

# HOUSE BILL 1246

E1, E2, E4

9lr2241  
CF SB 893

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By: **Delegates Shank, Aumann, Bates, Boteler, Carter, Costa, Dwyer, Eckardt, Elmore, Frank, George, Glenn, Haddaway, Kelly, Kipke, Krebs, McComas, Myers, Norman, Schuh, Serafini, Shewell, Smigiel, Sophocleus, Sossi, Waldstreicher, Walkup, and Wood**

Introduced and read first time: February 13, 2009

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Protection of Children from Online Predators Act of 2009**

3 FOR the purpose of requiring a certain Internet access provider to make a certain  
4 parental Internet control product or service available to a subscriber under  
5 certain circumstances; requiring an Internet access provider to provide certain  
6 information to a subscriber at a certain time under certain circumstances;  
7 authorizing an Internet access provider to make a parental Internet control  
8 product or service available to a subscriber in a certain manner and charge for  
9 the product or service; granting a provider of a certain interactive computer  
10 service immunity from civil liability for taking certain actions based on a certain  
11 belief or for failing to take certain actions under certain circumstances;  
12 authorizing an investigative or law enforcement officer to request the creation of  
13 a certain backup copy if the request is made in connection with a certain  
14 investigation; requiring a certain service provider to take all necessary steps to  
15 preserve certain records and evidence at a certain time; prohibiting a person  
16 who is at least a certain number of years older than a certain minor from  
17 knowingly requesting or encouraging the victim through a certain means to  
18 expose or touch the victim's own or another person's genital area or female  
19 breasts or observe the person's genital area or female breasts while  
20 communicating with the person through a certain means; providing that a  
21 certain violation is considered to be committed in the State for a certain purpose  
22 if a certain request or encouragement originated or is received in the State;  
23 providing penalties for a violation of this Act; requiring the Department of  
24 Public Safety and Correctional Services to make certain information available  
25 through a certain mechanism to certain entities for a certain purpose;  
26 authorizing a judge imposing a sentence on a person who has been convicted of  
27 a sexual offense against a minor to include a certain special sentence of  
28 supervision; requiring that a person serving a special sentence of supervision be

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



subject to one or more conditions that may include certain supervision or inspections; requiring that a special sentence of supervision be conducted by a certain officer or specialist, in a certain manner and form; authorizing a judge to limit or restrict a certain person's Internet access in a certain manner under certain circumstances; establishing procedures by which a person may petition for and a judge may grant release from a special sentence of supervision; defining certain terms; and generally relating to protection of children from online predators.

BY adding to

Article – Commercial Law

Section 14–3701 and 14–3702 to be under the new subtitle “Subtitle 37.  
Parental Internet Control Products and Services”

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

BY adding to

Article – Courts and Judicial Proceedings

Section 5–427

Annotated Code of Maryland

(2006 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,

Article – Courts and Judicial Proceedings

Section 10–4A–05(a)

Annotated Code of Maryland

(2006 Replacement Volume and 2008 Supplement)

BY adding to

Article – Criminal Law

Section 3–325

Annotated Code of Maryland

(2002 Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Procedure

Section 11–717(a)

Annotated Code of Maryland

(2008 Replacement Volume)

BY adding to

Article – Criminal Procedure

Section 11–728

Annotated Code of Maryland

(2008 Replacement Volume)

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

**Article – Commercial Law**

**SUBTITLE 37. PARENTAL INTERNET CONTROL PRODUCTS AND SERVICES.**

**14-3701.**

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) “INTERNET ACCESS PROVIDER” MEANS A FACILITIES-BASED PROVIDER OR OTHER ENTITY THAT PROVIDES CONSUMERS WITH THE ABILITY TO ACCESS THE INTERNET IN EXCHANGE FOR CONSIDERATION SUCH AS:

(I) A PAID SUBSCRIPTION; OR

(II) AN AGREEMENT TO VIEW SPECIFIC ADVERTISEMENTS OR CONTENT IN EXCHANGE FOR INTERNET ACCESS.

