

HOUSE BILL 501

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CF SB 365

By: **Delegates Moon, Bartlett, Charkoudian, W. Fisher, Fraser-Hidalgo, Korman, Lopez, Shetty, and Williams**

Introduced and read first time: January 24, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Child Pornography and Exhibition and Display of Obscene**
3 **Items to Minors**

4 FOR the purpose of establishing certain exceptions to certain provisions of law relating to
5 the display and exhibition of a certain item to a minor, child pornography, and
6 possession of a certain visual representation of a child under the age of 16 years;
7 providing for the construction of certain provisions of law relating to possession of a
8 certain visual representation of a child under the age of 16 years; prohibiting a minor
9 from engaging in certain conduct involving the display or exhibition of a certain item
10 to another minor, child pornography, or possession of certain visual representations;
11 providing that a certain child may not be committed to the Department of Juvenile
12 Services for out-of-home placement for a violation of this Act, except under certain
13 circumstances; requiring a juvenile court to order a child adjudicated delinquent for
14 a violation of this Act to complete a certain program; providing that a certain child
15 may not be subject to certain disposition measures by a juvenile court except under
16 certain circumstances; establishing that a minor who violates the prohibition
17 established by this Act is guilty of a Code violation and is subject to a certain penalty;
18 providing that a violation of this Act is a Code violation and does not impose any of
19 the civil disabilities that may result from a criminal conviction; establishing certain
20 exceptions to the prohibition established by this Act; providing that a police officer
21 authorized to make arrests may issue a citation for a violation of this Act under
22 certain circumstances; providing for the form and issuance of a citation for a civil
23 offense under this Act; providing for procedures in delinquency proceedings involving
24 violations of this Act; requiring the District Court to prescribe the citation; requiring
25 a jurisdiction issuing a citation under this Act to forward the citation to a certain
26 court for trial; requiring a court to summon a minor to appear in court for trial;
27 providing for the jurisdiction of the juvenile court over certain violations of this Act;
28 providing for the jurisdiction of the District Court for a certain violation of this Act;
29 establishing procedures for a case involving a violation of this Act in which a minor
30 fails to respond to a certain summons for trial; establishing procedures for a case

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 involving a Code violation under this Act; providing that a defendant in a Code
2 violation case under this Act is liable for certain costs; authorizing a certain State's
3 Attorney to prosecute a Code violation under this Act in a certain manner;
4 prohibiting a certain citation for a violation of this Act from being subject to public
5 inspection or included on a certain public website; establishing a certain affirmative
6 defense for a violation of this Act; providing for the construction of certain provisions
7 of this Act; providing that a certain minor who is found not guilty or adjudicated to
8 have not committed a delinquent act for a violation of this Act may not be subject to
9 a prosecution or a proceeding alleging a delinquent act under certain provisions of
10 law under certain circumstances; requiring the Secretary of Juvenile Services to
11 develop and conduct a certain education program in each county in the State;
12 authorizing the Secretary to adopt certain regulations; making conforming changes;
13 defining certain terms; and generally relating to child pornography and the
14 exhibition and display of obscene items to minors.

15 BY repealing and reenacting, with amendments,
16 Article – Courts and Judicial Proceedings
17 Section 3–8A–19(d)
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2019 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Courts and Judicial Proceedings
22 Section 10–923(a)
23 Annotated Code of Maryland
24 (2013 Replacement Volume and 2019 Supplement)

25 BY repealing and reenacting, without amendments,
26 Article – Criminal Law
27 Section 11–101(a) and (c) through (e) and 11–201
28 Annotated Code of Maryland
29 (2012 Replacement Volume and 2019 Supplement)

30 BY repealing and reenacting, with amendments,
31 Article – Criminal Law
32 Section 11–203, 11–207, and 11–208
33 Annotated Code of Maryland
34 (2012 Replacement Volume and 2019 Supplement)

35 BY adding to
36 Article – Criminal Law
37 Section 11–212
38 Annotated Code of Maryland
39 (2012 Replacement Volume and 2019 Supplement)

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

1 **Article – Courts and Judicial Proceedings**

2 3–8A–19.

3 (d) (1) In making a disposition on a petition under this subtitle, the court may:

4 (i) Place the child on probation or under supervision in his own
5 home or in the custody or under the guardianship of a relative or other fit person, upon
6 terms the court deems appropriate, including community detention;

7 (ii) Subject to the provisions of paragraphs (2) and (3) of this
8 subsection, commit the child to the custody or under the guardianship of the Department
9 of Juvenile Services, the Maryland Department of Health, or a public or licensed private
10 agency on terms that the court considers appropriate to meet the priorities set forth in §
11 3–8A–02 of this subtitle, including designation of the type of facility where the child is to
12 be accommodated, until custody or guardianship is terminated with approval of the court
13 or as required under § 3–8A–24 of this subtitle; or

14 (iii) Order the child, parents, guardian, or custodian of the child to
15 participate in rehabilitative services that are in the best interest of the child and the family.

16 (2) In addition to the provisions of paragraph (1) of this subsection, in
17 making a disposition on a petition, the court may adopt a treatment service plan, as defined
18 in § 3–8A–20.1 of this subtitle.

