

# **SB899**

Uploaded by: Mary-Dulany James

Position: FAV

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Judicial Proceedings Committee  
Executive Nominations Committee

Senate Chair

Joint Committee on  
Children, Youth, and Families

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

Over the past fifteen years or so three major trends have occurred and converged to justify and indeed necessitate that Maryland pass **SB 899**.

First, the victims of child pornography are getting younger, much younger: prepubescent, toddlers, and infants.

Second, because of how young those victims are, the hideous acts against them are all violent and probably beyond a normal person's comprehension.

Third, advances in technology, computers, internet, and data storage means perpetrators receive and store hundreds, but often thousands of images.

To begin to address these issues, SB 899 does three things:

1. Allows for the combination of 100 images into a single count during the initial phase of the criminal case.
2. Increases the penalty for child pornography when the child victim is under the age of five.
3. Increases the penalty for possession of 100 or more images.

There is now a constant escalation of these negative trends because a tipping point has been reached. Demand is fueling supply and more supply is desensitizing the perpetrators who internalize what they are seeing as normal and thus they demand more shocking and more craven images.

The following highlights further demonstrate the need for this legislation.

From 2007 to 2011 alone, the total images and videos reviewed by law enforcement went from 5 million to 22 million. Eighty-five (85%) of men arrested for possession and/or distribution of child pornography also committed a hands-on offense against a child.

At the same time, the consumers of child pornography now possess ever increasing numbers of images. According to federal authorities in 2019, the median number of images was 4,265, but with many offenders possessing millions. In cases across the country, state law enforcement repeatedly see the typical case involving 20,000 to 50,000 images, but plenty of cases involve over 100,000.

According to the Federal Sentencing of Child Pornography Report for 2019, over half (52.2%) of child pornography offenses included images or videos of infants and toddlers, and nearly every offense (99.4%) included prepubescent children. That the incredibly young are an ever-increasing

and often dominant part of today's child pornography is evident in every state for which I could find reporting. A list of some of my sources are at the end of my testimony.

Currently at the federal level, there can be sentence enhancements based on the age of the victim (under 14 years old), the brutality of the image (sadistic and masochistic), and the number of images. Additionally, a number of states have increased penalties for the number of images and the age of the victim. To keep up with the technological capabilities of ever-increasing storage capacity, these same states allow initial criminal complaints to describe the vast number of images in batches to make the early process more efficient and less unwieldy.

Maryland's child pornography statute has not been updated in this area since at least 2014, but possibly as far back as 2009. In either event, Maryland has not caught up with realities on the ground and our child pornography laws are not aligned with our recognition and significant policy improvements in protecting children from abuse, assaults, and trafficking, all of which are the essential crimes behind the explosion in numbers of the ever more hideously, perverted and brutal images that have taken hold in the modern world of child pornography. As one expert with the "We Need To Do Better" organization, the country's leader in fighting sex trafficking stated, "We don't say the words 'child pornography' because the accurate description is images of sexual assault on a child."

SB 899 is a first step in acknowledging this truth.

## SB 899 - Criminal Law - Child Pornography - Prohibitions Citations

1. "A Depraved World: FBI Agents Wage a Stressful Battle Against Child Pornography." Dec. 28, 2012. [https://www.nj.com/news/2012/12/a\\_depraved\\_world\\_fbi\\_agents\\_wa.html](https://www.nj.com/news/2012/12/a_depraved_world_fbi_agents_wa.html)

2. Testimony of Jame M. Fottrel, Steve DeBrotta, and Francey Hakes. Department of Justice Child Pornography Guidelines. [https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20120215/Testimony\\_15\\_Hakes\\_DeBrotta\\_Fottrell.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20120215/Testimony_15_Hakes_DeBrotta_Fottrell.pdf)

3. "Internet Pornography and Child Exploitation." DOJ. November 2006. Volume 54 'Number 7'. <https://www.justice.gov/sites/default/files/usao/legacy/2006/12/18/usab5407.pdf>