(2) “INTERNET ACCESS PROVIDER” DOES NOT INCLUDE:

(I) AN ENTITY THAT PROVIDES ACCESS TO THE INTERNET USING COMMERCIAL MOBILE SERVICE AS DEFINED IN 47 U.S.C. § 332(D); OR

(II) SYSTEMS OPERATED OR SERVICES OFFERED BY LIBRARIES OR EDUCATIONAL INSTITUTIONS.

(C) “PARENTAL INTERNET CONTROL PRODUCT OR SERVICE” MEANS A PRODUCT OR SERVICE THAT ENABLES A SUBSCRIBER OF INTERNET SERVICE TO:

(1) BLOCK A MINOR’S ACCESS TO SPECIFIC WEBSITES OR DOMAINS;

(2) RESTRICT A MINOR’S ACCESS EXCLUSIVELY TO SPECIFIC WEBSITES OR DOMAINS CONSIDERED APPROPRIATE BY THE SUBSCRIBER; AND

(3) MONITOR A MINOR’S USE OF THE INTERNET SERVICE BY PROVIDING A REPORT TO THE SUBSCRIBER OF THE SPECIFIC WEBSITES OR DOMAINS THAT THE MINOR HAS VISITED OR HAS ATTEMPTED TO VISIT BUT COULD NOT ACCESS BECAUSE THE WEBSITES OR DOMAINS WERE BLOCKED OR RESTRICTED BY THE SUBSCRIBER.

**14-3702.**

1           (A) AN INTERNET ACCESS PROVIDER SHALL MAKE AVAILABLE TO A  
2 SUBSCRIBER A PARENTAL INTERNET CONTROL PRODUCT OR SERVICE IF:

3                   (1) THE PROVIDER KNOWS OR HAS REASON TO KNOW FROM  
4 REGISTRATION DATA IN THE PROVIDER'S POSSESSION THAT THE SUBSCRIBER  
5 RESIDES IN THE STATE; AND

6                   (2) A PARENTAL INTERNET CONTROL PRODUCT OR SERVICE IS  
7 REASONABLY AND COMMERCIALY AVAILABLE FOR THE TECHNOLOGY USED BY  
8 THE SUBSCRIBER TO ACCESS THE INTERNET.

9           (B) IF AN INTERNET ACCESS PROVIDER IS REQUIRED TO MAKE  
10 AVAILABLE TO A SUBSCRIBER A PARENTAL INTERNET CONTROL PRODUCT OR  
11 SERVICE UNDER SUBSECTION (A) OF THIS SECTION, THE INTERNET ACCESS  
12 PROVIDER:

13                   (1) SHALL PROVIDE TO THE SUBSCRIBER, AT OR NEAR THE TIME  
14 OF SUBSCRIPTION, INFORMATION ABOUT THE AVAILABILITY OF A PARENTAL  
15 INTERNET CONTROL PRODUCT OR SERVICE; AND

16                   (2) MAY:

17                           (I) MAKE A PARENTAL INTERNET CONTROL PRODUCT OR  
18 SERVICE AVAILABLE TO THE SUBSCRIBER EITHER DIRECTLY OR THROUGH A  
19 THIRD-PARTY VENDOR; AND

20                           (II) CHARGE FOR THE PRODUCT OR SERVICE.

21                   Article – Courts and Judicial Proceedings

22   5-427.

23           (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
24 MEANINGS INDICATED.

25                   (2) (I) “INTERACTIVE COMPUTER SERVICE” MEANS AN  
26 INFORMATION SERVICE, SYSTEM, OR ACCESS SOFTWARE PROVIDER THAT  
27 OFFERS USERS THE CAPABILITY FOR GENERATING, ACQUIRING, STORING,  
28 TRANSFORMING, PROCESSING, RETRIEVING, USING, OR MAKING AVAILABLE  
29 INFORMATION BY WAY OF AN INTERNET ACCESS PROVIDER.

