

# HOUSE BILL 737

E1

7lr1566

---

By: **Delegate B. Wilson**

Introduced and read first time: February 2, 2017

Assigned to: Judiciary

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Child Pornography – Discovery Exception**

3 FOR the purpose of prohibiting the reproduction of certain obscene material in a  
4 prosecution for certain child pornography charges; requiring the State to make  
5 certain material available for a certain defendant to review; requiring the State to  
6 produce redacted copies of certain material under certain circumstances; requiring  
7 the State to produce metadata of certain material under certain circumstances;  
8 clarifying that a certain defendant is not entitled during discovery to certain  
9 material; defining a certain term; and generally relating to child pornography and  
10 discovery.

11 BY repealing and reenacting, without amendments,  
12 Article – Criminal Law  
13 Section 11–207  
14 Annotated Code of Maryland  
15 (2012 Replacement Volume and 2016 Supplement)

16 BY adding to  
17 Article – Criminal Procedure  
18 Section 11–206  
19 Annotated Code of Maryland  
20 (2008 Replacement Volume and 2016 Supplement)

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

23 **Article – Criminal Law**

24 11–207.

25 (a) A person may not:

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7                   (iii) expert medical testimony; or

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

#### 10                                   Article – Criminal Procedure

#### 11   **11–206.**

12           **(A) IN THIS SECTION, “METADATA” HAS THE MEANING STATED IN §**  
13 **4–205(A) OF THE GENERAL PROVISIONS ARTICLE.**

14           **(B) FOR A PROSECUTION OF A VIOLATION OF § 11–207 OF THE CRIMINAL**  
15 **LAW ARTICLE DURING THE DISCOVERY PROCESS, THE STATE MAY NOT REPRODUCE**  
16 **THE OBSCENE MATERIAL OR ANY VISUAL REPRESENTATION OR PERFORMANCE**  
17 **THAT DEPICTS A MINOR ENGAGED AS A SUBJECT IN SADMASOCHISTIC ABUSE OR**  
18 **SEXUAL CONDUCT.**

19           **(C) FOR MATERIAL PROHIBITED FROM BEING REPRODUCED UNDER**  
20 **SUBSECTION (B) OF THIS SUBSECTION, THE STATE SHALL:**

21                   **(1) MAKE THE MATERIAL AVAILABLE FOR REVIEW BY A DEFENDANT**  
22 **IN THE STATE’S ATTORNEY’S OFFICE;**

23                   **(2) PRODUCE REDACTED COPIES OF THE MATERIAL; AND**

24                   **(3) IF APPLICABLE, PRODUCE ANY METADATA OF THE MATERIAL.**

25           **(D) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A**  
26 **DEFENDANT IS NOT ENTITLED, IN THE COURSE OF DISCOVERY, TO THE OBSCENE**  
27 **MATERIAL DESCRIBED IN SUBSECTION (B) OF THIS SECTION.**

28           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2017.