19 (3) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph,
20 a child may not be committed to the Department of Juvenile Services for out-of-home
21 placement if the most serious offense is:

22 1. Possession of marijuana under § 5–601(c)(2)(ii) of the
23 Criminal Law Article;

24 2. Possession or purchase of a noncontrolled substance under
25 § 5–618 of the Criminal Law Article;

26 3. Disturbing the peace or disorderly conduct under § 10–201
27 of the Criminal Law Article;

28 4. Malicious destruction of property under § 6–301 of the
29 Criminal Law Article;

30 5. An offense involving inhalants under § 5–708 of the
31 Criminal Law Article;

32 6. An offense involving prostitution under § 11–303, §
33 11–306, or § 11–307 of the Criminal Law Article;

1 7. Theft under § 7–104(g)(2) or (3) of the Criminal Law
2 Article; [or]

3 8. Trespass under § 6–402(b)(1) or § 6–403(c)(1) of the
4 Criminal Law Article; **OR**

5 **9. AN OFFENSE INVOLVING DISPLAY OF OBSCENE**
6 **MATTER TO A MINOR OR CHILD PORNOGRAPHY UNDER § 11–212 OF THE CRIMINAL**
7 **LAW ARTICLE.**

8 (ii) A child whose most serious offense is an offense listed in
9 subparagraph (i) of this paragraph may be committed to the Department of Juvenile
10 Services for out-of-home placement if:

11 1. The child previously has been adjudicated delinquent for
12 three or more offenses arising from separate and independent circumstances;

13 2. The child waives the prohibition described in
14 subparagraph (i) of this paragraph and the court accepts the waiver as knowing, intelligent,
15 and voluntary; or

16 3. The court makes a written finding in accordance with
17 subparagraph (iii) of this paragraph.

18 (iii) A child whose most serious offense is an offense listed in
19 subparagraph (i) of this paragraph may be committed to the Department of Juvenile
20 Services for out-of-home placement if the court makes a written finding, including the
21 specific facts supporting the finding, that an out-of-home placement is necessary for the
22 welfare of the child or in the interest of public safety.

23 (iv) **1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS**
24 **SUBPARAGRAPH, A CHILD WHOSE MOST SERIOUS OFFENSE IS AN OFFENSE**
25 **INVOLVING THE DISPLAY OF OBSCENE MATTER TO A MINOR OR CHILD**
26 **PORNOGRAPHY UNDER § 11–212 OF THE CRIMINAL LAW ARTICLE SHALL BE**
27 **ORDERED TO COMPLETE THE EDUCATION PROGRAM DEVELOPED BY THE**
28 **SECRETARY OF JUVENILE SERVICES UNDER § 11–212 OF THE CRIMINAL LAW**
29 **ARTICLE.**

30 **2. THE CHILD MAY NOT BE SUBJECT TO ANY OTHER**
31 **DISPOSITION MEASURE AUTHORIZED UNDER THIS SECTION UNLESS:**

32 **A. THE CHILD REFUSES OR FAILS TO COMPLETE THE**
33 **EDUCATION PROGRAM ORDERED BY THE COURT UNDER SUBSUBPARAGRAPH 1 OF**
34 **THIS SUBPARAGRAPH; OR**

1 **B. THE COURT MAKES A WRITTEN FINDING, INCLUDING**
2 **SPECIFIC FACTS SUPPORTING THE FINDING, THAT THE DISPOSITION MEASURE IS**
3 **NECESSARY FOR THE WELFARE OF THE CHILD OR IN THE INTEREST OF PUBLIC**
4 **SAFETY.**

5 **(V)** This paragraph may not be construed to prohibit the court from
6 committing the child to another appropriate agency.

7 (4) A child committed under paragraph (1)(ii) of this subsection may not be
8 accommodated in a facility that has reached budgeted capacity if a bed is available in
9 another comparable facility in the State, unless the placement to the facility that has
10 reached budgeted capacity has been recommended by the Department of Juvenile Services.

11 (5) The court shall consider any oral address made in accordance with §
12 11-403 of the Criminal Procedure Article or any victim impact statement, as described in
13 § 11-402 of the Criminal Procedure Article, in determining an appropriate disposition on a
14 petition.

15 (6) (i) If the court finds that a child enrolled in a public elementary or
16 secondary school is delinquent or in need of supervision and commits the child to the
17 custody or under the guardianship of the Department of Juvenile Services, the court may
18 notify the county superintendent, the supervisor of pupil personnel, or any other official
19 designated by the county superintendent of the fact that the child has been found to be
20 delinquent or in need of supervision and has been committed to the custody or under the
21 guardianship of the Department of Juvenile Services.

22 (ii) If the court rescinds the commitment order for a child enrolled in
23 a public elementary or secondary school, the court may notify the county superintendent,
24 the supervisor of pupil personnel, or any other official designated by the county
25 superintendent of the fact that the child is no longer committed to the custody of the
26 Department of Juvenile Services.

27 (iii) The notice authorized under subparagraphs (i) and (ii) of this
28 paragraph may not include any order or pleading related to the delinquency or child in need
29 of supervision case.

30 10-923.