4. "Former HHS Cyber Security Director Timothy DeFoggi Sentenced for Child Porn." ABC News. January 5, 2015. <https://abcnews.go.com/US/hhs-cyber-security-director-timothy-defoggi-sentenced-child/story?id=28016875>

"...expressed interest and wanted to meet a member of his child porn network to violently rape and murder children"

5. "More Than 70 Arrested in New York Child Porn Bust." Washington Post. May 22, 2014. <https://www.washingtonpost.com/news/morning-mix/wp/2014/05/22/more-than-70-arrested-in-new-york-child-pornography-bust/>

"Searches online included 'real child rape' and tens of thousands of images were involved."

6. The Innocent Images National Initiative

"The most insidious use of internet is for child sexual exploitation, taking place in the dark shadows of the web, on websites, message boards, through file sharing and emails and in real time with web cams and streaming videos."

7. The High Tech Crimes Task Force

"In 2015, the FBI worked with San Diego to target an international ring of child molesters who distributed photos and videos over the internet. These individuals victimized at least 45 children from ages 2-14, 37 of which were in the US."

8. "15,000 Cases of Arizona Child Porn, Most Uninvestigated." January 23, 2015. <https://www.azcentral.com/story/opinion/op-ed/2015/01/23/arizona-child-porn-uninvestigated/22189005/>

"Investigators say child-pornography victims are getting younger, and the abuse is becoming more violent... A significant number of these videos and images consist of infants and young children being raped, tortured and sexually abused. Some even include "how to" instructions on how **a grown man can rape a 3-year-old** and groom him or her for years of abuse... Fifty to 70 percent of perpetrators who download and trade child pornography are considered "hands on" offenders who actively molest and abuse children... Sixty to 65 percent of the images intercepted in Arizona are of prepubescent children, and 9 percent of all victims are infants."

9a. "Butler County Child Porn Case: Infants, Toddlers Among Victims, Sheriff Says." November 19, 2019. <https://www.whio.com/news/local/butler-county-child-porn-case-infants-toddlers-among-victims-sheriff-says/q13fUuENBYktI9stDYOTNM/>

"...Images included children and babies, including some in diapers"

9b. "No Bond for Suspect in One of the Worst Cases of Child Porn Butler County Has Ever Seen." November 20, 2019. <https://www.fox19.com/2019/11/19/butler-sheriff-man-charged-one-worst-cases-child-porn/>

10. "I-TEAM INVESTIGATES: Our I-team Finds Child Pornography Arrests are on the Rise, Victims Getting Younger." May 8, 2019. <https://www.wrdw.com/content/news/I-TEAM-INVESTIGATES-Our-I-team-finds-child-pornography-victims-are-getting-younger-Much-younger-509656791.html>

" 'When you take a child's innocence, that's a part of their soul... It can't be replaced and it can't be returned.' The videos... he found on their computers -- involving infants -- are the worst he's seen in his 30-year career..."

'The children are younger. Pre-pubescent. Toddler, infant,' Kicklighter said. 'The guys and women changing and exchanging child pornography, the children have gotten younger as to what they desire, what they want.'

'Two of the videos I would not even show to the prosecutor because they were that bad,' Kicklighter said. 'With a child being sexually abused, physically abused, bondage -- basically tortured.'

11. "Cops and Volunteers Helping Rescue Children from Pornography." *News Center Maine*. February 2, 2015.

“86% of the pornographic images confiscated in Maine are young children.”

