

SENATE BILL 6

E2

8lr0399

(PRE-FILED)

By: **Senator Simonaire**

Requested: June 27, 2007

Introduced and read first time: January 9, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Offender Registry – Possession of Child Pornography**

3 FOR the purpose of altering the definition of “offender” for inclusion on a certain
4 offender registry to include a certain person convicted of possession of child
5 pornography; and generally relating to registration of offenders and possession
6 of child pornography.

7 BY repealing and reenacting, without amendments,
8 Article – Criminal Law
9 Section 11–208
10 Annotated Code of Maryland
11 (2002 Volume and 2007 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article – Criminal Procedure
14 Section 11–701(a) and 11–704
15 Annotated Code of Maryland
16 (2001 Volume and 2007 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Procedure
19 Section 11–701(d)
20 Annotated Code of Maryland
21 (2001 Volume and 2007 Supplement)

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

24 **Article – Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-208.

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

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

6 (2) engaged in sexual conduct; or

7 (3) in a state of sexual excitement.

8 (b) A person who violates this section is guilty of a misdemeanor and on
9 conviction is subject to:

10 (1) for a first violation, imprisonment not exceeding 2 years or a fine
11 not exceeding \$2,500 or both; and

12 (2) for each subsequent violation, imprisonment not exceeding 5 years
13 or a fine not exceeding \$10,000 or both.

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

17 (1) as a subject of sadomasochistic abuse; or

18 (2) in sexual conduct and in a state of sexual excitement.

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

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

22 (2) reported the matter to a law enforcement agency.

23 **Article - Criminal Procedure**

24 11-701.

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

26 (d) "Offender" means a person who is ordered by a court to register under
27 this subtitle and who:

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

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

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

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

8 (5) has been convicted of [violating the] **A CRIME INVOLVING** child
9 pornography [statute] under § 11–207 **OR** § **11–208** of the Criminal Law Article;

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

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

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

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

20 11–704.

21 (a) A person shall register with the person’s supervising authority if the
22 person is:

23 (1) a child sexual offender;

24 (2) an offender;

25 (3) a sexually violent offender;

26 (4) a sexually violent predator;

27 (5) a child sexual offender who, before moving into this State, was
28 required to register in another state or by a federal, military, or Native American
29 tribal court for a crime that occurred before October 1, 1995;

30 (6) an offender, sexually violent offender, or sexually violent predator
31 who, before moving into this State, was required to register in another state or by a

1 federal, military, or Native American tribal court for a crime that occurred before July
2 1, 1997; or

3 (7) a child sexual offender, offender, sexually violent offender, or
4 sexually violent predator who is required to register in another state, who is not a
5 resident of this State, and who enters this State:

6 (i) to carry on employment;

7 (ii) to attend a public or private educational institution,
8 including a secondary school, trade or professional institution, or institution of higher
9 education, as a full-time or part-time student; or

10 (iii) as a transient.

11 (b) Notwithstanding any other provision of law, a person is no longer subject
12 to registration under this subtitle if:

13 (1) the underlying conviction requiring registration is reversed,
14 vacated, or set aside; or

15 (2) the registrant is pardoned for the underlying conviction.

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