31 (a) In this section, “sexually assaultive behavior” means an act that would
32 constitute:

33 (1) A sexual crime under Title 3, Subtitle 3 of the Criminal Law Article;

34 (2) Sexual abuse of a minor under § 3-602 of the Criminal Law Article;

- 1 (3) Sexual abuse of a vulnerable adult under § 3–604 of the Criminal Law
 2 Article;
- 3 (4) A violation of 18 U.S.C. Chapter 109A; or
- 4 (5) A violation of a law of another state, the United States, or a foreign
 5 country that is equivalent to an offense under item (1), (2), (3), or (4) of this subsection.

6 **Article – Criminal Law**

7 11–101.

- 8 (a) In this subtitle the following words have the meanings indicated.
- 9 (c) “Sadomasochistic abuse” means:
- 10 (1) flagellation or torture committed by or inflicted on an individual who
 11 is:
- 12 (i) nude;
- 13 (ii) wearing only undergarments; or
- 14 (iii) wearing a revealing or bizarre costume; or
- 15 (2) binding, fettering, or otherwise physically restraining an individual
 16 who is:
- 17 (i) nude;
- 18 (ii) wearing only undergarments; or
- 19 (iii) wearing a revealing or bizarre costume.
- 20 (d) “Sexual conduct” means:
- 21 (1) human masturbation;
- 22 (2) sexual intercourse;
- 23 (3) whether alone or with another individual or animal, any touching of or
 24 contact with:
- 25 (i) the genitals, buttocks, or pubic areas of an individual; or
- 26 (ii) breasts of a female individual; or

1 (4) lascivious exhibition of the genitals or pubic area of any person.

2 (e) “Sexual excitement” means:

3 (1) the condition of the human genitals when in a state of sexual
4 stimulation;

5 (2) the condition of the human female breasts when in a state of sexual
6 stimulation; or

7 (3) the sensual experiences of individuals engaging in or witnessing sexual
8 conduct or nudity.

9 11–201.

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

11 (b) “Distribute” means to transfer possession.

12 (c) “Knowingly” means having knowledge of the character and content of the
13 matter.

14 (d) “Matter” means:

15 (1) a book, magazine, newspaper, or other printed or written material;

16 (2) a picture, drawing, photograph, motion picture, or other pictorial
17 representation;

18 (3) a statue or other figure;

19 (4) a recording, transcription, or mechanical, chemical, or electrical
20 reproduction; or

21 (5) any other article, equipment, machine, or material.

22 (e) “Sadomasochistic abuse” has the meaning stated in § 11–101 of this title.

23 (f) “Sexual conduct” has the meaning stated in § 11–101 of this title.

24 (g) “Sexual excitement” has the meaning stated in § 11–101 of this title.

25 11–203.

26 (a) (1) In this section the following words have the meanings indicated.

27 (2) “Distribute” includes to rent.

1 (3) "Illicit sex" means:

- 2 (i) human genitals in a state of sexual stimulation or arousal;
- 3 (ii) acts of human masturbation, sexual intercourse, or sodomy; or
- 4 (iii) fondling or other erotic touching of human genitals.

5 (4) "Item" means a:

- 6 (i) still picture or photograph;
- 7 (ii) book, pocket book, pamphlet, or magazine;
- 8 (iii) videodisc, videotape, video game, film, or computer disc; or
- 9 (iv) recorded telephone message.

10 (5) "Obscene" means:

- 11 (i) that the average adult applying contemporary community
12 standards would find that the work, taken as a whole, appeals to the prurient interest;
- 13 (ii) that the work depicts sexual conduct specified in subsection (b)
14 of this section in a way that is patently offensive to prevailing standards in the adult
15 community as a whole with respect to what is suitable material; and
- 16 (iii) that the work, taken as a whole, lacks serious artistic,
17 educational, literary, political, or scientific value.

18 (6) "Partially nude figure" means a figure with:

- 19 (i) less than completely and opaquely covered human genitals, pubic
20 region, buttocks, or female breast below a point immediately above the top of the areola; or
- 21 (ii) human male genitals in a discernibly turgid state, even if
22 completely and opaquely covered.

23 (b) (1) **[A] EXCEPT AS PROVIDED UNDER SUBSECTION (E) OF THIS**
24 **SECTION, A** person may not willfully or knowingly display or exhibit to a minor an item:

- 25 (i) the cover or content of which is principally made up of an obscene
26 description or depiction of illicit sex; or
- 27 (ii) that consists of an obscene picture of a nude or partially nude
28 figure.

1 (2) A person may not willfully or knowingly engage in the business of
2 displaying, exhibiting, selling, showing, advertising for sale, or distributing to a minor an
3 item:

4 (i) the cover or content of which is principally made up of an obscene
5 description or depiction of illicit sex; or

6 (ii) that consists of an obscene picture of a nude or partially nude
7 figure.

8 (3) If a newsstand or other place of business is frequented by minors, the
9 owner, operator, franchisee, manager, or an employee with managerial responsibility may
10 not openly and knowingly display at the place of business an item whose sale, display,
11 exhibition, showing, or advertising is prohibited by paragraph (2) of this subsection.

12 (c) The provision of services or facilities by a telephone company under a tariff
13 approved by the Public Service Commission is not a violation of subsection (b) of this section
14 relating to recorded telephone messages.

15 (d) A person who violates this section is guilty of a misdemeanor and on conviction
16 is subject to:

17 (1) for a first violation, imprisonment not exceeding 1 year or a fine not
18 exceeding \$1,000 or both; and

19 (2) for each subsequent violation, imprisonment not exceeding 3 years or a
20 fine not exceeding \$5,000 or both.