30                           (II) “INTERACTIVE COMPUTER SERVICE” INCLUDES A  
31 SERVICE OR SYSTEM THAT:

1                   **1. PROVIDES OR ENABLES COMPUTER ACCESS BY**  
2 **MULTIPLE USERS TO A COMPUTER SERVER; AND**

3                   **2. PROVIDES ACCESS TO THE INTERNET AND**  
4 **SYSTEMS OPERATED OR SERVICES OFFERED BY LIBRARIES OR EDUCATIONAL**  
5 **INSTITUTIONS.**

6                   **(3) “INTERNET ACCESS PROVIDER” HAS THE MEANING STATED IN**  
7 **§ 14–3701 OF THE COMMERCIAL LAW ARTICLE.**

8                   **(B) A PROVIDER OF AN INTERACTIVE COMPUTER SERVICE IS IMMUNE**  
9 **FROM CIVIL LIABILITY FOR:**

10                   **(1) IDENTIFYING, REMOVING, DISABLING, BLOCKING, OR**  
11 **OTHERWISE AFFECTING A USER BASED ON A GOOD FAITH BELIEF THAT THE**  
12 **USER’S ELECTRONIC MAIL ADDRESS, USERNAME, OR OTHER SIMILAR INTERNET**  
13 **IDENTIFIER APPEARED IN THE NATIONAL SEX OFFENDER REGISTRY OR AN**  
14 **ANALOGOUS STATE REGISTRY; OR**

15                   **(2) FAILING TO IDENTIFY, BLOCK, OR OTHERWISE PREVENT A**  
16 **PERSON FROM REGISTERING FOR ITS SERVICE, OR FOR FAILING TO REMOVE,**  
17 **DISABLE, OR OTHERWISE AFFECT A REGISTERED USER, WHEN THE PERSON’S OR**  
18 **USER’S ELECTRONIC MAIL ADDRESS, INSTANT MESSAGE ADDRESS, OR OTHER**  
19 **SIMILAR INTERNET IDENTIFIER APPEARS IN THE NATIONAL SEX OFFENDER**  
20 **REGISTRY OR AN ANALOGOUS STATE REGISTRY.**

21 10–4A–05.

22                   (a) (1) A subpoena or court order issued under § 10–4A–04 of this subtitle  
23 may include a requirement that the service provider to whom the request is directed  
24 create a backup copy of the contents of the electronic communications sought in order  
25 to preserve those communications. Without notifying the subscriber or customer of the  
26 subpoena or court order, the service provider shall create a backup copy as soon as  
27 practicable consistent with the provider’s regular business practices and shall confirm  
28 to the governmental entity that the backup copy has been made. The service provider  
29 shall create a backup copy under this subsection within 24 hours after the day on  
30 which the service provider receives the subpoena or court order.

31                   (2) Except as provided in § 10–4A–06 of this subtitle, the investigative  
32 or law enforcement officer shall give notice to the subscriber or customer within 3 days  
33 after the day on which the governmental entity receives confirmation that a backup  
34 copy has been made under paragraph (1) of this subsection.

35                   (3) The service provider may not destroy the backup copy until the  
36 later of:

(i) The delivery of the information; or

(ii) The resolution of any proceedings, including appeals of any proceedings, concerning a subpoena or court order issued under § 10–4A–04 of this subtitle.

(4) The service provider shall release the backup copy to the requesting investigative or law enforcement officer no sooner than 14 days after the day on which the officer gives notice to the subscriber or customer, if the service provider:

(i) Has not received notice from the subscriber or customer that the subscriber or customer has challenged the officer's request; and

(ii) Has not initiated proceedings to challenge the officer's request.

(5) (i) An investigative or law enforcement officer may seek to require the creation of a backup copy under subsection (a)(1) of this section if, in the officer's sole discretion, the officer determines that there is reason to believe that notification to the subscriber or customer under § 10–4A–04 of this subtitle of the existence of the subpoena or court order may result in destruction of or tampering with evidence.

