

2023-02-14 SB226 (Support).pdf

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Position: FAV

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February 14, 2023

TO: The Honorable William C. Smith Jr.
Chair, Judicial Proceedings Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: SB226 – Criminal Law – Child Pornography – Accessing With Intent to View – **Support**

The Office of Attorney General (the “OAG”) urges this Committee to favorably report Senate Bill 226. This legislation, sponsored by Senator Salling, would add to the existing criminal prohibition of possession of child pornography to cover someone who browses websites in search of such material but does not download the images or videos.

Currently, the statute bars “knowingly possess[ing] and intentionally retain[ing]” child pornography.¹ Without this addition, those who view child pornography without downloading the material could potentially fall within a loophole within the existing statutory language. With the rise of social media and the rapid development of technology, offenders are consistently evolving new methods to facilitate viewing child pornography while evading law enforcement.² Given the practical reality of how explicit material is transmitted and accessed on the internet, this bill will aid in safeguarding our children and our communities from this reprehensible offense.

For the foregoing reasons, the Office of the Attorney General urges a favorable report of Senate Bill 226.

cc: Committee members

¹ MD. CODE ANN., CRIM. LAW § 11-208(b) (West 2023)

² U.S. DEP’T OF JUSTICE, *The National Strategy for Child Exploitation Prevention and Interdiction, A Report to Congress* at 73 (Apr. 2016) (available at <https://www.justice.gov/media/857721/dl?inline>)

This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the Senate and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

Child porn - streaming - testimony - senate - 2023

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 226
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 226.

SB226 – Child Pornography – Streaming

This bill updates Maryland's child pornography possession law in response to changes in technology and adds streaming to existing law with this language:

“KNOWINGLY OR INTENTIONALLY ACCESS WITH INTENT TO VIEW”

Current law against possession of child pornography prohibits a person from “knowingly possess and intentionally retain” child pornography. This law omits the practice of offenders who stream, but do not download, child pornography. Federal law regarding child pornography also uses the language “knowingly accesses with intent to view”. 18 USC §252(a)(4)(b).

Child pornography is devastating to the children involved. The images of their sexual abuse and exploitation often live on the Internet, including the dark web, forever, and haunt them throughout their lives. The US Supreme Court described the continued harm suffered by one victim who had been sexually abused by a relative when she was 8-to-9 years of age:

“[A] major blow to her recovery came when, at the age of 17, she learned that images of her abuse were being trafficked on the Internet. The digital images were available nationwide and no doubt worldwide ... The knowledge that her images were circulated far and wide renewed the victim's trauma and made it difficult for her to recover from her abuse ... The full extent of this victim's suffering is hard to grasp. (Her original abuser's) crimes were compounded by the distribution of images of her abuser's horrific acts, which meant the wrongs inflicted upon her were in effect repeated; for she knew her humiliation and hurt were and would be renewed into the future as an ever-increasing number of wrongdoers witnessed the crimes committed against her.” *Paroline v. United States*, 134 S. Ct. 1710, 1717-18 (2014)

Senate Bill 226 is a needed amendment to current law to help give prosecutors the tools necessary to respond to the black market of images of the rape and molestation of children.

**The Maryland Coalition Against Sexual Assault urges
the Judicial Proceedings Committee to report favorably on Senate Bill 226**

Senate Judicial Proceedings testimony SB 226.pdf

Uploaded by: Peggy Cairns

Position: FAV

Maryland Coalition Against Pornography, Inc.

