



HB0180 - Juveniles – Sexting

Presented to the Hon. Will Smith and Members of the Senate Judicial Proceedings Committee
March 23, 2021 1:00 p.m.

POSITION: INFORMATION ONLY

MARAL Pro-Choice Maryland urges the Senate Judicial Proceedings Committee to take another look at **HB0180 - Juveniles – Sexting**, sponsored by Delegate Luke Clippinger.

Our organization is an advocate for reproductive health, rights, and justice. Reproductive freedom relies on respecting the sexual agency and bodily autonomy of each individual. Every person has the right to decide where, when, how, and with whom to voluntarily engage in healthy and consensual sexual expression. Accordingly, we support the criminalization of coercive and/or nonconsensual sexual interactions. However, we are concerned with the conflation of youth sexting with child pornography, and believe that there is opportunity to improve upon Maryland laws with the currently amended HB0180 by removing the response to minors engaged in sexting – voluntary or not - out of the child pornography statute.

Sexting among minors has become an expression of affection or flirtation. Studies published in the Journal of the American Academy of Pediatrics claim these are the two main reasons behind the sharing of digital sexual images. Teens use sexting as a way to show intimacy, often times without actually being physically intimate.ⁱ It can be used as a form of safe sex without engaging in sexual contact, and avoiding pregnancy or sexually transmitted infection. It can be used as a form of expression among younger people who are not ready to engage in physical contact, but wish to signal sexual attraction or interest to someone with consent to receive that image. Consensual sexting between minors reflects larger issues, including bodily autonomy and sexual expression.

However, sexting can have unintended consequences, such as the dissemination of the image or message to those the creator did not intend. Nonetheless, criminalizing consensual sexual expression like sexting teaches teens that there are forms of consensual sexual intimacy that are wrong and punishable – but not in the same way as for adults. Criminalization of these youth brings shame and a loss of privacy as justice is pursued. It prevents youth from reaching out to adults to ask about how to safely engage in online or in-person sexual behavior, especially in times when they may feel bullied or coerced.

Legally prohibiting minors from creating consensual sexual images or content does not protect them, but removes much of their sexual autonomy. Although not all minors know whether they are permitted to engage in all areas of sexual conduct with the same level of protection under the law as adults, they do believe they are guaranteed privacy in areas of sexual matters, such as contraceptive access as well as STI prevention or treatment. Teens feel they have the right to decide with whom they engage in sexual activities, and the right to consent to sexual activities if they so choose. Punishing their decisions does not act as a deterrent, but creates stigma and removes their bodily autonomy.ⁱⁱ Teens fear the removal of their ability to choose what happens to their bodies by outside influences. The threat of criminal prosecution of youth consensually exchanging images of themselves means teens have lost the ability to voluntarily express themselves and control their own

bodies. The aim of child pornography laws should not be to punish those consensually engaging in activities related to sexual expression as a means of safe sex or flirtation.

The amended version of HB0180 seeks to protect certain youth from criminalization by creating a legal definition of sexting for those who have created images of themselves and are voluntarily and consensually transmitting the images to others they choose. Yet, it is not enough as it just creates a mitigating factor instead of removing this type of sexual expression from the realm of possible criminal charges. Also, by removing the affirmative defense from the original language of the bill, we fear that youth who did not fit this new legal definition of texting, including those who have been forced or coerced, will be subjected to arrest and possible prosecution as well as conviction.

Sexting among youth should not be a situation in which arrests are made, and questions asked later, all under the threat of criminal prosecution. We suggest that if sexting occurs outside the new legal definition as described in HB0180, then youth could be subjected to a citation, with an assessment of whether any intervention is necessary, and with the possibility of a required education program created and conducted by professionals in the fields of crime victim advocacy and health education.

NARAL Pro-Choice Maryland urges members of the Senate Judicial Proceedings Committee to meet with advocates dedicated to the health and safety of youth to engage in further exploration of this issue. Thank you for your time and consideration.

¹ Setty, E. A Rights-Based Approach to Youth Sexting: Challenging Risk, Shame, and the Denial of Rights to Bodily and Sexual Expression Within Youth Digital Sexual Culture. *Int Journal of Bullying Prevention* 1, 298–311 (2019). <https://doi.org/10.1007/s42380-019-00050-6>

ⁱⁱ Victor C. Strasburger, Harry Zimmerman, Jeff R. Temple, Sheri Madigan. Teenagers, Sexting, and the Law. *Pediatrics* 143, 2018-3183 (2019).