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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

January 25th, 2024

The Maryland State Senate Judicial Proceedings Committee

The Honorable William C. Smith, Jr.

2 East Miller Senate Building

Annapolis, Maryland 21401

Testimony of Senator Mary-Dulany James
In Favor of SB 65 Criminal Law - Child Pornography - Prohibitions and Penalties

Dear Chairman Smith, Vice Chair Waldstreicher, and Members of the Committee,

Over the past fifteen years or so three major trends have occurred and converged to justify and indeed necessitate that Maryland pass **SB 65**.

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, and, more often, these images are actually videos and films as captured in the new section **11-208.2**.

To begin to address these issues, SB 65 does three things:

1. Increases the penalty for possession of 100 or more images.
2. Increases the penalty for child pornography when the child victim is under the age of 13.
3. Treats each video, film, or other similar moving depictions as equaling 20 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 officials 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 65 is a first step in acknowledging this truth.

Citations for SB 65 - Criminal Law - Child Pornography - Prohibitions

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

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

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."

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"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.

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"...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.' "

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“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>

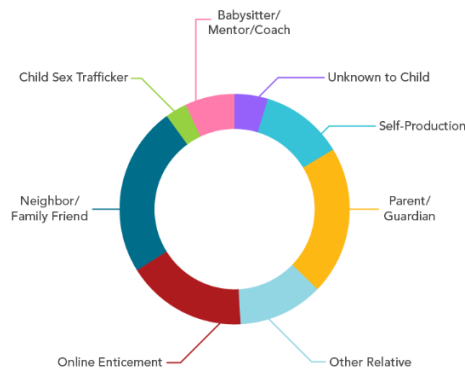
Data from the National Center for Missing and Exploited Children (NCMEC)

Actively traded images and videos

NCMEC's Child Victim Identification Program serves as the U.S. clearinghouse for information on CSAM and is aware of more than **25,140** child victims identified by law enforcement.

Of those, **2,734** children are depicted in imagery considered "actively traded," meaning the images or videos have been seen in multiple reports to NCMEC.

Relationship of offender to child in actively traded images and videos



Gender

Male
37%

Female
63%

Age

Infant/Toddler
9%

Prepubescent
58%

Pubescent
33%

Data: Relationship of offender to child in actively traded images and videos

Type of Relationship	# of Known Relationships	% of Total Victim Relationships
Parent/Guardian	590	20.93%
Other Relative	335	11.88%
Babysitter/Mentor/Coach/Teacher	193	6.85%
Neighbor/Family friend	675	23.94%
Self-Production	328	11.64%
Online Enticement/Youth Produced	480	17.03%
Child Sex Trafficker	82	2.91%
Unknown to Child	136	4.82%

This is Senator James' testimony from the 2023 bill hearing and is meant to supplement the testimony above.

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.

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