

# SENATE BILL 472

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By: **Senator Stone**

Introduced and read first time: February 1, 2010

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Possession of Visual Representation of Child Under 16 Engaged in Sexual**  
3 **Acts – Sex Offender Registration**

4 FOR the purpose of altering the definition of “offender” for purposes of inclusion on a  
5 certain offender registry to include a certain person convicted of knowingly  
6 possessing and intentionally retaining a film, videotape, photograph, or other  
7 visual representation showing an actual child under the age of 16 years engaged  
8 as a subject of sadomasochistic abuse, engaged in sexual conduct, or in a state of  
9 sexual excitement.

10 BY repealing and reenacting, without amendments,  
11 Article – Criminal Law  
12 Section 11–208  
13 Annotated Code of Maryland  
14 (2002 Volume and 2009 Supplement)

15 BY repealing and reenacting, without amendments,  
16 Article – Criminal Procedure  
17 Section 11–701(a) and 11–704(a) and (b)  
18 Annotated Code of Maryland  
19 (2008 Replacement Volume and 2009 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – Criminal Procedure  
22 Section 11–701(h)  
23 Annotated Code of Maryland  
24 (2008 Replacement Volume and 2009 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
26 MARYLAND, That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Criminal Law**

2 11–208.

3 (a) A person may not knowingly possess and intentionally retain a film,  
4 videotape, photograph, or other visual representation showing an actual child under  
5 the age of 16 years:

6 (1) engaged as a subject of sadomasochistic abuse;

7 (2) engaged in sexual conduct; or

8 (3) in a state of sexual excitement.

9 (b) (1) Except as provided in paragraph (2) of this subsection, a person  
10 who violates this section is guilty of a misdemeanor and on conviction is subject to  
11 imprisonment not exceeding 5 years or a fine not exceeding \$2,500 or both.

12 (2) A person who violates this section, having previously been  
13 convicted under this section, is guilty of a felony and on conviction is subject to  
14 imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

15 (c) Nothing in this section may be construed to prohibit a parent from  
16 possessing visual representations of the parent’s own child in the nude unless the  
17 visual representations show the child engaged:

18 (1) as a subject of sadomasochistic abuse; or

19 (2) in sexual conduct and in a state of sexual excitement.

20 (d) It is an affirmative defense to a charge of violating this section that the  
21 person promptly and in good faith:

22 (1) took reasonable steps to destroy each visual representation; or

23 (2) reported the matter to a law enforcement agency.

24 **Article – Criminal Procedure**

25 11–701.

26 (a) In this subtitle the following words have the meanings indicated.

27 (h) “Offender” means a person who is ordered by a court to register under  
28 this subtitle and who:

29 (1) has been convicted of violating § 3–503 of the Criminal Law  
30 Article;

1           (2)    has been convicted of violating § 3–502 of the Criminal Law Article  
2 or the fourth degree sexual offense statute under § 3–308 of the Criminal Law Article,  
3 if the victim is under the age of 18 years;

4           (3)    has been convicted of the common law crime of false imprisonment,  
5 if the victim is under the age of 18 years and the person is not the victim’s parent;

6           (4)    has been convicted of a crime that involves soliciting a person  
7 under the age of 18 years to engage in sexual conduct;

8           (5)    has been convicted of [violating the] **A CRIME INVOLVING** child  
9 pornography [statute] under § 11–207 **OR § 11–208** of the Criminal Law Article;

10          (6)    has been convicted of violating any of the prostitution and related  
11 crimes statutes under Title 11, Subtitle 3 of the Criminal Law Article if the intended  
12 prostitute or victim is under the age of 18 years;

13          (7)    has been convicted of a crime that involves conduct that by its  
14 nature is a sexual offense against a person under the age of 18 years;

15          (8)    has been convicted of an attempt to commit a crime listed in items  
16 (1) through (7) of this subsection; or

17          (9)    has been convicted in another state or in a federal, military, or  
18 Native American tribal court of a crime that, if committed in this State, would  
19 constitute one of the crimes listed in items (1) through (8) of this subsection.

20 11–704.

21          (a)    Subject to subsection (c) of this section, a person shall register with the  
22 person’s supervising authority if the person is:

23           (1)    a child sexual offender;

24           (2)    an offender;

25           (3)    a sexually violent offender;

26           (4)    a sexually violent predator;

27           (5)    a child sexual offender who, before moving into this State, was  
28 required to register in another state or by a federal, military, or Native American  
29 tribal court for a crime that occurred before October 1, 1995;

30           (6)    an offender, sexually violent offender, or sexually violent predator  
31 who, before moving into this State, was required to register in another state or by a

1 federal, military, or Native American tribal court for a crime that occurred before July  
2 1, 1997; or

3 (7) a child sexual offender, offender, sexually violent offender, or  
4 sexually violent predator who is required to register in another state, who is not a  
5 resident of this State, and who enters this State:

6 (i) to carry on employment;

7 (ii) to attend a public or private educational institution,  
8 including a secondary school, trade or professional institution, or institution of higher  
9 education, as a full-time or part-time student; or

10 (iii) as a transient.

11 (b) Notwithstanding any other provision of law, a person is no longer subject  
12 to registration under this subtitle if:

13 (1) the underlying conviction requiring registration is reversed,  
14 vacated, or set aside; or

15 (2) the registrant is pardoned for the underlying conviction.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2010.