21 **(E) A MINOR MAY NOT BE FOUND TO HAVE VIOLATED THIS SECTION FOR**
22 **CONDUCT THAT VIOLATES § 11-212 OF THIS SUBTITLE UNLESS THE MINOR ON A**
23 **PRIOR OCCASION HAS BEEN:**

24 **(1) CONVICTED OF OR ADJUDICATED DELINQUENT UNDER:**

25 **(I) THIS SECTION;**

26 **(II) § 11-207 OF THIS SUBTITLE (CHILD PORNOGRAPHY);**

27 **(III) § 11-208 OF THIS SUBTITLE (POSSESSION OF A VISUAL**
28 **REPRESENTATION OF A CHILD UNDER THE AGE OF 16 YEARS ENGAGED IN CERTAIN**
29 **SEXUAL ACTS);**

30 **(IV) TITLE 3, SUBTITLE 3 OF THIS ARTICLE (SEXUAL CRIMES);**

31 **(V) § 3-602 OF THIS ARTICLE (SEXUAL ABUSE OF A MINOR);**

1 (VI) § 3-604 OF THIS ARTICLE, INVOLVING SEXUAL ABUSE OF A
2 VULNERABLE ADULT;

3 (VII) § 3-709 OF THIS ARTICLE (SEXTORTION AND REVENGE
4 PORN);

5 (VIII) 18 U.S.C. CHAPTER 109A (SEXUAL ABUSE); OR

6 (IX) A LAW OF ANOTHER STATE, THE UNITED STATES, OR A
7 FOREIGN COUNTRY THAT IS EQUIVALENT TO AN OFFENSE UNDER ITEMS (I)
8 THROUGH (VII) OF THIS ITEM; OR

9 (2) FOUND GUILTY OF A CODE VIOLATION OR ADJUDICATED
10 DELINQUENT FOR A VIOLATION OF § 11-212 OF THIS SUBTITLE.

11 11-207.

12 (a) [A] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A person
13 may not:

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

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

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

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

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

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

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

1 sexual conduct of or with a minor.

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

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

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

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

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

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

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

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

20 (iii) expert medical testimony; or

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

23 **(D) A MINOR MAY NOT BE FOUND TO HAVE VIOLATED THIS SECTION FOR**
24 **CONDUCT THAT VIOLATES § 11-212 OF THIS SUBTITLE UNLESS THE MINOR HAS**
25 **PREVIOUSLY BEEN:**

26 **(1) CONVICTED OF OR ADJUDICATED DELINQUENT UNDER:**

27 **(I) THIS SECTION;**

28 **(II) § 11-203 OF THIS SUBTITLE (SALE OR DISPLAY OF AN**
29 **OBSCENE ITEM TO A MINOR);**

30 **(III) § 11-208 OF THIS SUBTITLE (POSSESSION OF A VISUAL**
31 **REPRESENTATION OF A CHILD UNDER THE AGE OF 16 YEARS ENGAGED IN CERTAIN**

1 **SEXUAL ACTS);**

2 (IV) **TITLE 3, SUBTITLE 3 OF THIS ARTICLE (SEXUAL CRIMES);**

3 (V) **§ 3-602 OF THIS ARTICLE (SEXUAL ABUSE OF A MINOR);**

4 (VI) **§ 3-604 OF THIS ARTICLE, INVOLVING SEXUAL ABUSE OF A**
5 **VULNERABLE ADULT;**

6 (VII) **§ 3-709 OF THIS ARTICLE (SEXTORTION AND REVENGE**
7 **PORN);**

8 (VIII) **18 U.S.C. CHAPTER 109A (SEXUAL ABUSE); OR**

9 (IX) **A LAW OF ANOTHER STATE, THE UNITED STATES, OR A**
10 **FOREIGN COUNTRY THAT IS EQUIVALENT TO AN OFFENSE UNDER ITEMS (I)**
11 **THROUGH (VII) OF THIS ITEM; OR**

12 (2) **FOUND GUILTY OF A CODE VIOLATION OR ADJUDICATED**
13 **DELINQUENT FOR A VIOLATION OF § 11-212 OF THIS SUBTITLE.**

14 11-208.

15 (a) (1) In this section, “indistinguishable from an actual and identifiable child”
16 means an ordinary person would conclude that the image is of an actual and identifiable
17 minor.

18 (2) “Indistinguishable from an actual and identifiable child” includes a
19 computer-generated image that has been created, adapted, or modified to appear as an
20 actual and identifiable child.

21 (3) “Indistinguishable from an actual and identifiable child” does not
22 include images or items depicting minors that are:

23 (i) drawings;

24 (ii) cartoons;

25 (iii) sculptures; or

26 (iv) paintings.

27 (b) [A] **EXCEPT AS PROVIDED IN SUBSECTIONS (D) AND (F) OF THIS**
28 **SECTION, A person may not knowingly possess and intentionally retain a film, videotape,**
29 **photograph, or other visual representation showing an actual child or a**

1 computer-generated image that is indistinguishable from an actual and identifiable child
2 under the age of 16 years:

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

4 (2) engaged in sexual conduct; or

5 (3) in a state of sexual excitement.

