

Bill Number: HB501
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION OF HOUSE BILL 501
OBSCENE MATTER – SEXTING BY MINOR

I write in support of House Bill 272 which sets reasonable standards on how juveniles charged with "sexting" get handled. House Bills 272, 501, 931 and 1245 appear to all be drafted in response to last year's Court of Appeals decision, In RE: S.K. 466 Md 31 (2019).

In RE: S.K. involved a 16 year old high school student who sent a one-minute video of herself performing fellatio on a male to two other high school students. The student was charged in Juvenile Court with child pornography and obscenity. The issue before Maryland's highest was can a minor legally engaged in consensual sexual activity be her own pornographer through the act of sexting?

The courts simple answer is yes. What made this case alarming is that after a fall-out with the two friends, she had sent it to those friends who sent it to many more in the school. This practically assured that it could be viewed, sent and posted forever. The appellate case cannot and does not address the 16 year old's need for services through the juvenile justice system.

House Bill 272, 501, 931, and 1245 all seem to address concerns raised by this case. Because of the other approaches, I support House bill 272. I oppose House bill 501, 931 and 1245.

House Bill 272 keeps juvenile conduct such as that displayed by S.K. a delinquent act, but makes sure of these things:

1. It is handled in the Juvenile Court.
2. The Court consider "sexting" as a mitigating factor.
3. The juvenile cannot be committed to custody unless there is an articulated extraordinary circumstance.
4. Importantly makes sure there is an educational component of the sentence.
5. Does not require the juvenile to register as a sex offender.

This is a practical approach. We must take action in these cases because we must recognize that juveniles like S.K. need to be educated on how their actions of distributing this kind of material can adversely affect them for the rest of their lives. While I acknowledge that behavior like S.K.'s is happening frequently among those of a similar age, it does not mean it does not need to be addressed. Each individual offender can and should be evaluated to determine what, if any, services are needed for the juvenile.

House Bill 501 basically gives an offender one free bite of the apple by needing to be a second offender. This does not take into account actions that could be more serious than those of S.K. especially involving younger children.

House Bill 931 eliminates the ability to charge any minors for this behavior which would eliminate any opportunity to educate the minor on the dangers of this destructive conduct.

House Bill 1245 appears to eliminate any actions against this conduct unless the child is under 13 years old. This again ignores the opportunity to assist those who are 14 to 18 years old.

I urge a favorable report for House Bill 272 and an unfavorable report for House Bills 501, 931 and 1245.