

ACLUMD Nalley_FAV_SB45

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Testimony for the Senate Judicial Proceedings Committee

February 11, 2020

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POLICY ANALYST,
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SB 45 – Criminal Law – Child Pornography – Distribution, Creation, or Possession by Minor Subject

SB 365 Criminal Law - Child Pornography and Exhibition and Display of Obscene Items to Minors

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The ACLU of Maryland supports SB 45 and SB 365, both of which would prevent the criminalization of minors who send nude images of themselves to another minor.

Our existing child pornography laws were created for the predators of child pornography and therefore do not properly address the issue of sexting, in which children send suggestive images of themselves to other children. Under current law, when a young person sends a suggestive picture of themselves, this legally constitutes creating and distributing child pornography. Certainly, these situations warrant intervention, but they should not be treated on par with felony charges for adults who victimize children. Even worse, children who engage in this activity are subject to severe penalties—violators are guilty of a felony, punishable by imprisonment for up to 10 years and/or a \$25,000 maximum fine for a first violation and imprisonment for up to 20 years and/or a \$50,000 maximum fine for each subsequent violation

Prosecutors have broad discretion to decide how to charge young people with sexting, or whether to prosecute them at all. Current laws were not written with sexting in mind and provide no guidance. Prosecutors might pursue felony convictions, which label the young person as a sex offender and carry mandatory registration requirements. Or they may charge a young person with misdemeanors without registration requirements, or impose hours of community service, or they may decide not to pursue charges at all.

Naivety is part of adolescence, and society has a responsibility to teach young people to protect themselves. Threatening teens with felony criminal prosecution, with the potential to drastically harm their future, is not the solution. We need to help our teens better understand the consequences of sexting. We do that by having clear laws that will be applied evenly, while limiting the possibility of misuse. This bill is a step in that direction, as we

adapt to ever changing technology and its use, while also protecting our most vulnerable population, our youth.

For the foregoing reasons, ACLU of Maryland supports SB 45 and SB 365.

FAIR_UNF_SB45

Uploaded by: Jones, Brenda

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**Unfavorable Response to Senate Bill 45
Criminal Law – Child Pornography – Distribution, Creation, or Possession
by Minor Subject**

Families Advocating Intelligent Registries (FAIR) has a special concern for persons accused and convicted of sexual offenses, and seeks rational, constitutional sexual offense laws and policies. Senate Bill 45 claims to be excluding minors from criminal liability for sexting with other minors, but the bill's language falls short of that goal.

The bill simply changes our existing child pornography law, which says "A person may not... [commit various pornographic crimes involving] a minor" to say instead "A person may not... [commit those crimes involving] another who is a minor." This does not correct the problem, and in fact could make things worse. The language can be read in more than one way.

It could be read that "another who is" is referring back to "person," which generally means an adult, and thus nothing changes at all. Or it could be read to mean the "other who is" is a different child from the child who is sharing the item. This would then create another problem because the statute would no longer cover any adults who are committing crimes related to child pornography. And if we do interpret to mean a minor sharing with some other minor, the language has not been changed to address any exception; therefore ONLY the minors would be punished, rather than minors being exempted in any way, and adults would no longer be charged at all.

In sum, SB 45 presents a vague and ineffective attempt to fix a problem, and FAIR respectfully requests that the committee vote NO on this bill.

Sincerely,



Brenda V. Jones, Executive Director
Families Advocating Intelligent Registries