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

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

12 (d) Nothing in this section may be construed to prohibit:

13 (1) a parent from possessing visual representations of the parent's own
14 child in the nude unless the visual representations show the child engaged:

15 [(1)] (I) as a subject of sadomasochistic abuse; or

16 [(2)] (II) in sexual conduct and in a state of sexual excitement;

17 (2) A PERSON WHO IS AN ADULT FROM POSSESSING A VISUAL
18 REPRESENTATION DESCRIBED UNDER SUBSECTION (B) OF THIS SECTION SHOWING
19 ONLY THE PERSON WHO POSSESSES THE VISUAL REPRESENTATION, OR THE PERSON
20 WHO POSSESSES THE VISUAL REPRESENTATION WITH ANOTHER, UNLESS THE
21 VISUAL REPRESENTATION:

22 (I) SHOWS AN ACTUAL ACT OF SEXUALLY ASSAULTIVE
23 BEHAVIOR AS DEFINED IN § 10-923 OF THE COURTS ARTICLE OR PROSTITUTION AS
24 DEFINED IN § 11-301 OF THIS TITLE;

25 (II) WAS FILMED, PHOTOGRAPHED, OR OTHERWISE CREATED
26 WITHOUT THE CONSENT OF A PERSON SHOWN IN THE VISUAL REPRESENTATION; OR

27 (III) WAS OBTAINED BECAUSE THE PERSON ENGAGED IN
28 CONDUCT THAT WOULD CONSTITUTE A VIOLATION OF § 3-709 OF THIS ARTICLE; OR

29 (3) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, A
30 PROSECUTION OR PROCEEDING ALLEGING A DELINQUENT ACT AGAINST A MINOR
31 UNDER § 11-212 OF THIS SUBTITLE.

1 (e) It is an affirmative defense to a charge of violating this section that the person
2 promptly and in good faith:

3 (1) took reasonable steps to destroy each visual representation; [or]

4 (2) reported the matter to a law enforcement agency; OR

5 **(3) IF THE PERSON IS A MINOR, REPORTED THE MATTER TO A SCHOOL**
6 **PRINCIPAL, AN ASSISTANT PRINCIPAL, OR A GUIDANCE COUNSELOR EMPLOYED AT**
7 **THE SCHOOL THE MINOR ATTENDS.**

8 **(F) A MINOR MAY NOT BE FOUND TO HAVE VIOLATED THIS SECTION FOR**
9 **CONDUCT THAT VIOLATES § 11-212 OF THIS SUBTITLE UNLESS THE MINOR HAS**
10 **PREVIOUSLY BEEN:**

11 **(1) CONVICTED OF OR ADJUDICATED DELINQUENT UNDER:**

12 **(I) THIS SECTION;**

13 **(II) § 11-203 OF THIS SUBTITLE (SALE OR DISPLAY OF AN**
14 **OBSCENE ITEM TO A MINOR);**

15 **(III) § 11-207 OF THIS SUBTITLE (CHILD PORNOGRAPHY);**

16 **(IV) TITLE 3, SUBTITLE 3 OF THIS ARTICLE (SEXUAL CRIMES);**

17 **(V) § 3-602 OF THIS ARTICLE (SEXUAL ABUSE OF A MINOR);**

18 **(VI) § 3-604 OF THIS ARTICLE, INVOLVING SEXUAL ABUSE OF A**
19 **VULNERABLE ADULT;**

20 **(VII) § 3-709 OF THIS ARTICLE (SEXTORTION AND REVENGE**
21 **PORN);**

22 **(VIII) 18 U.S.C. CHAPTER 109A (SEXUAL ABUSE); OR**

23 **(IX) A LAW OF ANOTHER STATE, THE UNITED STATES, OR A**
24 **FOREIGN COUNTRY THAT IS EQUIVALENT TO AN OFFENSE UNDER ITEMS (I)**
25 **THROUGH (VII) OF THIS ITEM; OR**

26 **(2) FOUND GUILTY OF A CODE VIOLATION OR ADJUDICATED AS**
27 **HAVING COMMITTED A DELINQUENT ACT UNDER § 11-212 OF THIS SUBTITLE.**

1 11-212.

2 (A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS
3 INDICATED.

4 (2) "PROSTITUTION" HAS THE MEANING STATED IN § 11-301 OF THIS
5 TITLE.

6 (3) "SEXUALLY ASSAULTIVE BEHAVIOR" HAS THE MEANING STATED
7 IN § 10-923 OF THE COURTS ARTICLE.

8 (B) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A MINOR
9 MAY NOT COMMIT AN ACT DESCRIBED IN § 11-203(B)(1), § 11-207(A)(1), (2), (3), OR
10 (4), OR § 11-208(B) OF THIS SUBTITLE.

11 (C) (1) A VIOLATION OF THIS SECTION IS A CIVIL OFFENSE AND IS
12 SUBJECT TO A MANDATORY SENTENCE OF PARTICIPATION IN AN EDUCATION
13 PROGRAM DEVELOPED BY THE SECRETARY OF JUVENILE SERVICES UNDER
14 SUBSECTION (G) OF THIS SECTION.

