

SENATE BILL 15

E1, D4
SB 208/15 – JPR

(PRE-FILED)

6lr0652

By: **Senator Young**

Requested: September 3, 2015

Introduced and read first time: January 13, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Child Placement – Prohibition on Human Trafficking, Restrictions on**
3 **Advertising, and Reporting Requirements**

4 FOR the purpose of prohibiting a person from knowingly committing certain acts related
5 to rehoming a minor; providing that a person who violates certain prohibitions
6 related to rehoming a minor is guilty of the felony of human trafficking; providing a
7 certain affirmative defense to prosecution under certain provisions of law relating to
8 rehoming a minor; prohibiting a person other than the Department of Human
9 Resources or a child placement agency from advertising regarding the placement or
10 acceptance of a child for adoption; requiring a certain advertisement to include a
11 certain agency's license number; authorizing an individual to notify a certain local
12 department or law enforcement agency if the individual has reason to believe that a
13 child is living with someone other than the individual who has legal custody of the
14 child or an individual related by blood or marriage to an individual who has legal
15 custody of the child; requiring a certain individual to make a certain report, under
16 certain circumstances; providing that a certain report may be oral or in writing;
17 requiring an individual who makes a certain report to immediately notify and give
18 information to the head of a certain institution or a designee of the head of a certain
19 institution, under certain circumstances; specifying the contents of a certain report;
20 defining certain terms; providing certain penalties for violations of certain provisions
21 of this Act; and generally relating to child placement.

22 BY repealing and reenacting, with amendments,
23 Article – Criminal Law
24 Section 11–301 and 11–303
25 Annotated Code of Maryland
26 (2012 Replacement Volume and 2015 Supplement)

27 BY adding to
28 Article – Family Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 5–3A–46, 5–3B–33, and 5–704.3
2 Annotated Code of Maryland
3 (2012 Replacement Volume and 2015 Supplement)

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

6 **Article – Criminal Law**

7 11–301.

8 (a) In this subtitle the following words have the meanings indicated.

9 (b) “Assignment” means the making of an appointment or engagement for
10 prostitution or any act in furtherance of the appointment or engagement.

11 (c) **“CHILD PLACEMENT AGENCY” HAS THE MEANING STATED IN § 5–101 OF**
12 **THE FAMILY LAW ARTICLE.**

13 (d) **“PHYSICAL CUSTODY” MEANS THE PHYSICAL CARE AND SUPERVISION**
14 **OF A MINOR.**

15 [(c)] (e) “Prostitution” means the performance of a sexual act, sexual contact, or
16 vaginal intercourse for hire.

17 (f) (1) **“REHOME” MEANS TRANSFERRING PHYSICAL CUSTODY OF A**
18 **MINOR WHO IS THE SUBJECT OF A GUARDIANSHIP OR AN ADOPTION ORDER TO A**
19 **PERSON NOT RELATED BY BLOOD OR MARRIAGE TO AN ADOPTIVE PARENT OR A**
20 **LEGAL GUARDIAN OF THE MINOR:**

21 (i) **WITH THE INTENT OF PERMANENTLY DIVESTING AN**
22 **ADOPTIVE PARENT OR LEGAL GUARDIAN OF THE MINOR OF PARENTAL**
23 **RESPONSIBILITIES; AND**

24 (ii) **WITHOUT THE PRIOR APPROVAL OF A COURT.**

25 (2) **“REHOME” DOES NOT INCLUDE:**

26 (i) **THE PLACEMENT OF A MINOR BY THE DEPARTMENT OF**
27 **HUMAN RESOURCES OR A CHILD PLACEMENT AGENCY;**

28 (ii) **TRANSFERRING PHYSICAL CUSTODY OF A MINOR TO THE**
29 **DEPARTMENT OF HUMAN RESOURCES OR TO A CHILD PLACEMENT AGENCY;**

1 (III) TRANSFERRING PHYSICAL CUSTODY OF A MINOR TO
2 ANOTHER PERSON ON A TEMPORARY BASIS DUE TO:

3 1. A VACATION OR SCHOOL-SPONSORED ACTIVITY; OR

4 2. THE INCARCERATION, MILITARY SERVICE, MEDICAL
5 TREATMENT, OR TEMPORARY INCAPACITY OF THE MINOR'S ADOPTIVE PARENT OR
6 LEGAL GUARDIAN;

7 (IV) PLACING A MINOR IN ANOTHER STATE IN ACCORDANCE
8 WITH THE REQUIREMENTS OF THE INTERSTATE COMPACT ON THE PLACEMENT OF
9 CHILDREN; OR

10 (V) LEAVING A NEWBORN WITH A RESPONSIBLE ADULT IN
11 ACCORDANCE WITH § 5-641 OF THE COURTS ARTICLE.

12 [(d)] (G) "Sexual act" has the meaning stated in § 3-301 of this article.

13 [(e)] (H) "Sexual contact" has the meaning stated in § 3-301 of this article.

