

SenatorBailey_FAV_SB208.pdf

Uploaded by: Jack Bailey

Position: FAV

JACK BAILEY
Legislative District 29
Calvert and St. Mary's Counties

Budget & Taxation Committee



THE SENATE OF MARYLAND
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February 14, 2023

Senate Bill 208 – Criminal Law – Indecent Exposure Within the Sight of a Minor

Dear Chairman Smith and Members of the Committee,

I am writing to introduce Senate Bill 208. This bill will provide for enhanced penalties for indecent exposure in cases where this act is done within the sight of a minor.

Under current law, all cases of indecent exposure are subject to a maximum penalty of three years in prison and a \$1,000 fine. Senate Bill 208 increases those to up to five years in prison and a fine of up to \$10,000 specifically when an offender commits indecent exposure with prurient intent within the sight of a minor who is at least two years old and where the victim is more than four years younger than the offender.

Senate Bill 208 is narrowly written to ensure that we are only capturing those who would commit this crime with the intent to cause harm to a child. At least 15 other states have enhanced penalties for indecent exposure against or within the sight of a minor. Maryland law already recognizes the importance of this issue and provides judges the option to require perpetrators to register as sex offenders if they commit indecent exposure against a minor as a deterrent.

This bill does not require any new minimum sentences, and only gives judges the discretion to apply these higher penalties to offenders. I know that this Committee recognizes the importance of protecting our minors from sexual offenders such as those who would meet the specifications outlined in this bill.

Senate Bill 208 identical to House Bill 34, which passed this Committee unanimously last year but did not receive final passage before the end of the session. I respectfully request a favorable report on Senate Bill 208. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bailey".

Senator Jack Bailey

SO - indecent exposure to minor - testimony - sena

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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For more information contact:
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Testimony Supporting Senate Bill 208
Lisae C. Jordan, Executive Director & Counsel
February 14, 2023

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence in the State of Maryland. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 208.

SB208 – Indecent Exposure within Sight of a Minor

SB208 would increase the penalty for indecent exposure with the sight of a minor. Indecent exposure is currently a common law crime, described by the Court of Appeals as follows: "... indecent exposure [means] the defendant intentionally exposed his penis or other body part that should not be exhibited in a public place. Indecent exposure, to amount to a crime, must have been done intentionally. Intent may be inferred from the conduct of the accused and the circumstances and the environment of the occurrence." *Wisneski v. State*, 398 Md. 578 (2007). Legislation last year clarified that indecent exposure includes masturbation in public whether or not a person's genitals are exposed.

Indecent exposure covers a range of behavior, and when a child is the target, the behavior can be especially harmful and intimidating. Additionally, indecent exposure is often a gateway crime to more serious sex offenses. SB208 recognizes the serious nature of indecent exposure to child by increasing the penalty from 3 years/\$1000 fine to 5 years/\$10,000 fine.

MCASA notes that SB208 includes the reasonable limitation that there must be an age difference of at least 4 years between the people involved. This is an appropriate response to young people and similar to other sex crimes provisions. We note that offenders within 4 years older than the other person would still be subject to the common law crime of indecent exposure, simply not to the heightened penalty.

**The Maryland Coalition Against Sexual Assault urges
the Judicial Proceedings Committee to report favorably on Senate Bill 208**

SB208-Friendly Amendment.pdf

Uploaded by: vince mcavoy

Position: FWA

AMENDMENT TO SENATE BILL 208

BY: SENATOR BAILEY

(To be offered in the Judicial Proceedings Committee)

(Second Reading File Bill)

AMENDMENT NO. 1

On page 1, on line 22, after “exposure.” insert

“or expose any device, costume, or covering that gives the appearance of or simulates the genitals.”

SB208 FAIR UNF.pdf

Uploaded by: Brenda Jones

Position: UNF

Unfavorable Response to SB208 Criminal Law – Indecent Exposure Within Sight of a Minor

Families Advocating Intelligent Registries (FAIR) seeks rational, constitutional sexual offense laws and policies for persons accused and convicted of sexual offenses.

This bill expands the existing common law misdemeanor crime for indecent exposure with prurient intent to have a harsher penalty if it occurs within sight of a child over the age of two, and there is more than a 4-year age difference. The punishment for this misdemeanor can be up to five years imprisonment and up to \$10,000, which actually puts it more on a level with a felony. Existing law for indecent exposure provides misdemeanor punishment of imprisonment not exceeding one year or a fine not exceeding \$1,000, or both.

This bill does not take into account normal child development, in which there could be a 7-year-old playing with himself in sight of a 3-year-old sibling or cousin, or a 10-year-old and 6-year-old at after-school care, with no real comprehension of what it means. Needless to say this would be disturbing to the adult who finds them, but does such behavior really necessitate such a harsh additional penalty? The bill's proponents will argue that such a situation has no "prurient intent;" however, if a distraught parent or neighbor makes the accusation to police, setting an investigation into motion, that 7- or 10-year-old could be put through the court system and expected to somehow explain himself, which would be far more traumatic for the older child than his behavior likely was to the younger viewer.

FAIR's position is that the existing language of Criminal Law 11-107 is sufficient. We urge an unfavorable response for SB208.

Sincerely,



Brenda V. Jones, Executive Director
Families Advocating Intelligent Registries
Cell: 301-318-8964

SB 208 Indecent Exposure MOPD Oppose.docx.pdf

Uploaded by: Elizabeth Hilliard

Position: UNF



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 208 Criminal Law – Indecent Exposure Within the Sight of a Minor

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 02/13/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 208.

Senate Bill 208 codifies the prohibition on committing the common law crime of indecent exposure and establishes a new offense by prohibiting a person from committing indecent exposure with prurient intent within the sight of a minor who is at least two years old and more than four years younger than the perpetrator.

The Office of the Public Defender recognizes the prerogative of the legislature to identify special classes of victims within our criminal laws, particularly as it relates to the especially vulnerable. Similarly, we recognize that the Assembly can create a sentencing scheme that, within reason and constitutional principles, penalizes an offender potentially more or less based on victim characteristics or class. However, we believe that when a differentiated sentencing scheme is sought, and the current maximum penalties in our code are already applicable to the specific class of especially vulnerable victims, that maximum penalty should remain in force, and the potential penalty for the more general cases should be reduced, unless specific data regarding increasing crime rates or recidivism related to the special class of victims can substantiate a need for higher penalties.

In regards to this bill, then, we believe indecent exposure offenses involving minor victims should still be punished at the current maximum of up to 3 years, with offenses involving adult victims subject to a 1 year penalty.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 208.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.