

# **Sexting - testimony - house in senate - 2021.pdf**

Uploaded by: Jordan, Lisae C

Position: FAV



---

**Working to end sexual violence in Maryland**

P.O. Box 8782  
Silver Spring, MD 20907  
Phone: 301-565-2277  
Fax: 301-565-3619

For more information contact:  
Lisae C. Jordan, Esquire  
443-995-5544  
www.mcasa.org

**Testimony Supporting House Bill 180**  
**Lisae C. Jordan, Executive Director & Counsel**  
March 24, 2021

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI) which provides direct legal services for survivors across Maryland. We urge the Judicial Proceedings Committee to report favorably on House Bill 180.

**House Bill 180 – Sexting**

This bill was introduced response to *In re: S.K.*, 461 Md. 31(2019), filed by the Court of Appeals on August 28, 2019. The publically available facts indicate that the case involved a teenage student who sent a video message of herself performing oral sex on an unidentified male to two of her close friends. Eventually one of the friends, without permission, chose to distribute the video throughout their high school. The school resource officer became aware of the video clip. When the student met with the resource officer, she justifiably expected the officer would help stop distribution of the video. She felt embarrassed and never intended for anyone other than her friends to see it. Instead, the resource officer viewed the teenager as having committed criminal activity. A police report was filed. Then, in an astonishing failure of prosecutorial discretion, the county State's Attorney office decided to go forward and file a juvenile petition alleging criminal charges against the student under Maryland's child pornography and obscenity laws.

Confronted with these facts and the prevalence of sexting throughout the country, MCASA advocates for a public policy that appropriately balances two things:

- 1) teenagers who engage in consensual sexting should not be criminally prosecuted; and
- 2) minors should be protected from non-consensual creation or distribution of nude images of themselves.

House Bill 180 was one of several bills heard by the House Judiciary Committee. It strikes the correct balance between competing policy concerns. The bill carves out the sending and receiving of most sexual images between young couples who are close in age. It continues to give courts discretion to address cases involving extraordinary circumstances while creating a separate alternative response for teenagers involved in sexting. The bill does this by carefully defining sexting, requiring the court to consider whether the case involves sexting, and then specifying what the court may do if the case involves sexting.

## **Definition of Sexting Giving Rise to Alternative Response**

The definition of “sexting” in HB180 is limited and responds to the prevalence of sexting in healthy teen dating relationships:

1) Sexting includes pictures of oneself sent to another or a picture of two people where the image is sent to one of the people depicted. Distribution beyond this, for example, to members of a sports team, would still fall under current laws.

2) Sexting is limited to teens who are within 4 years age difference, so an older person sending or retaining images would not benefit from the process established by HB180.

3) Sexting does NOT include situations where the child did not consent to the creation of the image or the child was coerced, threatened or intimidating into committing the conduct involved.

## **Alternative Response in Sexting Cases**

If a case falls under the definition of sexting, the court’s options are limited as follows:

1) the child may not be placed in community detention unless there are extraordinary circumstances explained on the record and in writing;

2) the child may be ordered to participate in an age-appropriate education program on the risks and consequences of sexting; and

3) the child may not be placed on the sex offender registry.

## **Incidence of Sexting**

A recent study published in JAMA Pediatrics surveyed more than 110,000 teens and found about 27% of teens have admitted to receiving a sext.<sup>1</sup> This is believable, if not an underestimate, considering most teens have access to a cell phone, and a simple Google search generates over 21 million results for “*how to sext*”. Our laws and those who enforce them should respond with appropriate education and careful assessment of whether there was any pressure or coercion to create images.

In Maryland, when teachers or other adults become aware of sexting, they typically contact parents or guardians. Very few cases are referred to the juvenile justice system. Data regarding juvenile cases involving violations child pornography laws (possession or production) are as follows:

<b>CATEGORY</b>	<b>CASE FORWARD DECISION</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>
Statewide	Resolved/No Jurisdiction	3	0	1	6
Statewide	Informal Disposition	11	8	8	9
Statewide	Authorized Formal Petition	28	26	43	39
<b><i>Total Intake Complaints</i></b>		<b><i>42</i></b>	<b><i>34</i></b>	<b><i>52</i></b>	<b><i>54</i></b>

## **Risks from Sexting & Need for Response**

While sexting is common, it also poses serious risks of a range of harms by increasing the risk of revenge porn, sextortion, sex trafficking, negative impact on employment or academic options, and more. Promises to keep images private are not always kept and the Digital Era makes it all too easy to distribute

---

<sup>1</sup> Sheri Madigan et al., *Prevalence of Multiple Forms of Sexting Behavior Among Youth: A Systematic Review and Meta-analysis*, 172 JAMA Pediatrics 327–335 (2018)

images. In December 2020, a New York Times article reported that Pornhub, the epicenter of online pornography, was hosting and monetizing videos of sexual assault, trafficking victims, and exploited youth (Kristof, 2020). At the time, anyone was allowed to upload personal content to the platform. The site's faulty and insufficient approval process allowed these videos to be uploaded to the site (Daily Mail, 2021). Sexting can provide content for these types of sites and, although the actions could give rise to other charges, the harm to the exploited youth is serious and irreversible: once an image is on the Internet, it lives there forever.

