

SENATE BILL 1003

E1, E2, O4

71r3196

By: **Senator Stone**

Introduced and read first time: March 5, 2007

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Possession of Child Pornography – Enhanced Penalties**

3 FOR the purpose of increasing the age of an individual who is depicted in a film,
4 videotape, photograph, or other visual representation for purposes of knowingly
5 possessing the type of depictions; increasing the penalties for possessing a film,
6 videotape, photograph, or other visual representation depicting a minor engaged
7 in certain activity or in a certain state; making the possession of child
8 pornography a felony; creating a mandatory minimum penalty for possession of
9 child pornography; prohibiting a court from imposing less than certain
10 mandatory minimum penalties; prohibiting a court from suspending part of a
11 certain minimum sentence for a person convicted of possessing certain visual
12 representations unless certain conditions are met; prohibiting a court from
13 suspending part of a certain minimum sentence for each subsequent conviction
14 of a person for possessing certain visual representations; providing that a
15 person convicted of a certain felony or a subsequent conviction of a certain
16 felony is not eligible for parole for a certain period of time; providing that each
17 individual visual representation may be charged in a separate count; providing
18 an affirmative defense to a charge of possession of child pornography under
19 certain circumstances; altering the definition of “sexual conduct” for purposes of
20 certain child pornography provisions, to include displaying the genitals of an
21 individual for purposes of sexual arousal or gratification; altering the definition
22 of “offender” to require registration as an offender for a conviction of the
23 possession of child pornography; and generally relating to child pornography.

24 BY repealing and reenacting, with amendments,
25 Article – Criminal Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 11–201(f) and 11–208
2 Annotated Code of Maryland
3 (2002 Volume and 2006 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Criminal Procedure
6 Section 11–701(d)
7 Annotated Code of Maryland
8 (2001 Volume and 2006 Supplement)

9 Preamble

10 WHEREAS, The Internet has facilitated the growth of a multi-billion dollar
11 global market for images of children being sexually displayed, raped, and tortured;
12 and

13 WHEREAS, Research by the U.S. Department of Justice and the National
14 Center for Missing and Exploited Children indicates the following about individuals
15 arrested for possession of child pornography: 83 percent had images of children
16 between 6 and 12 years old; 80 percent had images of children being sexually
17 penetrated; 21 percent had images depicting children bound, gagged, blindfolded, or
18 “otherwise enduring sadistic sex”; and only 1 percent restricted their collecting to
19 images of simple child nudity; and

20 WHEREAS, The growing demand for child pornography encourages,
21 commissions, and rewards the production of new images and movies of children being
22 sexually abused, forcing growing numbers of children into modern day sexual slavery;
23 and

24 WHEREAS, Maryland is one of only six remaining states in the United States
25 with misdemeanor child pornography possession laws, according to the National
26 Association to Protect Children; now, therefore,

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

29 **Article – Criminal Law**

30 11–201.

31 (f) (1) “Sexual conduct” has the meaning stated in § 11–101 of this title.

1 (2) **“SEXUAL CONDUCT” INCLUDES THE DISPLAY OF THE**
2 **GENITALS OF AN INDIVIDUAL FOR PURPOSES OF SEXUAL AROUSAL OR**
3 **GRATIFICATION.**

4 11-208.

5 (a) A person may not knowingly possess a film, videotape, photograph, or
6 other visual representation depicting [an individual under the age of 16 years] **A**
7 **MINOR:**

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

9 (2) engaged in sexual conduct; or

10 (3) in a state of sexual excitement.

11 (b) **(1)** A person who violates this section is guilty of a [misdemeanor]
12 **FELONY** and on conviction is subject to:

13 [(1)] **(I)** for a first violation, imprisonment **FOR NOT LESS THAN 2**
14 **YEARS AND** not exceeding [1 year] **5 YEARS** or a fine not exceeding [\$2,500] **\$10,000**
15 or both; and

16 [(2)] **(II)** for each subsequent violation, imprisonment **FOR NOT LESS**
17 **THAN 5 YEARS AND** not exceeding [2] **10** years or a fine not exceeding [\$5,000]
18 **\$20,000** or both.