15 (2) ADJUDICATION OF A VIOLATION UNDER THIS SECTION:

16 (I) IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE; AND

17 (II) DOES NOT IMPOSE ANY OF THE CIVIL DISABILITIES THAT
18 MAY RESULT FROM A CRIMINAL CONVICTION.

19 (D) THIS SECTION DOES NOT APPLY TO A MINOR WHO:

20 (1) HAS BEEN FOUND GUILTY OF A CODE VIOLATION OR
21 ADJUDICATED AS HAVING COMMITTED A DELINQUENT ACT ON A PRIOR OCCASION
22 UNDER THIS SECTION;

23 (2) HAS BEEN CONVICTED OF OR ADJUDICATED DELINQUENT ON A
24 PRIOR OCCASION UNDER:

25 (I) § 11-203 OF THIS SUBTITLE (SALE OR DISPLAY OF AN
26 OBSCENE ITEM TO A MINOR);

27 (II) § 11-207 OF THIS SUBTITLE (CHILD PORNOGRAPHY);

28 (III) § 11-208 OF THIS SUBTITLE (POSSESSION OF A VISUAL
29 REPRESENTATION OF A CHILD UNDER THE AGE OF 16 YEARS ENGAGED IN CERTAIN

1 **SEXUAL ACTS);**

2 (IV) **TITLE 3, SUBTITLE 3 OF THIS ARTICLE (SEXUAL CRIMES);**

3 (V) **§ 3-602 OF THIS ARTICLE (SEXUAL ABUSE OF A MINOR);**

4 (VI) **§ 3-604 OF THIS ARTICLE, INVOLVING SEXUAL ABUSE OF A**
5 **VULNERABLE ADULT;**

6 (VII) **§ 3-709 OF THIS ARTICLE (SEXTORTION AND REVENGE**
7 **PORN);**

8 (VIII) **18 U.S.C. CHAPTER 109A (SEXUAL ABUSE); OR**

9 (IX) **A LAW OF ANOTHER STATE, THE UNITED STATES, OR A**
10 **FOREIGN COUNTRY THAT IS EQUIVALENT TO AN OFFENSE UNDER ITEMS (I)**
11 **THROUGH (VII) OF THIS ITEM;**

12 (3) **DISPLAYS OR EXHIBITS TO ANOTHER MINOR AN ITEM DESCRIBED**
13 **UNDER § 11-203(B)(1) OF THIS SUBTITLE IF THE MINOR:**

14 (I) **KNEW OR REASONABLY SHOULD HAVE KNOWN THAT:**

15 1. **THE OTHER MINOR DID NOT WANT THE MINOR TO**
16 **DISPLAY OR EXHIBIT THE ITEM; OR**

17 2. **THE ITEM CONSISTED OF OR DEPICTED:**

18 A. **AN ACTUAL ACT OF SEXUALLY ASSAULTIVE BEHAVIOR**
19 **OR PROSTITUTION; OR**

20 B. **AN OBSCENE REPRESENTATION OF A NUDE OR**
21 **PARTIALLY NUDE FIGURE, OR A PERSON ENGAGED IN ILLICIT SEX, WHO WAS**
22 **PHOTOGRAPHED OR FILMED WITHOUT THE PERSON'S CONSENT OR BECAUSE OF A**
23 **VIOLATION OF § 3-709 OF THIS ARTICLE; OR**

24 (II) **OBTAINED THE ITEM BECAUSE THE MINOR VIOLATED §**
25 **3-709 OF THIS ARTICLE;**

26 (4) **CAUSES, INDUCES, SOLICITS, OR ALLOWS ANOTHER MINOR TO**
27 **ENGAGE AS A SUBJECT IN THE PRODUCTION OF OBSCENE MATTER OR A VISUAL**
28 **REPRESENTATION OR PERFORMANCE;**

1 (I) WITH THE INTENT TO COMMIT OR WHILE COMMITTING AN
2 ACT OF SEXUALLY ASSAULTIVE BEHAVIOR, PROSTITUTION, OR A VIOLATION OF §
3 3-709 OF THIS ARTICLE; OR

4 (II) WITHOUT THE CONSENT OF THE OTHER MINOR;

5 (5) PHOTOGRAPHS OR FILMS ANOTHER MINOR ENGAGING IN AN
6 OBSCENE ACT, SADOMASOCHISTIC ABUSE, OR SEXUAL CONDUCT:

7 (I) INVOLVING AN ACTUAL ACT OF SEXUALLY ASSAULTIVE
8 BEHAVIOR OR PROSTITUTION;

9 (II) WHILE VIOLATING, OR AS A DIRECT RESULT OF VIOLATING,
10 § 3-709 OF THIS ARTICLE; OR

11 (III) WITHOUT THE CONSENT OF THE OTHER MINOR;

12 (6) USES A COMPUTER TO DEPICT OR DESCRIBE ANOTHER MINOR
13 ENGAGING IN AN OBSCENE ACT, SADOMASOCHISTIC ABUSE, OR SEXUAL CONDUCT:

14 (I) INVOLVING AN ACTUAL ACT OF SEXUALLY ASSAULTIVE
15 BEHAVIOR OR PROSTITUTION; OR

16 (II) WITHOUT THE CONSENT OF THE OTHER MINOR;

17 (7) PROMOTES OR ADVERTISES ANY MATTER, VISUAL
18 REPRESENTATION, OR PERFORMANCE DESCRIBED IN § 11-207(A)(4) OF THIS
19 SUBTITLE;