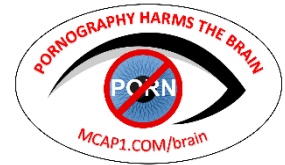
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TOGETHER WE CARE

February 14, 2023

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Judicial Proceedings Committee, Maryland House of Delegates

In support of SB 226

MCAP thanks Senator Salling for proposing additional language to Section 11–208 of the MD Criminal Code, at line 5 of the bill, quote: ...KNOWINGLY OR INTENTIONALLY ACCESS WITH INTENT TO VIEW... which would provide needed and specific extrapolation of the intent of our law to protect minors in today's digital realm. Currently the code language specifies that the perpetrator **retain or possess** the media/visual representations in order for there to be prosecution. However, technology in this age has enabled livestreaming, or shall we compare it to Netflix or Zoom meetings, of sexual exploitation, where consumers can watch children who have been or are actively being sexually abused, sometimes tailor-made to audio instructions from the viewer. The images are not downloaded or retained onto the viewer's device, so there is no long-lasting trail of digital evidence on the computer, tablet or smartphone that investigators can delve into. Yet the abuse is occurring, in ways more horrific than ever, and we need to provide investigators and prosecutors a legal avenue to pursue and press charges.

For more details on the history and variety of technology behind such crimes, we recommend https://en.wikipedia.org/wiki/Cybersex_trafficking to aid in understanding the history and permutations involved in this crime. To show how early this kind of crime started getting media attention, see footnote no. 104, which mentions webcam rape, back in 2009.

Statistics on the magnitude of cybersex trafficking are elusive, as it is hard to detect, but it is a billion-dollar industry, with millions of reports to authorities annually, and surging due to globalization and technology advancement, so much encrypted now. In 2021 alone, the National Center for Missing and Exploited Children received nearly 85 **million** images, videos, and other files containing or related to child sexual abuse and exploitation and other incident-related content – and those are only what were detected and reported. Another aspect is its **shockingly low cost**. E.g., the Australian Institute of Criminology found a median of Australian \$51 being paid by sex offenders, equivalent of just over £27, per abusive livestream. Behind every livestream is a real child, suffering real trauma - often for years on end while the livestreamed abuse goes unreported and unprosecuted. Many child victims are left with serious emotional and physical trauma, often complex.

MCAP believes this bill moves our Maryland laws a significant step in the right direction to help recognize these extreme wrongs and aid law enforcement in its efforts to pursue righting them.

Respectfully submitted,
Peggy Cairns

SB 226 Criminal Law - Child Pornography - Accessin

Uploaded by: Scott Shellenberger

Position: FAV

Bill Number: SB 226
Scott D. Shellenberger, State's Attorney for Baltimore County
Support

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 226
CRIMINAL LAW – CHILD PORNOGRAPHY – ACCESSING WITH INTENT TO VIEW

I write in support of Senate Bill 226 that would update the State's child pornography laws and the way child pornography can be viewed.

Under Criminal Law §11-208 it is currently illegal for a person to possess and intentionally retain child pornography in the form of a film, photograph, etc.

During current times it is possible to view and access child pornography without retaining it. Adding the element of knowingly or intentionally accessing with the intent to view brings our child pornography statute up to date with current computer uses and functions.

I urge a favorable report.

SB0226 FAV vmcavoy.pdf

Uploaded by: vince mcavoy

Position: FAV

SB0226 Senator Salling / JPR Hearing
Criminal Law - Child Pornography - Accessing With Intent to View

Dear Senators,

If your JPR hearing goes as the House Judiciary hearing did, you will hear only the most “out-there” testimony from the Office of Public Defender saying that this bill should not become law. These two ladies’ queer stance is that a judge reviewing the long-standing legislative code and this minor revision will not be able to discern legislative intent nor best societal interests. These 2 ladies were denigrated last week by delegates of the Judiciary Committee in a way rarely seen. The reason? Their single-minded approach of freeing criminality and preventing some hypothetical 15-year-old from being, in any way, “put out” (pun intended) from her own prideful and salacious perversity of sending child porn via her phone.

The ladies from OPD showed little empathy to the millions – literally millions worldwide- of child sex slaves who are forced to submit to perverse sexual demands via commands on streaming technology.

