

## **Unfavorable Response to HB364**

### **Criminal Law – Child Pornography – Prohibitions and Penalties**

Families Advocating Intelligent Registries (FAIR) seeks rational, constitutional sexual offense laws and policies for persons accused and convicted of sexual offenses. We have substantial concerns with this bill, as the result of its passage would be an elevation of the offense of possession of child pornography (Criminal Law 11-208) from a misdemeanor to a felony under some circumstances, and multiple penalties for a single offense.

#### **Possession of Child Pornography**

This bill would enhance the penalty for this offense from a misdemeanor to a felony in two circumstances: (1) the offender possesses a single illegal picture of a child under the age of 13, or (2) the offender possesses 5 or more videos in violation of Criminal Law 11-208.

FAIR condemns child pornography and believes that individuals who possess, distribute, produce or engage in other offenses involving child pornography be appropriately punished. Under current law, possession of child pornography is a misdemeanor with a potential penalty of up to five (5) years in prison. That is not a “slap on the wrist.” The elevation of the offense from a misdemeanor to a felony as proposed by this bill will not enhance the safety of the community or of our children. It is purely adding more punishment without a rational basis and is unjustified.

With regard to possession (Criminal Law 11-208), years of research and experience have established that individuals who engage only in the possession of child pornography are exceedingly unlikely to reoffend.

From a clinical perspective, users of child pornography often respond well to treatment, especially compulsive/addicted and situational users. The vast majority of these offenders show no other evidence of criminal behavior. Typically, they are average, law-abiding citizens. Most have never before been involved in the criminal justice system. In many respects, they have lived productive lives, both personally and professionally. Such men are solid treatment candidates and unlikely to re-offend.<sup>1</sup>

Research continues to support this conclusion. Elevation of the possession of child pornography offense from a misdemeanor to a felony merely increases punishment

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<sup>1</sup> [Understanding Users of Child Pornography | Psychology Today](https://www.psychologytoday.com/us/blog/love-and-sex-in-the-digital-age/202011/understanding-users-child-pornography) (Nov 17, 2020). Robert Weiss, PhD., LCSW, CSAT (<https://www.psychologytoday.com/us/blog/love-and-sex-in-the-digital-age/202011/understanding-users-child-pornography>)

with no benefit to society. It also makes it more difficult for the individuals who committed the offense to reintegrate into society as the law-abiding individuals they were before the offense.

### **Multiple Penalties for A Single Offense**

#### **Possession Offenses**

As currently written, an individual may be convicted and punished multiple times for a single offense: once under Criminal Law 11-208 for possession of child pornography and a second time under this proposed bill if one of the possessed pictures is a child under age 13 (proposed Criminal Law 11-208.2(C)), and arguably a third time if the number of pictures exceeds the number of pictures/videos set out in the bill (proposed Criminal Law 11-208.2(B)). Each of those violations would constitute a separate offense: up to a 5-year term for violation of Criminal Law 11-208, and 10-year prison terms for each of proposed Criminal Law 208.2(B) and (C) with punishments stacked consecutively and totaling up to 25 years. This raises significant questions regarding overreach and unconstitutionality.

#### **Distribution Offenses**

The same overreach and constitutional concerns arise in how this bill would allow for extreme sentencing for a distribution case. Under current Maryland law, distribution of child pornography is a felony, with a penalty of up to 10 years in prison. Under this bill, an individual who distributes a single picture involving a 12-year-old would be subject to possible incarceration for 20 years. As this bill is worded, distribution of 5 videos to the same person, with one of the videos depicting a 12-year-old, would result in a potential penalty of 30 years. What is the purpose here? What is the societal good in taking an offense that already is a felony with a 10-year penalty and doubling or possibly tripling the penalty?

### **Other issues**

Under the bill, possession of only a single picture obtained on the internet of a 12-year-old engaging in sexual conduct could result in a felony punishment of 15 years in prison. Meanwhile, if an individual photographs a 13-year-old engaging in sexual conduct or distributes or sells that picture of the same 13-year-old child, the maximum penalty under Maryland law for that individual would be 10 years.

For these reasons, FAIR asks that the committee return an unfavorable report.

Sincerely,



Brenda V. Jones, Executive Director  
Families Advocating Intelligent Registries