20 (8) SOLICITS ANY MATTER, VISUAL REPRESENTATION, OR
21 PERFORMANCE DESCRIBED IN § 11-207(A)(4) OF THIS SUBTITLE:

22 (I) DEPICTING AN ACTUAL ACT OF SEXUALLY ASSAULTIVE
23 BEHAVIOR OR PROSTITUTION;

24 (II) WHILE VIOLATING, ATTEMPTING TO VIOLATE, OR WITH THE
25 INTENT TO VIOLATE § 3-709 OF THIS ARTICLE; OR

26 (III) WITH THE INTENT TO DISTRIBUTE OR MAKE THE MATTER,
27 VISUAL REPRESENTATION, OR PERFORMANCE ACCESSIBLE TO MORE THAN TWO
28 OTHER INDIVIDUALS;

29 (9) DISTRIBUTES, OR POSSESSES WITH INTENT TO DISTRIBUTE, ANY

1 MATTER, VISUAL REPRESENTATION, OR PERFORMANCE DESCRIBED IN §
2 11-207(A)(4) OF THIS SUBTITLE:

3 (I) DEPICTING AN ACTUAL ACT OF SEXUALLY ASSAULTIVE
4 BEHAVIOR OR PROSTITUTION;

5 (II) WITHOUT THE CONSENT OF A MINOR DEPICTED IN THE
6 MATTER, VISUAL REPRESENTATION, OR PERFORMANCE;

7 (III) WHILE VIOLATING, ATTEMPTING TO VIOLATE, OR WITH THE
8 INTENT TO VIOLATE § 3-709 OF THIS ARTICLE; OR

9 (IV) WITH THE INTENT TO DISTRIBUTE OR MAKE THE MATTER,
10 VISUAL REPRESENTATION, OR PERFORMANCE ACCESSIBLE TO MORE THAN TWO
11 OTHER INDIVIDUALS; OR

12 (10) KNOWINGLY POSSESSES AND INTENTIONALLY RETAINS A FILM,
13 VIDEOTAPE, PHOTOGRAPH, OR OTHER VISUAL REPRESENTATION DESCRIBED IN §
14 11-208(B) OF THIS SUBTITLE:

15 (I) SHOWING AN ACTUAL ACT OF SEXUALLY ASSAULTIVE
16 BEHAVIOR OR PROSTITUTION;

17 (II) WITHOUT THE CONSENT OF A MINOR SHOWN IN THE FILM,
18 VIDEOTAPE, PHOTOGRAPH, OR OTHER VISUAL REPRESENTATION; OR

19 (III) IF THE MINOR OBTAINED THE FILM, VIDEOTAPE,
20 PHOTOGRAPH, OR OTHER VISUAL REPRESENTATION BECAUSE THE MINOR
21 VIOLATED § 3-709 OF THIS ARTICLE.

22 (E) (1) A CITATION FOR A VIOLATION OF THIS SECTION MAY BE ISSUED
23 TO A MINOR BY A POLICE OFFICER AUTHORIZED TO MAKE ARRESTS IF THERE IS
24 PROBABLE CAUSE TO BELIEVE THAT THE MINOR IS COMMITTING OR HAS
25 COMMITTED A VIOLATION OF THIS SECTION.

26 (2) (I) A CITATION ISSUED UNDER THIS SECTION SHALL CONTAIN:

27 1. THE NAME, ADDRESS, AND DATE OF BIRTH OF THE
28 MINOR CHARGED;

29 2. THE STATUTE ALLEGEDLY VIOLATED;

30 3. THE DATE AND TIME THAT THE VIOLATION

1 OCCURRED;

2 4. THE LOCATION AT WHICH THE VIOLATION OCCURRED;

3 5. THE PENALTY THAT MAY BE IMPOSED; AND

4 6. THE SIGNATURE OF THE POLICE OFFICER ISSUING
5 THE CITATION.

6 (II) THE COURT SHALL SUMMON THE MINOR FOR TRIAL.

7 (3) THE FORM OF THE CITATION SHALL BE UNIFORM THROUGHOUT
8 THE STATE AND SHALL BE PRESCRIBED BY THE DISTRICT COURT.

9 (4) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE
10 CITATION AND A REQUEST FOR TRIAL TO THE CIRCUIT COURT HAVING VENUE.

11 (5) (I) A MINOR ISSUED A CITATION FOR A VIOLATION OF THIS
12 SECTION SHALL BE SUBJECT TO THE PROCEDURES AND DISPOSITIONS PROVIDED IN
13 TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.

14 (II) IF THERE IS A WAIVER OF JUVENILE JURISDICTION WITH
15 RESPECT TO A MINOR WHO IS OTHERWISE SUBJECT TO JUVENILE COURT
16 JURISDICTION, OR IF THE JUVENILE COURT DOES NOT HAVE JURISDICTION UNDER
17 § 3-8A-03 OF THE COURTS ARTICLE AND THE MINOR IS CHARGED WITH A
18 VIOLATION UNDER ONLY THIS SECTION, THE DISTRICT COURT HAS JURISDICTION
19 OVER THE MATTER.

