

Chapter 454

(House Bill 1053)

AN ACT concerning

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

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

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 11–207
Annotated Code of Maryland
(2002 Volume and 2009 Supplement)

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

Article – Criminal Law

11–207.

(a) A person may not:

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

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

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

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

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

(II) IN A MANNER THAT REFLECTS THE BELIEF, OR THAT IS INTENDED TO CAUSE ANOTHER TO BELIEVE, THAT THE MATTER, ~~PURPORTED MATTER,~~ VISUAL REPRESENTATION, OR PERFORMANCE DEPICTS A MINOR ENGAGED AS A SUBJECT OF SADMASOCHISTIC ABUSE OR SEXUAL CONDUCT; OR

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

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

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

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

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

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

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

(i) observation of the matter depicting the individual;

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

- (iii) expert medical testimony; or
- (iv) any other method authorized by an applicable provision of law or rule of evidence.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 4, 2010.