19 **(2)** **NOTWITHSTANDING § 14-102 OF THIS ARTICLE, THE COURT**
20 **MAY NOT IMPOSE LESS THAN THE MANDATORY MINIMUM SENTENCE OF 2 YEARS**
21 **FOR A FIRST VIOLATION OR 5 YEARS FOR EACH SUBSEQUENT VIOLATION.**

22 **(3)** **THE COURT MAY NOT SUSPEND ANY PART OF THE**
23 **MANDATORY MINIMUM SENTENCE OF 2 YEARS FOR A FIRST VIOLATION UNLESS**
24 **THE FOLLOWING CONDITIONS ARE MET:**

25 **(I)** **THE DEFENDANT IS UNDER THE AGE OF 21 YEARS;**

26 **(II)** **THE VISUAL REPRESENTATION POSSESSED DEPICTS**
27 **NOT MORE THAN ONE INDIVIDUAL WHO IS A MINOR; AND**

1 **(III) THE AGE DIFFERENCE BETWEEN THE DEFENDANT AND**
2 **THE MINOR IS NOT MORE THAN 4 YEARS.**

3 **(4) THE COURT MAY NOT SUSPEND ANY PART OF THE**
4 **MANDATORY MINIMUM SENTENCE OF 5 YEARS FOR EACH SUBSEQUENT**
5 **VIOLATION.**

6 **(5) EXCEPT AS PROVIDED IN § 4-305 OF THE CORRECTIONAL**
7 **SERVICES ARTICLE, A PERSON SENTENCED UNDER THIS SECTION IS NOT**
8 **ELIGIBLE FOR PAROLE IN LESS THAN 2 YEARS FOR A FIRST VIOLATION OR 5**
9 **YEARS FOR EACH SUBSEQUENT VIOLATION.**

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

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

14 (2) in sexual conduct [and]; **OR**

15 (3) in a state of sexual excitement.

16 **(D) A PERSON POSSESSING MATERIAL THAT VIOLATES THIS SECTION**
17 **MAY BE CHARGED IN A SEPARATE COUNT FOR EACH INDIVIDUAL FILM,**
18 **VIDEOTAPE, PHOTOGRAPH, OR OTHER VISUAL REPRESENTATION.**

19 **(E) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING THIS**
20 **SECTION THAT THE DEFENDANT:**

21 (1) **POSSESSED LESS THAN THREE MATTERS CONTAINING ANY**
22 **VISUAL REPRESENTATION PROHIBITED BY THIS SECTION; AND**

23 (2) **PROMPTLY AND IN GOOD FAITH, AND WITHOUT RETAINING OR**
24 **ALLOWING ANY PERSON OTHER THAN A LAW ENFORCEMENT AGENCY TO ACCESS**
25 **ANY VISUAL REPRESENTATION OR COPY OF THE VISUAL REPRESENTATION:**

26 (1) **TOOK REASONABLE STEPS TO DESTROY EACH VISUAL**
27 **REPRESENTATION; OR**

1 (II) REPORTED THE MATTER TO A LAW ENFORCEMENT
2 AGENCY AND ALLOWED THAT AGENCY ACCESS TO EACH VISUAL
3 REPRESENTATION.

4 **Article – Criminal Procedure**

5 11–701.

6 (d) “Offender” means a person who is ordered by a court to register under
7 this subtitle and who:

8 (1) has been convicted of violating § 3–503 of the Criminal Law
9 Article;

10 (2) has been convicted of violating § 3–502 of the Criminal Law Article
11 or the fourth degree sexual offense statute under § 3–308 of the Criminal Law Article,
12 if the victim is under the age of 18 years;

13 (3) has been convicted of the common law crime of false imprisonment,
14 if the victim is under the age of 18 years and the person is not the victim’s parent;

15 (4) has been convicted of a crime that involves soliciting a person
16 under the age of 18 years to engage in sexual conduct;

17 (5) has been convicted of violating the child pornography statute
18 under § 11–207 **OR** § **11–208** of the Criminal Law Article;

19 (6) has been convicted of violating any of the prostitution and related
20 crimes statutes under Title 11, Subtitle 3 of the Criminal Law Article if the intended
21 prostitute or victim is under the age of 18 years;

22 (7) has been convicted of a crime that involves conduct that by its
23 nature is a sexual offense against a person under the age of 18 years;

24 (8) has been convicted of an attempt to commit a crime listed in items
25 (1) through (7) of this subsection; or

26 (9) has been convicted in another state or in a federal, military, or
27 Native American tribal court of a crime that, if committed in this State, would
28 constitute one of the crimes listed in items (1) through (8) of this subsection.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2007.