

SENATE BILL 893

E1, E2, E4

9lr3059
CF 9lr2241

By: **Senator Mooney**

Introduced and read first time: February 6, 2009

Assigned to: Judicial Proceedings and Finance

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
29 subject to one or more conditions that may include certain supervision or
30 inspections; requiring that a special sentence of supervision be conducted by a
31 certain officer or specialist, in a certain manner and form; authorizing a judge to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 limit or restrict a certain person's Internet access in a certain manner under
2 certain circumstances; establishing procedures by which a person may petition
3 for and a judge may grant release from a special sentence of supervision;
4 defining certain terms; and generally relating to protection of children from
5 online predators.

6 BY adding to
7 Article – Commercial Law
8 Section 14–3701 and 14–3702 to be under the new subtitle “Subtitle 37.
9 Parental Internet Control Products and Services”
10 Annotated Code of Maryland
11 (2005 Replacement Volume and 2008 Supplement)

12 BY adding to
13 Article – Courts and Judicial Proceedings
14 Section 5–427
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2008 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 10–4A–05(a)
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2008 Supplement)

22 BY adding to
23 Article – Criminal Law
24 Section 3–325
25 Annotated Code of Maryland
26 (2002 Volume and 2008 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – Criminal Procedure
29 Section 11–717(a)
30 Annotated Code of Maryland
31 (2008 Replacement Volume)

32 BY adding to
33 Article – Criminal Procedure
34 Section 11–728
35 Annotated Code of Maryland
36 (2008 Replacement Volume)

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

39 **Article – Commercial Law**

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

2 **14-3701.**

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

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

8 (I) **A PAID SUBSCRIPTION; OR**

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

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

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

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

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

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

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

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

27 **14-3702.**

28 (A) **AN INTERNET ACCESS PROVIDER SHALL MAKE AVAILABLE TO A**
29 **SUBSCRIBER A PARENTAL INTERNET CONTROL PRODUCT OR SERVICE IF:**

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

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

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

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

14 (2) MAY:

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

18 (II) CHARGE FOR THE PRODUCT OR SERVICE.

19 Article - Courts and Judicial Proceedings

20 5-427.

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
22 MEANINGS INDICATED.

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

28 (II) "INTERACTIVE COMPUTER SERVICE" INCLUDES A
29 SERVICE OR SYSTEM THAT:

30 1. PROVIDES OR ENABLES COMPUTER ACCESS BY
31 MULTIPLE USERS TO A COMPUTER SERVER; AND

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

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

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

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

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

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

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

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

28 **Article - Criminal Law**

29 **3-325.**

30 (A) A PERSON WHO IS AT LEAST 4 YEARS OLDER THAN A MINOR WHO IS
31 UNDER 16 YEARS OLD MAY NOT KNOWINGLY REQUEST OR ENCOURAGE THE
32 MINOR THROUGH COMMUNICATION BY WAY OF A COMPUTER NETWORK OR
33 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.**

33 11-728.

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

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

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

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

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

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

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

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

33 (2) A JUDGE MAY GRANT A PETITION FOR RELEASE ONLY UPON
34 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.