Both education for teens and the option of court involvement are important tools to respond to sexting. Education has been proven to deter the act of sexting.<sup>2</sup> HB180 permits education in individual cases. MCASA strongly supports this policy. Professor Quince Hopkins and her students at the University of Maryland Law School researched this issue and found a number of already existing curricula that Maryland could easily adopt. They range in cost from about \$50-\$500. Alternatively, Texas has developed its own educational program, called "Before You Text" and Maryland could develop a similar program. <https://txssc.txstate.edu/tools/courses/before-you-text/>

We note that Maryland's current curricula on sex and consent education includes some information on sexting and would be relatively straight forward to expand. Legislators in the House have already begun plans to mandate education on sexting as part of Maryland's health curricula and MCASA looks forward to working on this next session.

It is necessary, however, for prosecutors and courts to also retain some tools to respond to sexting cases in extreme cases. Child pornography is a serious crime that harms victims for life. The fact that something was produced consensually does not mean the images are not child pornography or that the risks from child pornography are eliminated.

The very low number of juvenile cases pursued typically involve children who are producing disturbing images or who are in need of services, including services to address serious sexual misconduct. The *S.K.* case shows that some limits on court options are needed, however, it should also be noted that confidentiality protections prevent full discussion of the situation *S.K.* was in. HB180 creates a balanced response and will discourage juvenile justice responses. Some have suggested that a citation would be a more appropriate procedural response. MCASA believes that citations would backfire and result in an increase in children involved in the juvenile justice system and a decrease in cases handled by parents. As a result we object to citations as a response to sexting.

### **Do Not Delay Action on HB180**

This is a problem that needs solving now. Teens engage in sexting in Maryland every day. The current law is inadequate and this Committee can and should fix it. House Bill 180 strikes the needed careful balance and should be enacted.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on House Bill 180**

---

<sup>2</sup>Joseph Paravecchia, Note, *Sexting and Subsidiarity: How Increased Participation and Education from Private Entities May Deter the Production, Distribution, and Possession of Child Pornography Among Minors*, 10 AVE MARIA L. REV. 235, 242-48 (2011);

# hb180 - sexting.pdf

Uploaded by: Niemann, Doyle

Position: FAV



St., Baltimore, MD 21201  
800-492-1964  
| tdd 410-539-3186

---

**To:** Members of The House Judiciary Committee

**From:** Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section

**Date:** January 19, 2021

**Subject:** **HB180 – Juveniles - Sexting**

**Position:** **Support**

---

The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) **Supports HB180 – Juveniles - Sexting.**

This bill addresses a growing and prevalent problem – the sending of sexually oriented pictures by minors to each other – in a sensible and thoughtful manner. It provides guidance for prosecutors and the courts in handling these cases, which have at times been prosecuted under the child pornography laws.

The bill defines sexting in a reasonable fashion. Rather than legalizing it, which would be counterproductive and dangerous, it makes the fact that a particular communication was one of a sexting nature on the part of a juvenile a mitigating factor that must be considered by a juvenile court. It prohibits the custodial detention of juveniles unless the court clearly specifies why that is in the best interest of the child.

The General Assembly has before it this year other bills dealing with this subject – a response to recent prosecutions. Of the bills that have been filed so far, this is the best and we suggest it be used as the framework for any legislation the Committee wishes to consider.

For the reasons stated, we **Support HB180 – Juveniles - Sexting.**

If you have questions about the position of the Criminal Law and Practice Section's Legislative Committee, please feel free to address them to me at 240-606-1298 or at [doyleniemann@verizon.net](mailto:doyleniemann@verizon.net).

Should you have other questions, please contact The MSBA's Legislative Office at (410)-269-6464 / (410)-685-7878 ext: 3066 or at [Richard@MSBA.org](mailto:Richard@MSBA.org).

**HB180\_JPR\_MNADV\_FAV.pdf**

Uploaded by: Shapiro, Melanie

Position: FAV



**BILL NO:** House Bill 180  
**TITLE:** Juveniles - Sexting  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** March 25, 2021  
**POSITION:** **SUPPORT AS AMENDED**

---

The Maryland Network Against Domestic Violence (MNADV) is the federally recognized state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report on HB 180 as amended.**

The Maryland Network Against Domestic Violence is deeply concerned about the connection between sexting and teen dating violence. The use of coercion in sexting among children has been identified as an indicator of other forms of coercion that occur offline.<sup>1</sup> In one survey of youth who reported at least one dating or sexual partner in the past 12 months, 12% reported coercive sexting victimization and 8% acknowledged pressuring a partner to sext.<sup>2</sup> Other studies have identified a connection between victims who are coerced into sexting also being victimized by other forms of teen dating violence, including sexual, physical and emotional abuse.<sup>3</sup>

Against the backdrop of the Court of Appeals decision in *In re S.K.*, it is clear that legislative action is needed to address sexting. However, any piece of legislation that seeks to address the issue of sexting must also contemplate and address the realities of coercive sexting and the possible republication of a sext received and forwarded by the recipient to others without consent. HB 180 as amended strikes a necessary balance between youth who engage in consensual sexting, youth who are coerced or threatened into sexting, and victims of child pornography.