12. California Penal Code Section 311.11

13. Colorado Statute Sections 18-6-403, 18-1, 3-401

14. West Virginia Statute Section 61-8C-3

15. Pennsylvania Statute 18 PA CSA Sections 6312, 3101, 106

16. 18 U.S.C. Sections 1466A, 2252, 2252A (a)-(b), 2260 (b)

17. ECPAT (End Child Prostitution and Trafficking) – USA Report “We Need to Do Better.” August 12, 2019.

<https://static1.squarespace.com/static/594970e91b631b3571be12e2/t/5d516a24dd94dd0001bc6e5b/1565616783919/CSAM+Report-v4.pdf>

# **SB971**

Uploaded by: Mary-Dulany James

Position: FAV



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Judicial Proceedings Committee  
Executive Nominations Committee

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THE SENATE OF MARYLAND  
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SB 971 is a modest proposal by the Real Estate section of the Maryland State Bar Association. It is a small step toward addressing two questions:

1. Why is it so difficult to record land record documents?
2. How can we begin to address this difficulty?

Attached to my remarks is a 5-page white paper explaining some of the many problems and obstacles that have grown over the years. At the heart of the issue is the fact that Maryland's land recording system is not unified nor uniform. Because state law says deeds and other instruments affecting real property must be filed in the county where the land is located (Real Property Code Section 3-103), our system is made up of 24 jurisdictions, each of which have differing requirements. Over the years, in addition to requiring that all real estate taxes be paid prior to the recording of instruments covering title, local governments have been loading up the process with all sorts of special assessments, special district taxes, public water and sewer assessments, personal property taxes, hotel taxes, local town or city taxes, and so on. These too all must be paid in full.

While starting in 2015, Maryland began allowing the electronic filing of documents, it was not until the pandemic that all the different jurisdictions embraced it. So far, however, only simple recording packages can be e-recorded. That means some residential real estate and most commercial transactions are not eligible. Thus, these different and often tangential fees and taxes are administered and collected by offices in addition to the Clerks of Court, such as city halls, local administrators, treasurers, or directors of finance that must be personally visited. These processes can take hours at each visit or require that documents be dropped off necessitating return trips. Some offices have their own special forms that are different from the standardized Maryland Land Intake Sheet. Not all fees, taxes, and assessments, nor their necessary information, are available online. Information that is provided online does not stop jurisdictions from demanding payment of fees and assessments not showing in the system but is due and owed. Local county offices have refused to process a deed based on these newly created bills with surprise undisclosed charges, and the practical effect of this sharp practice is that settlement companies are left with either becoming a de facto collection agency chasing after the responsible party who may claim they have no money to pay or taking a loss on the hidden charges.

There are many issues and complications because of the variability and inefficiencies across counties and even within counties that strongly suggest the real estate recordation system should be overhauled, ideally with all the stakeholders' collaboration behind it.



This bill is meant as a first step toward that cooperation by amending in two places within the Real Property Code as follows:

First, by changing the word "may" to "shall" in Real Property Section 3-703 (b) (7) and (c) (The Electronic Recording Act) so that it reads:

"(b) ... the clerk of a circuit court...

(7) ~~May~~ **SHALL** agree with other State or county officials on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording documents or the electronic payment of fees or taxes

(c) The State Department of Assessments and Taxation or a county ~~may~~ **SHALL**:

(1) Accept by electronic means any fee or tax that the Department or county is authorized to collect as a condition precedent to recording a document; and

(2) Agree with the clerk of a circuit court or other State official on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording documents or the electronic payment of fees or taxes."

The Maryland Circuit Court Clerks Association supports this proposal and are willing to take the lead and work with the local finance officials to develop a process for allowing the electronic payment of all fees and taxes required to record documents (see their email attached).

Second, by inserting new language into Real Property Section 3-104 (b) (2) (iii), modeled after Baltimore City's Annotated Code Article 28 Sections 2-3. The exact language of this proposal is on page 4 and 5 of the attached white paper. The goal of this language is to improve the nature and quality of certificates already existing by mandating they be made accurate, complete, timely, and once issued, can be relied on in favor of all purchasers.

