to
10 prohibit a person from knowingly advertising, presenting, or soliciting any
11 matter, purported matter, visual representation, or performance that depicts a
12 minor engaged as a subject of sadomasochistic abuse or sexual conduct; and
13 generally relating to child pornography.

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Law
16 Section 11–207
17 Annotated Code of Maryland
18 (2002 Volume and 2008 Supplement)

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

21 **Article – Criminal Law**

22 11–207.

23 (a) A person may not:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

8 (4) knowingly promote, **ADVERTISE, PRESENT, SOLICIT**, distribute,
9 or possess with the intent to distribute any matter, **PURPORTED MATTER**, visual
10 representation, or performance:

11 (I) that depicts a minor engaged as a subject in sadomasochistic
12 abuse or sexual conduct; or

13 (II) **IN A MANNER THAT REFLECTS THE BELIEF, OR THAT IS**
14 **INTENDED TO CAUSE ANOTHER TO BELIEVE, THAT THE MATTER, PURPORTED**
15 **MATTER, VISUAL REPRESENTATION, OR PERFORMANCE DEPICTS A MINOR**
16 **ENGAGED AS A SUBJECT OF SADOMASOCHISTIC ABUSE OR SEXUAL CONDUCT;**
17 **OR**

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

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

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

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

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

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

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

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

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

7 (iii) expert medical testimony; or

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

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