(ii) A determination under subparagraph (i) of this paragraph is not subject to challenge by the subscriber or customer or service provider.

**(6) (I) AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER MAY REQUEST THE CREATION OF A BACKUP COPY UNDER SUBSECTION (A)(1) OF THIS SECTION IF THE REQUEST IS MADE IN CONNECTION WITH AN INVESTIGATION OF A POSSIBLE SEXUAL OFFENSE INVOLVING A MINOR.**

**(II) AS SOON AS IS REASONABLY PRACTICABLE FOLLOWING RECEIPT OF THE REQUEST, THE SERVICE PROVIDER SHALL TAKE ALL NECESSARY STEPS TO PRESERVE RECORDS AND OTHER EVIDENCE IN ITS POSSESSION PENDING THE ISSUANCE OF A SUBPOENA OR COURT ORDER.**

## **Article – Criminal Law**

### **3–325.**

**(A) A PERSON WHO IS AT LEAST 4 YEARS OLDER THAN A MINOR WHO IS UNDER 16 YEARS OLD MAY NOT KNOWINGLY REQUEST OR ENCOURAGE THE MINOR THROUGH COMMUNICATION BY WAY OF A COMPUTER NETWORK OR SYSTEM TO:**

1           **(1) EXPOSE OR TOUCH THE MINOR'S OWN OR ANOTHER PERSON'S**  
2 **GENITAL AREA OR FEMALE BREASTS WHILE COMMUNICATING WITH THE**  
3 **PERSON BY WAY OF A COMPUTER NETWORK OR SYSTEM; OR**

4           **(2) OBSERVE THE PERSON'S GENITAL AREA OR FEMALE BREASTS**  
5 **WHILE COMMUNICATING WITH THE PERSON BY WAY OF A COMPUTER NETWORK**  
6 **OR SYSTEM.**

7           **(B) IT IS NOT AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER**  
8 **THIS SECTION THAT THE VICTIM WAS ACTUALLY A LAW ENFORCEMENT OFFICER**  
9 **POSING AS A MINOR UNDER 16 YEARS OLD.**

10          **(C) A VIOLATION OF THIS SECTION IS CONSIDERED TO BE COMMITTED**  
11 **IN THE STATE FOR PURPOSES OF DETERMINING JURISDICTION IF THE REQUEST**  
12 **OR ENCOURAGEMENT:**

13           **(1) ORIGINATED IN THE STATE; OR**

14           **(2) IS RECEIVED IN THE STATE.**

15          **(D) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY**  
16 **AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS**  
17 **OR A FINE NOT EXCEEDING \$25,000 OR BOTH.**

## 18                           **Article – Criminal Procedure**

19   11-717.

20          (a) (1) The Department shall make available to the public registration  
21 statements or information about registration statements.

22           (2) Information about registration statements shall include, in plain  
23 language that can be understood without special knowledge of the criminal laws of the  
24 State, a description of the crime of the offender that is the basis for the registration,  
25 excluding details that would identify the victim.

26           **(3) THE DEPARTMENT SHALL MAKE ELECTRONIC MAIL**  
27 **ADDRESSES, USERNAMES, AND OTHER INFORMATION COLLECTED FROM**  
28 **REGISTRATION STATEMENTS AVAILABLE THROUGH A FORMAL MECHANISM TO**  
29 **COMMERCIAL OR NONPROFIT ENTITIES, INCLUDING CHILD SAFETY**  
30 **ORGANIZATIONS, EDUCATIONAL INSTITUTIONS, AND INTERACTIVE COMPUTER**  
31 **SERVICE PROVIDERS, FOR THE PURPOSE OF PROTECTING CHILDREN FROM SEX**  
32 **OFFENDERS.**

1 **11-728.**

2 (A) A JUDGE IMPOSING A SENTENCE ON A PERSON WHO HAS BEEN  
3 CONVICTED OF A SEXUAL OFFENSE AGAINST A MINOR MAY INCLUDE A SPECIAL  
4 SENTENCE OF SUPERVISION IN ACCORDANCE WITH THIS SECTION.

