

CHAPTER 510

(Senate Bill 99)

AN ACT concerning

Criminal Law – Possession of Child Pornography – Penalties

FOR the purpose of ~~altering the definition of “sexual conduct” for purposes of certain child pornography provisions to include displaying the genitals of an individual for purposes of sexual arousal or gratification;~~ increasing the penalties for possessing a film, videotape, photograph, or other visual representation depicting a minor engaged in certain activity or in a certain state; making the possession of child pornography a felony under certain circumstances; ~~making the possession of child pornography a felony under certain circumstances;~~ providing that the jurisdiction of the District Court is concurrent with that of a circuit court in a criminal case in which a person is charged with a second or subsequent offense of possession of child pornography; and generally relating to child pornography.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section ~~11–201(f)~~ and 11–208
Annotated Code of Maryland
(2002 Volume and 2008 Supplement)

BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 11–201(f)
Annotated Code of Maryland
(2002 Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 4–301 and 4–302(a) and (d)
Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)

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

Article – Criminal Law

11–201.

(f) ~~(1)~~ "Sexual conduct" has the meaning stated in § 11-101 of this title.

~~(2) "SEXUAL CONDUCT" INCLUDES THE DISPLAY OF THE GENITALS OF AN INDIVIDUAL FOR PURPOSES OF SEXUAL AROUSAL OR GRATIFICATION.~~

11-208.

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

- (1) engaged as a subject of sadomasochistic abuse;
- (2) engaged in sexual conduct; or
- (3) in a state of sexual excitement.

(b) **(1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A** person who violates this section is guilty of a misdemeanor and on conviction is subject to[:

(1) for a first violation,] imprisonment not exceeding [2] **5** years or a fine not exceeding \$2,500 or both[; and].

(2) [for each subsequent violation, imprisonment not exceeding 5 years] **A PERSON WHO VIOLATES THIS SECTION, HAVING PREVIOUSLY BEEN CONVICTED UNDER THIS SECTION, IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS** or a fine not exceeding \$10,000 or both.

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

- (1) as a subject of sadomasochistic abuse; or
- (2) in sexual conduct and in a state of sexual excitement.

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

- (1) took reasonable steps to destroy each visual representation; or
- (2) reported the matter to a law enforcement agency.

Article – Courts and Judicial Proceedings

4–301.

(a) Except as provided in §§ 3–803, 3–8A–03, and 4–302 of this article, the District Court has exclusive original jurisdiction in a criminal case in which a person at least 16 years old or a corporation is charged with violation of the vehicle laws, or the State Boat Act, or regulations adopted pursuant to the vehicle laws or State Boat Act.

(b) Except as provided in § 4–302 of this subtitle, the District Court also has exclusive original jurisdiction in a criminal case in which a person at least 18 years old or a corporation is charged with:

(1) Commission of a common-law or statutory misdemeanor regardless of the amount of money or value of the property involved;

(2) Violation of § 7–104, § 7–105, § 7–107, or § 7–108 of the Criminal Law Article, whether a felony or a misdemeanor;

(3) Violation of a county, municipal, or other ordinance, if the violation is not a felony;

(4) Criminal violation of a State, county, or municipal rule or regulation, if the violation is not a felony;

(5) Doing or omitting to do any act made punishable by a fine, imprisonment, or other penalty as provided by the particular law, ordinance, rule, or regulation defining the violation if the violation is not a felony;

(6) Violation of § 8–103 of the Criminal Law Article, whether a felony or a misdemeanor;

(7) Violation of §§ 8–203 through 8–209 of the Criminal Law Article, whether a felony or misdemeanor;

(8) Forgery or violation of Title 8, Subtitle 6 of the Criminal Law Article, whether a felony or misdemeanor;

(9) Violation of Title 27, Subtitle 4 of the Insurance Article, whether a felony or a misdemeanor;

(10) Violation of § 9–1106 of the Labor and Employment Article;

(11) Violation of § 8–301 of the Criminal Law Article, whether a felony or misdemeanor;

(12) Violation of § 2–209 of the Criminal Law Article;

(13) Violation of Title 2, Subtitle 5 of the Criminal Law Article;

(14) Violation of Title 11, Subtitle 5 of the Financial Institutions Article;

(15) Violation of §§ 10–604 through 10–608 of the Criminal Law Article, whether a felony or misdemeanor;

(16) Violation of Title 7, Subtitle 3, Part III of the Criminal Law Article, whether a felony or misdemeanor;

(17) Violation of § 20–102 of the Transportation Article, whether a felony or misdemeanor;

(18) Violation of § 8–801 of the Criminal Law Article;

(19) Violation of § 8–604 of the Criminal Law Article;

(20) Violation of Title 8, Subtitle 2, Part II of the Criminal Law Article;

(21) Violation of §§ 16–801 through 16–804 of the Election Law Article;

(22) Violation of § 3–203(c) of the Criminal Law Article; [or]

(23) VIOLATION OF § 11–208 OF THE CRIMINAL LAW ARTICLE AS A SECOND OR SUBSEQUENT OFFENSE; OR

[(23)](24) Violation of § 11–303(b) of the Criminal Law Article.

4–302.

(a) Except as provided in § 4–301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), [and] (23), AND (24) of this subtitle, the District Court does not have jurisdiction to try a criminal case charging the commission of a felony.

(d) (1) Except as provided in paragraph (2) of this subsection, the jurisdiction of the District Court is concurrent with that of the circuit court in a criminal case:

(i) In which the penalty may be confinement for 3 years or more or a fine of \$2,500 or more; or

(ii) That is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), [and] (23), AND (24) of this subtitle.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, a circuit court does not have jurisdiction to try a case charging a violation of § 5-601 or § 5-620 of the Criminal Law Article.

(ii) A circuit court does have jurisdiction to try a case charging a violation of § 5-601 or § 5-620 of the Criminal Law Article if the defendant:

1. Properly demands a jury trial;
2. Appeals as provided by law from a final judgment entered in the District Court; or
3. Is charged with another offense arising out of the same circumstances that is within a circuit court's jurisdiction.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Approved by the Governor, May 19, 2009.