The real estate settlement industry is responsible for collecting billions of dollars on behalf of state, local and municipal governments each year at no cost. These taxes and fees (along with annual real property taxes) are the backbone of county revenues and budgets. It behooves our local governments to begin to modernize and streamline all facets of recordation and elevate notice, transparency, and certainty to its proper place.



## **James, Mary-Dulany Senator**

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**From:** Enten, D. Robert <denten@gflaw.com>  
**Sent:** Thursday, March 16, 2023 11:30 AM  
**To:** James, Mary-Dulany Senator  
**Subject:** SB971

See email below to Biil O'Connell.

Bill, The Maryland Circuit Court Clerks' Association supports this legislation. A special Thank You goes out to Sen James for asking for our position. Please pass that along if you could.

Thank you,  
Katherine

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**We are have moved!**

*Effective April 19, 2021, we moved our offices, mailing address and center of remote operations to 1001 Fleet Street, Suite 700, Baltimore, MD 21202. Our email addresses and phone numbers are unchanged.*

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**Why is it so Difficult to Record Documents in the Land Records?**  
**How Can We Begin to Address this Difficulty?**

Anyone who has handled commercial real estate transactions in Maryland knows “closing” the transaction, which includes obtaining all the executed closing documents, clearing all liens of record, collecting the funds, and disbursing them according to the parties instructions, is only the beginning of the battle. Perfecting the transaction by recording documents in the Land Records can be as challenging as any stage of a transaction *and in many instances, the most difficult part.*

Maryland’s land recording system is made up of 24 jurisdictions (23 Counties and the City of Baltimore) managed by the State of Maryland Clerks of the Circuit Court. But the Clerks can only record what documents make their way to them after navigating the many offices and toll booths the documents have to go through along the way. These toll booths are maintained by Finance Offices in each of the 24 jurisdictions. To be clear, the Clerks and the Courts are not the problem. The problem is with what happens before the documents reach them.

In a basic residential real estate transaction in which there is a deed and a single mortgage or deed of trust, and the documents are e-recorded through Simplifile, the process could take as little as several days. However, if the property is in Baltimore City, this could take a month or more. But not all transactions can utilize Simplifile because they do not meet the requirement that it be a “simple” or “basic” transaction.

Maryland can and should do better. In most jurisdictions around the country, documents get recorded on the day on which they are delivered to the recorder by the settlement company. Generally, the documents are delivered to the recorder in the morning on the day of closing (i.e., the day the money is disbursed), and title is brought to date at that time. Once the documents are recorded, the recording service notifies the settlement company that the documents are on record, at which time the settlement company disburses the money according to the parties instructions. *All on the same day.*

We cannot record on that schedule in Maryland because of the length of time it takes for a deed to make its way through the system. No seller, buyer, lender, or real estate salesperson is willing to wait around for several days or weeks (or more in the case of Baltimore City) to receive their money or be able to move into the property. And if the seller’s existing secured loan is not paid on the date of “closing,” it will continue to accrue interest for which the settlement statement and Closing Disclosure do not account.

So what happens in Maryland to enable “closings” to include the disbursement of funds to the seller and seller’s lender, so interest will cease to accrue, and to others and for the parties to act as if there has been a completed and perfected transaction? The parties inherently assume certain risks of which they may not even be aware and which the recording system is designed to prevent. Also, if the buyer has purchased title insurance, the title insurance company will assume certain risks, and at the same time try to reduce its exposure by obtaining representations and indemnities from parties to the



transaction. Frequently, the settlement company will hold back from the settlement proceeds the amount of money that it thinks will be necessary to satisfy the liens and claims of the jurisdiction where the property is located.

Some of the problems with the current system are explained in further detail below. While the entire process should be overhauled, with 24 jurisdictions and 24 different ways of doing things, that would be difficult without a concerted effort by all stakeholders. Instead, as a meaningful first step, we propose some modest changes that we hope will lead to cooperation by all stakeholders to fix our antiquated system.

