

SENATE BILL 223

E1, E4

7lr1198
CF 7lr1208

By: **Senators Lee, Kelley, King, Manno, and Young**

Introduced and read first time: January 19, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law and Procedure – Sex Offenders and Possession of Child**
3 **Pornography – Penalties and Registration Requirements**

4 FOR the purpose of altering the criminal penalty for possession of child pornography;
5 requiring certain sex offender registrants to receive and pay for certain psychological
6 counseling services; establishing a term during which a certain sex offender
7 registrant is required to participate in certain psychological counseling services;
8 requiring the Department of Public Safety and Correctional Services to adopt certain
9 regulations; requiring certain sex offender registrants to provide certain information
10 in a certain periodic registration statement; applying a criminal penalty for
11 knowingly failing to participate in certain psychological counseling services; and
12 generally relating to sex offenses and sex offender registrants.

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Law
15 Section 11–208
16 Annotated Code of Maryland
17 (2012 Replacement Volume and 2016 Supplement)

18 BY adding to
19 Article – Criminal Procedure
20 Section 11–704.3
21 Annotated Code of Maryland
22 (2008 Replacement Volume and 2016 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Criminal Procedure
25 Section 11–706 and 11–721
26 Annotated Code of Maryland
27 (2008 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – Criminal Law

11–208.

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

(1) engaged as a subject of sadomasochistic abuse;

(2) engaged in sexual conduct; or

(3) in a state of sexual excitement.

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

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

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

(1) as a subject of sadomasochistic abuse; or

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

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

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

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

Article – Criminal Procedure

11–704.3.

1 (A) A REGISTRANT SHALL REGULARLY PARTICIPATE IN AND PAY FOR
2 PSYCHOLOGICAL COUNSELING SERVICES THAT MEET THE MINIMUM STANDARDS
3 ESTABLISHED BY THE DEPARTMENT.

4 (B) A REGISTRANT SHALL BEGIN PARTICIPATION IN THE PSYCHOLOGICAL
5 COUNSELING SERVICES DESCRIBED IN SUBSECTION (A) OF THIS SECTION WITHIN 30
6 DAYS OF THE REGISTRANT'S FIRST IN-PERSON REGISTRATION WITH LOCAL LAW
7 ENFORCEMENT AS PROVIDED UNDER § 11-705 OF THIS SUBTITLE AND SHALL
8 CONTINUE REGULAR PARTICIPATION IN THOSE SERVICES UNTIL THE REGISTRANT
9 HAS COMPLETED THE TERM OF REGISTRATION REQUIRED UNDER § 11-707 OF THIS
10 SUBTITLE.

11 (C) THE DEPARTMENT SHALL ADOPT REGULATIONS ESTABLISHING
12 MINIMUM STANDARDS FOR:

13 (1) THE TYPE OF PSYCHOLOGICAL COUNSELING SERVICES THAT A
14 REGISTRANT SHALL RECEIVE UNDER THIS SECTION; AND

15 (2) THE FREQUENCY AT WHICH A REGISTRANT MUST ATTEND
16 PSYCHOLOGICAL COUNSELING SERVICES UNDER THIS SECTION.

17 11-706.

18 (a) For all sex offenders in the State, a registration statement shall include:

19 (1) the registrant's full name, including any suffix, and all addresses and
20 places where the registrant resides or habitually lives;

21 (2) the name and address of each of the registrant's employers and a
22 description of each location where the registrant performs employment duties, if that
23 location differs from the address of the employer;

24 (3) the name of the registrant's educational institution or place of school
25 enrollment and the registrant's educational institution or school address;

26 (4) a description of the crime for which the registrant was convicted;

27 (5) the date that the registrant was convicted;

28 (6) the jurisdiction and the name of the court in which the registrant was
29 convicted;

30 (7) a list of any aliases, former names, names by which the registrant
31 legally has been known, traditional names given by family or clan under ethnic or tribal
32 tradition, electronic mail addresses, computer log-in or screen names or identities,

instant-messaging identities, and electronic chat room identities that the registrant has used;

(8) the registrant's Social Security number and any purported Social Security numbers, the registrant's date of birth, purported dates of birth, and place of birth;

(9) all identifying factors, including a physical description;

(10) a copy of the registrant's passport or immigration papers;

(11) information regarding any professional licenses the registrant holds;

(12) the license plate number, registration number, and description of any vehicle, including all motor vehicles, boats, and aircraft, owned or regularly operated by the registrant;

(13) the permanent or frequent addresses or locations where all vehicles are kept;

(14) all landline and cellular telephone numbers and any other designations used by the sex offender for the purposes of routing or self-identification in telephonic communications;

(15) a copy of the registrant's valid driver's license or identification card;

(16) the registrant's fingerprints and palm prints;

(17) the criminal history of the sex offender, including the dates of all arrests and convictions, the status of parole, probation, or supervised release, and the existence of any outstanding arrest warrants; [and]

(18) UNLESS IT IS THE REGISTRANT'S FIRST REGISTRATION STATEMENT, THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE INDIVIDUAL OR INDIVIDUALS FROM WHOM THE REGISTRANT HAS RECEIVED PSYCHOLOGICAL COUNSELING SERVICES SINCE THE REGISTRANT'S LAST REGISTRATION; AND

(19) the registrant's signature and date signed.

(b) If the registrant is determined to be a sexually violent predator, the registration statement shall also include:

(1) anticipated future residence, if known at the time of registration; and

(2) documentation of treatment received for a mental abnormality or personality disorder.

1 11-721.

2 (a) A registrant may not knowingly fail to register, **KNOWINGLY FAIL TO**
3 **PARTICIPATE IN PSYCHOLOGICAL COUNSELING SERVICES REQUIRED UNDER §**
4 **11-704.3 OF THIS SUBTITLE**, knowingly fail to provide the notice required under §
5 11-705 of this subtitle, knowingly fail to provide any information required to be included
6 in a registration statement described in § 11-706 of this subtitle, or knowingly provide false
7 information of a material fact as required by this subtitle.

8 (b) A person who violates this section:

9 (1) for a first offense, is guilty of a misdemeanor and on conviction is subject
10 to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both; and

11 (2) for a second or subsequent offense, is guilty of a felony and on conviction
12 is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

13 (c) A person who violates this section is subject to § 5-106(b) of the Courts Article.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2017.