The arrest details of a related case where such streaming was used to pimp adopted children were made known in January. A “married” LGBT couple was charged with NINE life sentences for molesting their adopted sons and also pimping them out to a pedophile ring. The use of streaming technology was employed vis-a-vis the Georgia homosexual couple who used streams to elicit bids on the poor, tortured boys. The boys’ anal cavities were so abused as to needing hospitalization, the article highlights. They appeared to be mentally-challenged boys given over to this couple from a now-defunct adoption shop.

<https://nypost.com/2023/01/20/couple-pimped-their-adopted-sons-out-to-pedophile-ring-report/>

<https://www.foxnews.com/us/georgia-couple-accused-sexually-abusing-adopted-boys-husband-bragged-molesting-son>

And just 2 weeks ago, your former colleague, former Delegate Erik Barron, announced a major conviction involving children being abused, used for child porn and the conspiracy to pimp-out minors utilizing streaming technology. Instagram video chat on **Snapchat** and **Kik** were used to perpetrate – AGAIN– anal perversion involving a minor. This perversion, child abuse and sexual crime shows the need for Senator Salling’s bill to rescue these abused children. Minors as young as **THREE** years of age were mentioned in the announcement.

FOR IMMEDIATE RELEASE

Friday, January 27, 2023

Registered Sex Offender Sentenced for Production and Distribution of Child Pornography

A Maryland man was sentenced today to 35 years in prison for production and distribution of images and videos depicting the sexual abuse of children.

Justin Michael Peterson, 28, pleaded guilty in the District of Maryland to one count of sexual exploitation of a child and one count of distribution of child pornography on Aug. 30, 2022.

According to court documents, in January 2020, **Peterson used Instagram to video chat with a minor victim and entice the minor victim to masturbate and insert objects into the victim’s anus while Peterson masturbated. Peterson used special software to record those chats and distributed the recordings to another minor child with whom Peterson had been exchanging sexually explicit messages on Kik and Snapchat. During his chats with the second minor child, Peterson discussed his interest in traveling to the minor victim’s home to kidnap them.**

After his arrest in February 2020, Peterson admitted to law enforcement that he is sexually attracted to children as young as three years old. Peterson’s phone contained hundreds of images depicting the sexual abuse of children, including toddlers and infants. Forensic examination of Peterson’s phone also revealed that he actively participated in several online chat groups dedicated to the sexual exploitation of children and distributing child sexual abuse material. **Peterson also posted messages to these groups offering to “rent” one of the minor victims as a “cam slave.”**

Peterson was previously convicted in Maryland in 2016 for distributing child pornography and was required to register as a sex offender at the time of his offenses.

In addition to serving 35 years in prison, Peterson was sentenced to 30 years of supervised release years and will be required to register as a sex offender in the place where he resides, where he is an employee, and where he is a student, under the Sex Offender Registration and Notification Act (SORNA).

Assistant Attorney General Kenneth A. Polite, Jr. of the Justice Department's Criminal Division, U.S. Attorney Erek L. Barron for the District of Maryland, and Assistant Director Luis Quesada of the FBI's Criminal Investigative Division made the announcement.

The FBI, the Carroll County Sheriff's Office, and the Boone, North Carolina, Police Department investigated the case.

Trial Attorney Eduardo Palomo of the Criminal Division's Child Exploitation and Obscenity Section and Assistant U.S. Attorney Paul E. Budlow for the District of Maryland prosecuted the case.

<https://www.justice.gov/opa/pr/registered-sex-offender-sentenced-production-and-distribution-child-pornography>

As mentioned during House testimony for the cross-file, HB0233, federal code updates have done a better job than state legislation of keeping pace with technology used for LGBTQ perversion with children.

In closing, this minor revision is what Baltimore and Frederick County officials stated was needed to aid prosecution of streamers of child pornography. The surrounding standards of perversity have been on the books at the state and federal level for some time. This is a small "ask" for Maryland's prosecutors to keep up with overt, ubiquitous and omnipresent streaming technology.