14 [(f)] (I) "Sexually explicit performance" means a public or private, live,
15 photographed, recorded, or videotaped act or show in which the performer is wholly or
16 partially nude, and which is intended to sexually arouse or appeal to the prurient interest
17 of patrons or viewers.

18 [(g)] (J) "Solicit" means urging, advising, inducing, encouraging, requesting, or
19 commanding another.

20 [(h)] (K) "Vaginal intercourse" has the meaning stated in § 3-301 of this article.

21 11-303.

22 (a) (1) A person may not knowingly:

23 (i) take or cause another to be taken to any place for prostitution;

24 (ii) place, cause to be placed, or harbor another in any place for
25 prostitution;

26 (iii) persuade, induce, entice, or encourage another to be taken to or
27 placed in any place for prostitution;

28 (iv) receive consideration to procure for or place in a house of
29 prostitution or elsewhere another with the intent of causing the other to engage in
30 prostitution or assignation;

1 (v) engage in a device, scheme, or continuing course of conduct
2 intended to cause another to believe that if the other did not take part in a sexually explicit
3 performance, the other or a third person would suffer physical restraint or serious physical
4 harm; or

5 (vi) destroy, conceal, remove, confiscate, or possess an actual or
6 purported passport, immigration document, or government identification document of
7 another while otherwise violating or attempting to violate this subsection.

8 (2) A parent, guardian, or person who has permanent or temporary care or
9 custody or responsibility for supervision of another may not consent to the taking or
10 detention of the other for prostitution.

11 (b) (1) A person may not violate subsection (a) of this section involving a victim
12 who is a minor.

13 (2) A person may not knowingly take or detain another with the intent to
14 use force, threat, coercion, or fraud to compel the other to marry the person or a third person
15 or perform a sexual act, sexual contact, or vaginal intercourse.

16 **(3) A PERSON MAY NOT KNOWINGLY:**

17 **(I) REHOME A MINOR;**

18 **(II) ADVERTISE, RECRUIT, OR SOLICIT A MINOR FOR REHOMING;**

19 **(III) HARBOR, TRANSPORT, TRANSFER, OR RECEIVE A MINOR**
20 **FOR THE PURPOSE OF REHOMING THE MINOR; OR**

21 **(IV) ENTER INTO ANY AGREEMENT, WITH OR WITHOUT**
22 **VALUABLE CONSIDERATION, TO REHOME A MINOR.**

23 (c) (1) (i) Except as provided in paragraph (2) of this subsection, a person
24 who violates subsection (a) of this section is guilty of the misdemeanor of human trafficking
25 and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding
26 \$5,000 or both.

27 (ii) A person who violates subsection (a) of this section is subject to §
28 5–106(b) of the Courts Article.

29 (2) A person who violates subsection (b) of this section is guilty of the felony
30 of human trafficking and on conviction is subject to imprisonment not exceeding 25 years
31 or a fine not exceeding \$15,000 or both.

1 (d) A person who violates this section may be charged, tried, and sentenced in any
2 county in or through which the person transported or attempted to transport the other.

3 (e) (1) A person who knowingly benefits financially or by receiving anything of
4 value from participation in a venture that includes an act described in subsection (a) or (b)
5 of this section is subject to the same penalties that would apply if the person had violated
6 that subsection.

7 (2) A person who knowingly aids, abets, or conspires with one or more other
8 persons to violate any subsection of this section is subject to the same penalties that apply
9 for a violation of that subsection.

10 (f) It is not a defense to a prosecution under subsection (b)(1) of this section that
11 the person did not know the age of the victim.

12 **(G) IT IS AN AFFIRMATIVE DEFENSE TO PROSECUTION UNDER SUBSECTION**
13 **(B)(3) OF THIS SECTION THAT:**

14 **(1) PHYSICAL CUSTODY OF THE MINOR WAS TRANSFERRED BY A**
15 **VALID POWER OF ATTORNEY; AND**

16 **(2) AT THE TIME THE TRANSFER OCCURRED, THERE WAS A PETITION**
17 **PENDING BEFORE AN APPROPRIATE COURT OR AN ADMINISTRATIVE AGENCY TO**
18 **APPOINT THE PERSON TO WHOM THE MINOR WAS TRANSFERRED AS THE MINOR'S**
19 **LEGAL GUARDIAN.**

20 **Article – Family Law**

21 **5-3A-46.**

22 **(A) IN THIS SECTION, “ADVERTISE” MEANS TO COMMUNICATE BY**
23 **NEWSPAPER, RADIO, TELEVISION, E-MAIL, INTERNET POSTING, OR ANY OTHER**
24 **PRINT OR ELECTRONIC MEDIA THAT ORIGINATES WITHIN THE STATE.**

