



State of Maryland
Office of the Attorney General

February 27, 2020

TO: The Honorable Luke Clippinger., Chair, Judiciary Committee
FROM: Carrie J. Williams, Assistant Attorney General
RE: Attorney General's Support for HB 272

The Attorney General urges the Judiciary Committee to report favorably on House Bill 272. House Bill 272 is one of a number of bills that addresses the court of Appeals' opinion in *In re S.K.*, 466 Md. 31 (2019), which holds that a juvenile who distributes cell phone video of herself performing sexually explicit acts can be adjudicated delinquent for distribution of child pornography.

In the view of the Attorney General, House Bill 272 strikes the right balance between protecting minors against exploitation and ensuring that juveniles receive treatment and services proportionate to the delinquent conduct. The Criminal Appeals Division of the Office of the Attorney General represented the State in *In re S.K.* before the Court of Appeals. In its brief, the State cited several law review articles discussing the harm created by minors distributing sexually explicit images of themselves.

Society as a whole, including children exposed to the images, are harmed when children are sexually objectified. Mary Graw Leary, *Sexting or Self-Produced Child Pornography? The Dialog Continues – Structured Prosecutorial Discretion Within a Multidisciplinary Response*, 17 Va. J. Soc. Pol'y & L. 486, 488 (2010). And the minor producing the images of him or herself is also harmed because a permanent record is created that may be shared far beyond its intended recipient. “[T]he fact that the image exists out of the subject’s control for the remainder of his or life remains harmful. The harm remains because of the pictures’ existence and distribution.” Leary, 17 Va. J. Soc. Pol'y & L. at 522. Depictions of minors engaged in sexual conduct, even those that may have originally been created for, or shared with, a partner or friend, can take on new life on the Internet and fall into the hands of adults who traffic in child pornography.

By requiring a juvenile court to consider as a mitigating factor that the explicit images the respondent distributed were of him or herself, allowing the respondent to receive services specifically directed to the risks and consequences of “sexting,” and mandating that a respondent involved in “sexting” is not subject to sex offender registration, the bill ensures that a respondent will receive treatment and services tailored to the delinquent conduct. Retaining the discretion for the court to order committed custody gives the juvenile court the tools necessary to protect minors against exploitation in “extraordinary circumstances.”

The Attorney General urges the Committee to report favorably on House Bill 272.

cc: Members of the Committee