Thank you for your support of Senator Salling's SB0226/HB0233

humbly
~vince

My SB0054 testimony

https://mgaleg.maryland.gov/cmte_testimony/2023/jud/1u9OuljTYPJeUOiy9pMPbou_xnGcpY0w-.pdf

SB 226 Child Pornography - Accessing With Intent t

Uploaded by: Michal Gross

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 226 - Criminal Law - Child Pornography - Accessing With Intent to View

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/13/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 226.

House Bill 233 would expand the crime of Possession of Child Pornography to include instances where individuals knowingly or intentionally access the visual representations prohibited by Criminal Law Section 11–208. Criminal Law Section 11–208 already prohibits the knowing possession and intentional retention of child pornography. In seeking to expand the definition of possession to include those who merely access the content, House Bill 233 would expand the universe of youth who could be selectively charged for common behavior, and could result in the criminalization of mere adolescent curiosity.

Although adolescent sexting is not child pornography, in 2019 Maryland’s highest court ruled that children can be charged for producing, distributing and/or possessing child pornography for self-produced images as if they were their own exploiters and abusers. In Re: S.K., 466 Md. 31 (2019). S.K. had sent two friends a video of herself engaged in consensual sexual behavior. When one of her now former friends posted the video on social media, S.K. had hoped the police officer at her school would offer assistance in removing the video; instead, she was interrogated, charged, prosecuted, and eventually convicted of distribution of child pornography. Despite its ultimate ruling, the court noted, however, that “there may be compelling reasons for treating teenage sexting different from child pornography.” Id. at 57. To do so, the court called on a legislative fix to the outdated laws, noting that “legislation ought to be considered by the General Assembly.” Id.

While this committee aimed in previous legislative sessions to fix the issues that were highlighted in In Re: S.K., the legislation passed by the General Assembly in 2021 can and does lead to the same disastrous results: teenagers charged with distribution, possession, and production of child pornography for sending or receiving images of themselves engaged in consensual sexual behavior. The well-intentioned legislation that was enacted, 2021 House Bill 180, left too much to the discretion of police, prosecutors, and judges – the same discretion that

led to charging, prosecuting, and convicting 16 year old S.K. The legislature, in passing a bill that continued to define adolescent sexting as child pornography, codified the very harm highlighted by In Re: S.K., endorsing prosecution for sexting within the criminal laws related to child pornography.

As a result, any expansion of Criminal Law Section 11–208 runs the risk of selective and disparate prosecution of adolescents for sending or receiving images or videos that were created by the subject of that “child pornography.” Take, for example, a common situation in a high school building full of teenagers with phones: 15 year old Adam, intentionally or mistakenly, airdrops a nude image of himself. That image is received by everyone within a certain proximity – hundreds of people in an ordinary high school building. Curious about the contents of a file sent without an explanation, Bailey opens the image. Bailey has now knowingly or intentionally possessed child pornography if the definition is expanded as proposed by SB 226. Similarly, youth often share content with the intention that the images or videos will not be saved. Snapchat, a social media application where temporary sharing is the very purpose of the app, is used for exactly that scenario. SB 226 would criminalize the sending or receiving of a temporary image over snapchat – even when the recipient did not know the content of the image before viewing it – as long as they knowingly or intentionally accessed the content.

While prosecution based on the circumstances described above may seem absurd, it is important to remember that in Charles County, 16 year old S.K. was charged, prosecuted, and convicted for sending a video of herself to two friends. That situation – an abuse of discretion at every level – occurred in this state less than 10 years ago. Teenaged sexting is not child pornography, but until the legislature changes the definition of child pornography to treat teenagers who sext as entirely different from adults who possess, produce, or distribute sexually explicit images of children, any expansion of Criminal Law Section 11–208 runs the risk of the selective criminalization of more youth like S.K. for behavior that many, if not most, adolescents surveyed have admitted to.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 226.

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

Authored by: Michal Gross, Assistant Public Defender, michal.gross@maryland.gov