20 (6) THE FAILURE OF A MINOR TO RESPOND TO A SUMMONS
21 DESCRIBED IN PARAGRAPH (2)(II) OF THIS SUBSECTION SHALL BE GOVERNED BY §
22 5-212 OF THE CRIMINAL PROCEDURE ARTICLE.

23 (7) IN ANY PROCEEDING FOR A CODE VIOLATION UNDER THIS
24 SECTION:

25 (I) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE
26 DEFENDANT BY A PREPONDERANCE OF THE EVIDENCE;

27 (II) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS
28 PRESCRIBED BY LAW OR RULE OF THE TRIAL OF A CRIMINAL CASE;

29 (III) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS
30 RECEIVED A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE

1 DEFENDANT UNDERSTANDS THOSE CHARGES;

2 (IV) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL
3 WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR
4 WITNESSES ON BEHALF OF THE DEFENDANT, AND TO TESTIFY ON THE DEFENDANT'S
5 OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;

6 (V) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY
7 COUNSEL OF THE DEFENDANT'S CHOICE AND AT THE EXPENSE OF THE DEFENDANT;
8 AND

9 (VI) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT
10 GUILTY, AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:

11 1. GUILTY OF A CODE VIOLATION;

12 2. NOT GUILTY OF A CODE VIOLATION; OR

13 3. PROBATION BEFORE JUDGMENT, IMPOSED BY THE
14 COURT IN THE SAME MANNER AND TO THE SAME EXTENT AS IS ALLOWED BY LAW IN
15 THE TRIAL OF A CRIMINAL CASE.

16 (8) (I) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE
17 PROCEEDING IN THE DISTRICT COURT.

18 (II) THE COURT COSTS IN A CODE VIOLATION CASE UNDER THIS
19 SECTION IN WHICH COSTS ARE IMPOSED ARE \$5.

20 (9) (I) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE
21 A CODE VIOLATION UNDER THIS SECTION IN THE SAME MANNER AS PROSECUTION
22 OF A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.

23 (II) IN A CODE VIOLATION CASE UNDER THIS SECTION, THE
24 STATE'S ATTORNEY MAY:

25 1. ENTER A NOLLE PROSEQUI OR MOVE TO PLACE THE
26 CASE ON THE STET DOCKET; AND

27 2. EXERCISE AUTHORITY IN THE SAME MANNER AS
28 PRESCRIBED BY LAW FOR VIOLATION OF THE CRIMINAL LAWS OF THE STATE.

29 (10) A CITATION FOR A VIOLATION OF THIS SECTION AND THE
30 OFFICIAL RECORD OF A COURT REGARDING THE CITATION ARE NOT SUBJECT TO

1 PUBLIC INSPECTION AND MAY NOT BE INCLUDED ON THE PUBLIC WEBSITE
2 MAINTAINED BY THE MARYLAND JUDICIARY.

3 (F) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING THIS
4 SECTION THAT THE MINOR WAS COERCED, THREATENED, OR INTIMIDATED INTO
5 COMMITTING THE CONDUCT CONSTITUTING THE VIOLATION.

6 (G) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, NOTHING IN
7 THIS SECTION SHALL PROHIBIT A PROSECUTION OR PROCEEDING ALLEGING A
8 DELINQUENT ACT IN ACCORDANCE WITH TITLE 3, SUBTITLE 8A OF THE COURTS
9 ARTICLE AGAINST A MINOR UNDER § 11-203, § 11-207, OR § 11-208 OF THIS
10 SUBTITLE FOR ANY ACT THAT IS NOT APPLICABLE OR NOT SPECIFICALLY
11 PROHIBITED UNDER THIS SECTION.

12 (2) A MINOR WHO IS FOUND NOT GUILTY OR ADJUDICATED TO HAVE
13 NOT COMMITTED A DELINQUENT ACT UNDER THIS SECTION MAY NOT BE SUBJECT
14 TO A PROSECUTION OR A PROCEEDING ALLEGING A DELINQUENT ACT UNDER §
15 11-203, § 11-207, OR § 11-208 OF THIS SUBTITLE FOR THE SAME ACT THAT GAVE
16 RISE TO THE CHARGE OR PROCEEDING ALLEGING A DELINQUENT ACT AGAINST THE
17 MINOR UNDER THIS SECTION.

18 (H) (1) THE SECRETARY OF JUVENILE SERVICES SHALL DEVELOP AN
19 EDUCATION PROGRAM DESIGNED TO TEACH MINORS ABOUT THE RISKS AND
20 CONSEQUENCES ASSOCIATED WITH THE POSSESSION, PRODUCTION, AND
21 DISTRIBUTION OF DEPICTIONS OF MINORS ENGAGED AS SUBJECTS IN
22 SADOMASOCHISTIC ABUSE, SEXUAL CONDUCT, OR ILLICIT SEX, OR IN A STATE OF
23 SEXUAL EXCITEMENT.

24 (2) THE EDUCATION PROGRAM DEVELOPED UNDER THIS SECTION
25 SHALL BE CONDUCTED IN EACH COUNTY IN THE STATE.

26 (3) THE SECRETARY OF JUVENILE SERVICES MAY ADOPT
27 REGULATIONS TO DEVELOP AND IMPLEMENT THE EDUCATION PROGRAM UNDER
28 THIS SUBSECTION.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2020.