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BILL NUMBER: HB 670

POSITION: Support

The Maryland State's Attorney's Association supports HB 670.

HB 670 contemplates the reality of modern child pornography possession by enhancing and streamlining the charging capability of prosecutors in child pornography possession crimes in two significant ways: 1) permitting the combination of 100 images into one felony count; and 2) creating a charge specific to images that contain children under the age of 13. Under either theory, the bill enhances the sentence to 10 years consecutive to any separate sentence imposed for a violation of Criminal Law § 11-207 or § 11-208.

Prior to 2013, the ability to store large amounts of information on a flash drive was limited, but then storage capacities increased exponentially when the first 1 TB (1 terabyte) USB drives were marketed and sold to consumers. One terabyte of information is analogous to roughly 132,000 average length books or 250 standard definition movies-approximately 22,500 minutes.¹ Ten terabytes could hold the entire printed collection of the Library of Congress. Unfortunately, with the unprecedented growth of portable information storage, so too did law enforcement start encountering staggering collections of child pornography contained on 1 TB USB drives, which could be as much as 200,000 photos.²

Even more disturbing, current trends include the downloading and retention of a significant number of images, videos, and other material at a much faster and more undetectable rate. This trend is the consequence of increasingly available digital pathways to seek, download, and retain through sophisticated and hidden means. Recently, offenders have been utilizing a variety of cell phone apps and social media outlets to reach like-minded consumers and trade material. Law enforcement is in a constant battle to identify and understand emerging technology used in this manner.

¹ The average movie length is approximately 90 minutes.

² It is worth noting that a 2 terabyte flash drives are available at retail for an average of \$25.00.

Further, these images and videos have become increasingly graphic and lengthy as download speeds and storage capacity have also exponentially improved. Downloading excessive volumes of child pornographic materials creates an enhanced market that drives disturbing individuals to flood 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 California³, Colorado⁴, West Virginia⁵, Pennsylvania⁶ and the United States Criminal Code⁷. 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 Maryland State's Attorney's Association seeks a favorable report on HB 670.

³ California Penal Code § 311.11

⁴ Colorado Statute § 18-6-403 and § 18-1.3-401

⁵ West Virginia Statute § 61-8C-3

⁶ Pennsylvania Statute 18 PA.C.S.A. § 6312, §3101, §106

⁷ 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.”