## **A. Prerequisites To Recording Documents**

Prerequisites to recording documents can be found in RP §3-104. This code section contains about 80 provisions. This paper will focus on the several most responsible for rejections:

## **B. The Most Common Reasons for Recording Rejections**

### *1. Pay Open Assessments*

RP §3-104(a)(1) states that “[t]he Clerk of the Circuit Court may record an instrument that effects a change of ownership if the instrument is: (i) Endorsed with the certificate of the collector of taxes of the county in which the property is assessed. . . .”

All public taxes, and if applicable, special assessments, special district taxes, public water and sewer assessments, front foot benefit charges, personal property taxes, hotel taxes, rollback or recapture taxes, local town or city taxes and municipal fees due and owing on the property must be paid in full to the treasurer, tax collector, or director of finance of the jurisdiction in which the property is assessed.

Obtaining the amounts due often takes *herculean* effort. Six jurisdictions require purchasing official lien certificates. Four have optional certificates or tax reports. These lien certificates or tax reports typically contain only the basic real property tax information. Few include any other additional fees or charges that may need to be remitted in order to record a document. Seventeen jurisdictions have incorporated municipalities that must be separately contacted. Some require special water readings. Some have special forms in addition to the Maryland Land Intake Sheet. Some jurisdictions have separate utility companies owned by municipalities that you must contact directly. Some may have various departments under one roof, but you need to contact each individual department to inquire about charges and obtain a sign off. All have different turnaround times (from as little as three days to two weeks, and most recently in Baltimore City six weeks or more) and varying expiration dates.

Not all necessary information is available through online systems. Information provided online does not prevent jurisdictions from demanding fees or assessments not showing in the system. Surprises at the county finance level happen frequently. Sometimes, the County will create a new bill (even when you obtain their voluntary lien certificate) once it receives the deed attempting to transfer title to a



property and will refuse to process the deed until such new, undisclosed, and undiscoverable “lien” is paid in full.

The problem with all this, as noted above, is that the money on deposit with settlement company has already been disbursed or allocated to expected expenses, and there are no funds left from which to pay these hidden charges. The settlement company is left in the untenable position of trying to collect after the “closing” the additional sums from the responsible party before the deed is recorded or paying the hidden charges and trying to thereafter collect from a party who may then claim that it “has no money,” or arguing with the jurisdiction that rejected the deed, which goes nowhere.

The real estate settlement industry is responsible for collecting countless billions of dollars on behalf of the State and local governments each year for which the State and local governments pay nothing. Is it fair to make settlement companies the guarantor of hidden or undisclosed charges? Is it unreasonable to demand that each jurisdiction state promptly after request what must be paid to transfer title and allow the settlement companies to rely on such statement? If a mistake is made and the jurisdiction does not request all of the funds to which it might be entitled, the jurisdiction could demand payment from the responsible party (usually the seller) after the deed has been recorded, but that should not hold up recording or prevent a *bona fide* purchaser from obtaining record title to the property. .

## 2. *Recording v. e-Recording*

Maryland began allowing electronic recording in some jurisdictions in 2015, and because of the pandemic that last remaining counties have now embraced it. Only simple recording packages can be e-recorded. As noted above, for a basic residential real estate transaction, if the documents are e-recorded, the documents could make it to record in as little as a day or two, or as long as a month or more.

But most commercial transactions are not eligible to be processed in the e-recording system, and thus, must be presented in person or by overnight mail (e.g., FedEx, UPS, DHL etc. . .). If presented in person, recording can be accomplished on the same day in some jurisdictions, but in others the documents must be left at each stop. Two or three office stops (Town, County Finance, Clerk of Court) is normal and can add hours of travel between the offices. Some jurisdictions require you to drop off the package and wait for clerks to get to yours for review. The delay between drop off and processing varies based on jurisdiction, time of year and the complexities of the recording package. It can be a few days or months if there is a problem. Often one does not learn that a document has been rejected for several weeks.

