

# SENATE BILL 674

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CF 4lr2196

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By: **Senators Jacobs, DeGrange, Forehand, Hershey, Shank, and Stone**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Probation – Sexual Crimes Involving a Minor**

3 FOR the purpose of adding certain sexual crimes involving a minor to a list of crimes  
4 for which a court may order probation for a time longer than the sentence  
5 imposed subject to certain limitations; repealing a certain requirement that a  
6 certain defendant consent in writing to a certain order of probation; and  
7 generally relating to probation.

8 BY repealing and reenacting, without amendments,  
9 Article – Criminal Law  
10 Section 3–324, 11–207, and 11–208  
11 Annotated Code of Maryland  
12 (2012 Replacement Volume and 2013 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article – Criminal Procedure  
15 Section 6–222(a)  
16 Annotated Code of Maryland  
17 (2008 Replacement Volume and 2013 Supplement)

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

20 **Article – Criminal Law**

21 3–324.

22 (a) In this section, “solicit” means to command, authorize, urge, entice,  
23 request, or advise a person by any means, including:

24 (1) in person;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (2) through an agent or agency;
- 2 (3) over the telephone;
- 3 (4) through any print medium;
- 4 (5) by mail;
- 5 (6) by computer or Internet; or
- 6 (7) by any other electronic means.

7 (b) A person may not, with the intent to commit a violation of § 3-304, §  
8 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article,  
9 knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in  
10 activities that would be unlawful for the person to engage in under § 3-304, § 3-306,  
11 or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article.

12 (c) A violation of this section is considered to be committed in the State for  
13 purposes of determining jurisdiction if the solicitation:

- 14 (1) originated in the State; or
- 15 (2) is received in the State.

16 (d) A person who violates this section is guilty of a felony and on conviction is  
17 subject to imprisonment not exceeding 10 years or a fine not exceeding \$25,000 or  
18 both.

19 11-207.

20 (a) A person may not:

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

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

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

28 (4) knowingly promote, advertise, solicit, distribute, or possess with  
29 the intent to distribute any matter, visual representation, or performance:

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

3 (ii) in a manner that reflects the belief, or that is intended to  
4 cause another to believe, that the matter, visual representation, or performance  
5 depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or

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

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

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

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

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

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

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

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

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

30 (iii) expert medical testimony; or

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

33 11-208.

1 (a) A person may not knowingly possess and intentionally retain a film,  
2 videotape, photograph, or other visual representation showing an actual child under  
3 the age of 16 years:

4 (1) engaged as a subject of sadomasochistic abuse;

5 (2) engaged in sexual conduct; or

6 (3) in a state of sexual excitement.

7 (b) (1) Except as provided in paragraph (2) of this subsection, a person  
8 who violates this section is guilty of a misdemeanor and on conviction is subject to  
9 imprisonment not exceeding 5 years or a fine not exceeding \$2,500 or both.

10 (2) A person who violates this section, having previously been  
11 convicted under this section, is guilty of a felony and on conviction is subject to  
12 imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

13 (c) Nothing in this section may be construed to prohibit a parent from  
14 possessing visual representations of the parent's own child in the nude unless the  
15 visual representations show the child engaged:

16 (1) as a subject of sadomasochistic abuse; or

17 (2) in sexual conduct and in a state of sexual excitement.

18 (d) It is an affirmative defense to a charge of violating this section that the  
19 person promptly and in good faith:

20 (1) took reasonable steps to destroy each visual representation; or

21 (2) reported the matter to a law enforcement agency.

## 22 Article – Criminal Procedure

23 6–222.

24 (a) A circuit court or the District Court may:

25 (1) impose a sentence for a specified time and provide that a lesser  
26 time be served in confinement;

27 (2) suspend the remainder of the sentence; and

28 (3) (i) order probation for a time longer than the sentence but,  
29 subject to subsections (b) and (c) of this section, not longer than:

1  
2 or

1. 5 years if the probation is ordered by a circuit court;

3  
4 Court; or

2. 3 years if the probation is ordered by the District

5 (ii) if a defendant **IS** convicted of sexual abuse of a minor under  
6 § 3–602 of the Criminal Law Article or a crime involving a minor under § 3–303, §  
7 3–304, § 3–305, § 3–306, **[or] § 3–307, § 3–324, § 11–207, OR § 11–208** of the  
8 Criminal Law Article, **[consents in writing,]** order probation for a time longer than the  
9 sentence that was imposed on the defendant, but not longer than:

10  
11 or

1. 10 years if the probation is ordered by a circuit court;

12  
13 Court.

2. 6 years if the probation is ordered by the District

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2014.