

HOUSE BILL 574

E1, E2, O4
SB 1003/07 – JPR

8lr0745

By: **Delegates McComas, DeBoy, Eckardt, Elliott, Frank, George, Haddaway, James, Kipke, Krebs, Levy, McConkey, Miller, Myers, Norman, O'Donnell, Schuh, Shank, Shewell, Sophocleus, Stocksdales, and Wood**

Introduced and read first time: January 31, 2008

Assigned to: Judiciary

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, a certain depiction of whom in
4 a film, videotape, photograph, or other visual representation may not be
5 knowingly possessed by another; 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 a certain visual
12 representation unless certain conditions are met; prohibiting a court from
13 suspending part of a certain minimum sentence for a subsequent conviction of a
14 person for possessing a certain visual representation; providing that a person
15 convicted of a certain felony or a subsequent conviction of a certain felony is not
16 eligible for parole for a certain period of time; providing that each individual
17 visual representation may be charged in a separate count; providing an
18 affirmative defense to a charge of possession of child pornography under certain
19 circumstances; altering the definition of “sexual conduct” for purposes of certain
20 child pornography provisions to include displaying the genitals of an individual
21 for purposes of sexual arousal or gratification; altering the definition of
22 “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
26 Section 11–201(f) and 11–208
27 Annotated Code of Maryland
28 (2002 Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 11–701(d)
Annotated Code of Maryland
(2001 Volume and 2007 Supplement)

Preamble

WHEREAS, The Internet has facilitated the growth of a multibillion dollar global market for images of children being sexually displayed, raped, and tortured; and

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

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

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

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] **A MINOR:**

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

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

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

9 [(2)] (II) for each subsequent violation, imprisonment **FOR NOT LESS**
10 **THAN 5 YEARS AND** not exceeding [5] **10** years or a fine not exceeding [\$10,000]
11 **\$20,000** or both.

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

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

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

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

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

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

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

(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]; **OR**

(3) in a state of sexual excitement.

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

[(d)] **(E)** It is an affirmative defense to a charge of violating this section that the [person] **DEFENDANT** promptly and in good faith **AND WITHOUT RETAINING OR ALLOWING A PERSON OTHER THAN A LAW ENFORCEMENT AGENCY TO ACCESS A VISUAL REPRESENTATION OR COPY OF THE VISUAL REPRESENTATION:**

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

(2) reported the matter to a law enforcement agency **AND ALLOWED THAT AGENCY ACCESS TO THE VISUAL REPRESENTATION.**

Article – Criminal Procedure

11–701.

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

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

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

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

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

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

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

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

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

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2008.