## C. **A Modest Proposal to Correct Some of the Problems**

This paper has highlighted some of the challenges to successful recording in Maryland but does not cover every pitfall. The process is complicated even if there are no hidden fees or rejections based on a county’s view of the transaction. The real estate settlement industry has noticed that the Clerks and



the Finance Offices often do not work together to improve the process. And thus, we propose to change the word “may” to “shall” in RP§ 3-703 (i.e., the Electronic Recording Act) which states in relevant part (with the proposed change shown):

(a) In this section, “paper document” means a document received by the clerk of a circuit court in a form that is not electronic.

(b) In compliance with any standards established by the Administrative Office of the Courts, the clerk of a circuit court: . . .

(7) ~~May~~ SHALL agree with other State or county officials on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording documents or the electronic payment of fees or taxes.

(c) The State Department of Assessments and Taxation or a county ~~may~~ SHALL: . . .

(2) Agree with the clerk of a circuit court or other State official on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording documents or the electronic payment of fees or taxes.

The second proposed change is to require each jurisdiction to provide a timely lien certification that can be relied on to show all charges and fees assessed against the property and prevent recording rejections based on charges not shown on the lien certificate. In exchange, the jurisdictions may charge a modest fee to cover the cost of producing such certificates.

Thus, the real estate settlement industry proposes adding such a requirement with the addition to RP § 3-104 of a new section (b)(2)(iii) stating:

(iii) THE DIRECTOR OF FINANCE, OR HIS OR HER DESIGNEE, FOR EACH COUNTY SHALL MAKE PROVISIONS FOR:

(1) THE TIMELY, SYSTEMATIC, AND RELIABLE COLLECTION OF ACCURATE DATA IN REGARD TO ALL COUNTY AND MUNICIPAL, IF APPLICABLE, CHARGES OR ASSESSMENTS AFFECTING ANY PARTICULAR PIECE OF REAL PROPERTY SITUATE IN THE COUNTY; AND

(2) THE ISSUANCE WITHIN FIVE BUSINESS DAYS OF RECEIPT OF THE APPLICATION OF ANY PERSON TENDERING A FEE OF \$55 FOR EACH SEPARATE PIECE OF PROPERTY INQUIRED ABOUT, OF A CERTIFICATE SHOWING PLAINLY AND ACCURATELY THE KIND AND AMOUNT OF ALL SUCH CHARGES OR ASSESSMENTS AGAINST SUCH PARTICULAR PIECE OF PROPERTY THAT WILL BE REQUIRED TO OBTAIN THE ENDORSEMENT CONTEMPLATED IN SECTION (II).

(3) SUCH CERTIFICATE HEREBY PROVIDED TO BE ISSUED, WHEN ISSUED, SHALL BE AND BECOME EFFECTUAL IN FAVOR OF EVERY BONA FIDE PURCHASER FOR



VALUE AND WITHOUT NOTICE TO BAR ANY CLAIM THEREAFTER, FOR AND ON ACCOUNT OF ANY CHARGE OR ASSESSMENT AGAINST ANY PARTICULAR PIECE OF PROPERTY, PRECLUDED BY THE FACT OF SAID CERTIFICATE;

(4) SUCH CERTIFICATE SHALL BE ACCEPTED BY THE COLLECTING AGENT IF PRESENTED WITHIN 45 DAYS OF ISSUANCE WHO SHALL ENDORSE THE DEED AS REQUIRED IN (III) AND UPON PAYMENT OF ALL CHARGES SET FORTH IN SAID CERTIFICATE ALONG WITH ANY APPLICABLE TRANSFER AND RECORDATION TAXES.