5 (B) A PERSON SERVING A SPECIAL SENTENCE OF SUPERVISION SHALL  
6 BE SUBJECT TO ONE OR MORE CONDITIONS THAT MAY INCLUDE:

7 (1) CONTINUED SUPERVISION, EITHER IN PERSON OR THROUGH  
8 REMOTE MONITORING, OF THE PERSON'S INCOMING AND OUTGOING  
9 ELECTRONIC MAIL AND OTHER INTERNET-BASED COMMUNICATION FOR  
10 EVIDENCE RELEVANT TO A SEXUAL OFFENSE AGAINST A MINOR;

11 (2) CONTINUED SUPERVISION, EITHER IN PERSON OR THROUGH  
12 REMOTE MONITORING, OF THE PERSON'S HISTORY OF WEBSITES VISITED AND  
13 CONTENT ACCESSED FOR EVIDENCE RELEVANT TO A SEXUAL OFFENSE AGAINST  
14 A MINOR; OR

15 (3) PERIODIC UNANNOUNCED INSPECTIONS OF THE CONTENTS  
16 OF THE PERSON'S COMPUTER OR OTHER DEVICE WITH INTERNET ACCESS,  
17 INCLUDING THE RETRIEVAL AND COPYING OF ALL DATA FROM THE COMPUTER  
18 OR DEVICE AND ANY INTERNAL OR EXTERNAL STORAGE OR PORTABLE MEDIA,  
19 AND REMOVAL OF SUCH DATA, COMPUTER, DEVICE, OR MEDIA TO CONDUCT A  
20 MORE THOROUGH INSPECTION FOR EVIDENCE RELEVANT TO A SEXUAL CRIME  
21 AGAINST A MINOR.

22 (C) A SPECIAL SENTENCE OF SUPERVISION SHALL BE CONDUCTED BY A  
23 PAROLE AND PROBATION OFFICER, LAW ENFORCEMENT OFFICER, OR  
24 COMPUTER INFORMATION TECHNOLOGY SPECIALIST, IN A MANNER AND FORM  
25 PRESCRIBED BY THE SECRETARY.

26 (D) IF THE INTERNET WAS USED BY THE PERSON IN THE COMMISSION  
27 OF THE CRIME FOR WHICH SENTENCE IS BEING IMPOSED, THE JUDGE, AS PART  
28 OF THE SENTENCE, MAY LIMIT OR RESTRICT THE PERSON'S INTERNET ACCESS  
29 IN A MANNER TAILORED TO PREVENT FURTHER USE OF THE INTERNET BY THE  
30 PERSON TO COMMIT A SEXUAL OFFENSE AGAINST A MINOR.

31 (E) (1) A PERSON SUBJECT TO A SPECIAL SENTENCE OF  
32 SUPERVISION MAY PETITION THE COURT FOR RELEASE FROM THE  
33 SUPERVISION.

34 (2) A JUDGE MAY GRANT A PETITION FOR RELEASE ONLY UPON  
35 PROOF BY CLEAR AND CONVINCING EVIDENCE THAT THE PERSON:



1                   **(I) HAS NOT COMMITTED A SEXUAL OFFENSE AGAINST A**  
2 **MINOR SINCE THE LAST CONVICTION OR RELEASE FROM INCARCERATION,**  
3 **WHICHEVER IS LATER; AND**

4                   **(II) IS NOT LIKELY TO POSE A THREAT TO THE SAFETY OF**  
5 **OTHERS IF RELEASED FROM SUPERVISION.**

6           **(F) A PERSON WHO VIOLATES A SPECIAL SENTENCE OF SUPERVISION**  
7 **IMPOSED UNDER THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS**  
8 **SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT**  
9 **EXCEEDING \$10,000 OR BOTH.**

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