



POSITION ON PROPOSED LEGISLATION

BILL: HB 1245 - Juvenile Law - Conduct by Children Involving Sexually Explicit or Nude Images

POSITION: SUPPORT

DATE: February 27, 2020

The prototypical child pornography case, whether production, distribution or possession, usually involves adults and their intentional sexual abuse or exploitation of children, against the child's will, and often for monetary gain. It is, in the words of the Supreme Court, "a most serious crime and an act repugnant to the moral instincts of a decent people" *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

In contrast, the act of young people sexting one another, which typically involves a completely voluntary exchange of self-produced images of nudity or consensual sex, is not and should not be considered criminal. *See attached articles.*

Nonetheless, unfortunately, in a decision that strains common sense, our state's highest court did recently rule that children can be charged and held culpable for producing, distributing and/or possessing child porn, as if they were their own pornographers. *In Re: S.K.*, 466 Md. 31 (2019). The court did at least note, correctly, that something had to be done: "there may be compelling reasons for treating teenage sexting different from child pornography...legislation ought to be considered by the General Assembly..." *Id.* at 57.

HB 1245 therefore aims to ensure that these two completely different kinds of situations are dealt with separately and appropriately in our law.

To be clear, proponents for this bill are not saying sexting in all cases is completely innocuous, although it often is. In fact, we must all recognize, if only at a practical level, that sexting and what it might depict may carry various possible risks: teenage pregnancy, possibly unhealthy relationships, that the images be shared in mass, or that the images might get into the wrong hands and be transformed into child porn. HB 1245 is the only proposal currently mandating school-based education on these issues in an effort to prevent these harms, rather than punish them after they happen. *Please see attached chart comparing the various sexting bills.*

For this reason also, this bill is not a full pass on sexting, but rather, will authorize the intervention of our local social services agencies, where a family-based and confidential approach will be taken to address these risks and issues with children and their families under the CINS and CINA systems. We believe HB 1245 is the most comprehensive and best-balanced approach to this issue, and for that reason ask for your favorable report.