(5) NEITHER THE PAYMENT OF THE SAID FEE NOR THE ISSUANCE OF SUCH CERTIFICATE MENTIONED SHALL IN ANY EVENT BE HELD TO PRECLUDE THE CLAIM BY THE COUNTY TO ANY CHARGE OR ASSESSMENT AS AGAINST THE OWNER OF THE PROPERTY AT THE TIME SUCH CERTIFICATE AS IS HEREIN PROVIDED FOR IS APPLIED FOR AND ISSUED OR ANY PERSON ACQUIRING SAID PROPERTY WITH KNOWLEDGE OF SUCH CLAIM.

This proposed addition to RP § 3-104 is modeled after Baltimore City Code Article 28, Section § 2-3, which says in relevant part, "The Director of Finance, through the Chief Clerk in charge of said Bureau, to be appointed as aforesaid, shall make provisions for: (1) the systematic and reliable collection of accurate data in regard to all municipal charges or assessments affecting any particular piece of real property situate in the City of Baltimore; and (2) the issuance, upon the application of any person tendering a fee . . . for each separate piece of property inquired about, of a certificate showing plainly and accurately the kind and amount of all such charges or assessments against such particular piece of property. . . . Said certificate hereby provided to be issued, when issued, shall be and become effectual in favor of every bona fide purchaser for value and without notice to bar any claim thereafter, for and on account of any charge or assessment against any particular piece of property, precluded by the fact of said certificate. . . ."

We recognize that this proposal will not cure all of the problems related to the recording process and delays in recording in Maryland, but we believe that this includes an important first step to doing so.

**SB 899 - FAV - SUPPORT.pdf**

Uploaded by: Susan Kivioja

Position: FAV



**OFFICE OF THE  
STATE'S ATTORNEY**  
CECIL COUNTY, MARYLAND

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**JAMES A. DELLMYER**

*State's Attorney for Cecil County, Maryland*

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**DATE:**                   **March 21, 2023**

**BILL NUMBER:**   **SB 899**

**POSITION:**           **Support**

The Office of the State's Attorney for Cecil County and the Maryland State's Attorney's Association (MSAA) supports SB 899.

SB 899 enhances the charging capability of prosecutors in child pornography possession crimes under Criminal Law Article 11-208 in two ways: 1) it permits the combination of 100 images into one count; and 2) creates a charge that is specific to images that contain children under the age of five. For either theory, the bill enhances the sentence to 10 years.

This bill contemplates the reality of modern child pornography possession. Current trends include the downloading and retention of a significant number of images, videos, and other material. At times the amount of material downloaded and retained have exceeded 1000 or more separate images. These images and videos have become increasingly graphic and lengthy as download speeds and storage capacity have exponentially improved. Downloading excessive volumes of child pornographic materials creates an enhanced market that drives individuals to feed the consumers of this industry with more victims. Photographic and video evidence of child pornography often exists in perpetuity, and the victims of these crimes suffer lasting psychological consequences and are revictimized every time an image is viewed, possessed, or distributed and is precisely why in 2021 the Maryland Sentencing Guidelines Commission enhanced criminal sentencing guidelines for this type of criminal conduct.

Current law requires investigators, prosecutors, and fact finders to review each image separately which does not contemplate the full extent of the criminal conduct or trauma to victims. Further, each charge necessitates the inclusion of the particular image, video file name or hash value which may produce charging documents or indictments that involve hundreds of individual counts. Such a charging methodology is unwieldy and ineffectual. By pooling batches of pornographic material into a singular 10-year charge, offenders are held accountable for the possession and proliferation of the child pornographic industry in a reasonable way. Further, although ALL child pornographic images are extremely harmful and reprehensible, there exists a particular market that caters to the exploitation of very young children who are often displayed in extremely graphic sadomasochistic material that includes torture. This bill confronts the

retention of that material in a similar manner by specifically addressing images that contain this population.