25 **(B) (1) WHENEVER A PRIVATE CHILD PLACEMENT AGENCY LICENSED BY**
26 **THE SOCIAL SERVICES ADMINISTRATION OF THE DEPARTMENT UNDER § 5-507 OF**
27 **THIS TITLE, OR BY A COMPARABLE GOVERNMENTAL UNIT OF ANOTHER STATE,**
28 **ADVERTISES REGARDING THE PLACEMENT OR ACCEPTANCE OF A CHILD FOR**
29 **ADOPTION, THE ADVERTISEMENT MUST INCLUDE THE AGENCY'S LICENSE NUMBER.**

30 **(2) THIS SECTION DOES NOT PROHIBIT A LICENSED ATTORNEY FROM**
31 **ADVERTISING THE ATTORNEY'S AVAILABILITY TO PROVIDE LEGAL SERVICES**
32 **RELATED TO ADOPTIONS.**

1 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
2 AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$100 OR
3 IMPRISONMENT NOT EXCEEDING 3 MONTHS OR BOTH FOR EACH OFFENSE.

4 ~~5-3B-33.~~

5 (A) IN THIS SECTION, "ADVERTISE" MEANS TO COMMUNICATE BY
6 NEWSPAPER, RADIO, TELEVISION, E-MAIL, INTERNET POSTING, OR ANY OTHER
7 PRINT OR ELECTRONIC MEDIA THAT ORIGINATES WITHIN THE STATE.

8 (B) THIS SECTION DOES NOT APPLY TO THE DEPARTMENT OR A CHILD
9 PLACEMENT AGENCY.

10 (C) A PERSON MAY NOT ADVERTISE REGARDING THE PLACEMENT OR
11 ACCEPTANCE OF A CHILD FOR ADOPTION.

12 (D) THIS SECTION DOES NOT PROHIBIT A LICENSED ATTORNEY FROM
13 ADVERTISING THE ATTORNEY'S AVAILABILITY TO PROVIDE LEGAL SERVICES
14 RELATED TO ADOPTIONS.

15 (E) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
16 AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$100 OR
17 IMPRISONMENT NOT EXCEEDING 3 MONTHS OR BOTH FOR EACH OFFENSE.

18 ~~5-704.3.~~

19 (A) (1) AN INDIVIDUAL MAY NOTIFY THE LOCAL DEPARTMENT OR THE
20 APPROPRIATE LAW ENFORCEMENT AGENCY IF THE INDIVIDUAL HAS REASON TO
21 BELIEVE THAT A CHILD IS LIVING WITH SOMEONE OTHER THAN:

22 (I) AN INDIVIDUAL WHO HAS LEGAL CUSTODY OF THE CHILD;
23 OR

24 (II) AN INDIVIDUAL RELATED BY BLOOD OR MARRIAGE TO AN
25 INDIVIDUAL WHO HAS LEGAL CUSTODY OF THE CHILD.

26 (2) AN INDIVIDUAL REQUIRED TO MAKE A REPORT UNDER § 5-704 OF
27 THIS SUBTITLE SHALL IMMEDIATELY NOTIFY THE LOCAL DEPARTMENT OR THE
28 APPROPRIATE LAW ENFORCEMENT AGENCY IF THE INDIVIDUAL HAS REASON TO
29 BELIEVE THAT A CHILD HAS BEEN LIVING WITH SOMEONE OTHER THAN AN
30 INDIVIDUAL LISTED IN PARAGRAPH (1) OF THIS SUBSECTION FOR 6 MONTHS OR
31 MORE.

1 **(B) (1) A REPORT UNDER THIS SECTION MAY BE ORAL OR IN WRITING.**

2 **(2) TO THE EXTENT REASONABLY POSSIBLE, AN INDIVIDUAL WHO**
3 **MAKES A REPORT UNDER THIS SECTION SHALL INCLUDE IN THE REPORT THE**
4 **FOLLOWING INFORMATION:**

5 **(I) THE NAME, AGE, AND HOME ADDRESS OF THE CHILD;**

6 **(II) THE NAME AND HOME ADDRESS OF THE INDIVIDUAL WITH**
7 **WHOM THE CHILD IS LIVING;**

8 **(III) THE NAME AND HOME ADDRESS OF THE INDIVIDUAL WHO**
9 **HAS LEGAL CUSTODY OF THE CHILD;**

10 **(IV) THE WHEREABOUTS OF THE CHILD; AND**

11 **(V) ANY OTHER INFORMATION THAT WOULD HELP TO**
12 **DETERMINE WHETHER THE CHILD HAS BEEN SUBJECT TO HUMAN TRAFFICKING IN**
13 **VIOLATION OF § 11-303 OF THE CRIMINAL LAW ARTICLE.**

14 **(3) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC HEALTH**
15 **AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER, SCHOOL, OR**
16 **SIMILAR INSTITUTION, AN INDIVIDUAL WHO MAKES A REPORT UNDER THIS SECTION**
17 **IMMEDIATELY SHALL NOTIFY AND GIVE ALL OF THE INFORMATION REQUIRED**
18 **UNDER PARAGRAPH (2) OF THIS SUBSECTION TO THE HEAD OF THE INSTITUTION OR**
19 **THE DESIGNEE OF THE HEAD OF THE INSTITUTION.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2016.