The idea of batch image charging and sentencing enhancements for voluminous age-based or disturbing image retention is not new and is codified in a similar manner in California<sup>1</sup>, Colorado<sup>2</sup>, West Virginia<sup>3</sup>, Pennsylvania<sup>4</sup> and the United States Criminal Code<sup>5</sup>. This straightforward and common-sense legislation will immediately hold offenders accountable in line with current trends and protect future victims from this extremely harmful and offensive conduct.

The Office of the State’s Attorney for Cecil County and the MSAA seeks a favorable report on SB 899.

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<sup>1</sup> California Penal Code § 311.11

<sup>2</sup> Colorado Statute § 18-6-403 and § 18-1.3-401

<sup>3</sup> West Virginia Statute § 61-8C-3

<sup>4</sup> Pennsylvania Statute 18 PA.C.S.A. § 6312, §3101, §106

<sup>5</sup> Sentencing enhancements for violation of the federal child pornography statutes under 18 U.S.C. §§ 1466A, 2252, 2252A(a)–(b), 2260(b) are not codified in the criminal statute, however, the United States Sentencing Commission has expressly provided for enhancing sentencing score based on quantity of images possessed.

(A) at least 10 images, but fewer than 150, increase by 2 levels;

(B) at least 150 images, but fewer than 300, increase by 3 levels;

(C) at least 300 images, but fewer than 600, increase by 4 levels; and

(D) 600 or more images, increase by 5 levels.

In determining the number of images, the Sentencing Commission decided each individual image shall be considered to be one image, while “each video, video-clip, movie, or similar visual depiction shall be considered to have 75 images.”

**Porn - child - number of images, age of child - se**

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**Testimony Supporting Senate Bill 899 with Amendments**  
**Lisae C. Jordan, Executive Director & Counsel**  
March 21, 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. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 899 with amendments.

**Senate Bill 899 -- Child Pornography – Penalty Increases**

This bill increases the penalties for possession of child pornography where the number of images retained exceeds 100 or the image depicts a child under or indistinguishable from a child under the age of five.

Victims of child pornography suffer long lasting a repeated harm. They initiating are sexual abused during the creation of the images, but then experience repeated harm as the pictures of their abuse are circulated. Child pornography, now often referred to as images of child sexual abuse, are typically shared electronically. The material travels the web, around the world, and shared by the sex offenders interested in exploiting children by viewing their sexual abuse.

In Maryland, possession of child pornography requires that the child depicted be under the age of 16 and the crime is a is a misdemeanor with a penalty with up to 5 years and a \$2,500 fine or both for a first offense, and up to 10 years and a \$10,000 fine or both for subsequent offenses. SB899 proposes that the penalty for possessing an image of child under 5 or more than 100 images have a potential penalty of up to 10 years. **With all respect, MCASA respectfully suggests that the available penalty be increased in all cases and that restitution be mandatory.**

MCASA concurs that depictions of the sexual abuse of children under the age of five are horrific and vile. Unfortunately, there are other horrific and vile depictions of sexual abuse of children. Without providing unnecessary detail, consider cases involving



children and bodily fluids, or with animals, or violence. Remember that the very definition of child pornography includes children who are a “subject of sadomasochistic abuse”. Consider also, whether children who are five, six, seven or more really should have less protection. MCASA believes firmly that the potential penalty should be increased for *all* cases and courts should be able to consider *all* of these factors. If there is a concern about overbreadth and prosecution of someone who obtained a low number of images due to curiosity or some other mitigating reason, consider creating mitigating factors for courts to consider during sentencing.

Additionally, MCASA respectfully suggests that courts be required to impose restitution in child pornography cases and that the legislature set a minimum level of restitution. Victims in these cases are often not able or even aware of the criminal proceedings involving the images of their sexual abuse. Maryland should automatically impose restitution judgements in these cases and these funds can be used for prevention and services.

MCASA appreciates the intent of this bill and respectfully suggests that it is unnecessarily modest in scope. Child pornography is child sexual abuse and possession of images of child sexual abuse should have stronger penalties in all cases.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on Senate Bill 899 with Amendments**