Through a collaborative effort, the definition of sexting was amended to reflect the unfortunate reality that a youth may be coerced into sexting. MNADV supports the removal of the affirmative defense and placing the burden on the police and prosecutors to investigate each case and not charge victims of coercive sexting. It also incorporates age parameters that are consistent with

---

<sup>1</sup> Choi, HyeJeong, Joris Van Ouytsel, and Jeff R Temple. 2016. *Association between sexting and sexual coercion among female adolescents*. Journal of Adolescence 53: 164–68.

<sup>2</sup> Kernsmith, Poco D., Bryan G. Victor, and Joanne P. Smith-Darden. 2018. *Online, offline, and over the line: Coercive sexting among adolescent dating partners*. Youth & Society 50: 891–904,

<sup>3</sup> Lemke, Melinda and Rogers, Katelyn. *When Sexting Crosses the Line: Educator Responsibilities in the Support of Prosocial Adolescent Behavior and the Prevention of Violence*. Soc. Sci. 2020, 9, 150.



existing law. This bill prohibits community detention and commitment to an out-of-home placement for sexting unless there are extraordinary circumstances.

For the above stated reasons, the **Maryland Network Against Domestic Violence** urges a **favorable report on HB 180 as amended.**

---

For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • [mshapiro@mnadv.org](mailto:mshapiro@mnadv.org)

4601 Presidents Drive, Suite 300 • Lanham, MD 20706  
Tel: 301-429-3601 • E-mail: [info@mnadv.org](mailto:info@mnadv.org) • Website: [www.mnadv.org](http://www.mnadv.org)

# **HB 180 - MDHTTF - Support - crossover.pdf**

Uploaded by: Wallerstedt, Anne

Position: FAV



**BILL NUMBER:** House Bill 180

**TITLE:** Juveniles - Sexting

**COMMITTEE:** Judicial Proceedings

**HEARING DATE:** March 25, 2021

**POSITION:** Support

---

The Maryland Human Trafficking Task Force (MDHTTF) and its members respectfully submits this testimony in support of House Bill 180.

House Bill 180 defines “sexting,” namely that it is a mitigating factor in a juvenile proceeding for certain child pornography and obscenity charges and establishes specific exceptions of conduct, importantly including that the child did not consent to the conduct or that the child was coerced, threatened, or intimidated into committing the conduct. It generally prohibits the court from making dispositions of community detention or commitment if the conduct arose from sexting, and further allows a child to be referred to an educational program on sexting.

MDHTTF supports efforts to dismantle human trafficking by strengthening laws to prosecute traffickers, providing services and rehabilitation to victims, and increasing awareness of the issue. MDHTTF aims to keep trafficking victims out of the criminal justice system, and we are also incredibly vigilant about new and insidious ways that a trafficker can victimize a person, most especially and importantly children. As such, we very much appreciate this first step toward addressing sexting in Maryland. Further, we applaud the educational option in the bill, as awareness of new and potentially dangerous situations is critical to prevention and we are always mindful of the differentiation between what is a coercive act and not. MDHTTF believes HB 180 is a fantastic first step of many that is needed to address and rectify the *In Re: S.K.* case, and we look forward to being a part of the conversation moving forward.

For these reasons, MDHTTF respectfully requests a favorable report on House Bill 180.

**About MDHTTF:** Formed in 2007 by the U.S. Attorney’s Office, the Attorney General of Maryland, and the State’s Attorney for Baltimore City, MDHTTF serves as the lead investigative, prosecutorial, and victim services coordinating body for anti-human trafficking activity in the State of Maryland. MDHTTF has grown to include most law enforcement agencies in the State, all child-serving state agencies, the Federal Bureau of Investigations, Homeland Security Investigations, most local State’s Attorney’s Offices, and dozens of victim service agencies. MDHTTF is comprised of five committees – legislative, law enforcement, victim services, public awareness, and training. During this time, MDHTTF has grown a robust understanding of the issue of human trafficking in Maryland.

For further questions, please contact the co-chairs of the Legislative Committee of MDHTTF, Amanda Rodriguez at [arodriguez@turnaroundinc.org](mailto:arodriguez@turnaroundinc.org) or Anne Wallerstedt at [azwallerstedt@gmail.com](mailto:azwallerstedt@gmail.com).

# **OPD Written Testiomny for HB 180 Senate.pdf**

Uploaded by: Gross, Michal

Position: UNF



## POSITION ON PROPOSED LEGISLATION

BILL: HB 180- Juveniles - Sexting

POSITION: Unfavorable

DATE: March 23, 2021

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 180.

Teenaged sexting is not child pornography. Laws prohibiting the production, distribution, and possession of child pornography were enacted to prevent the exploitation of children by adults. The prototypical child pornography case, and the behavior those laws intend to prevent, involves adults and their intentional sexual abuse or exploitation of a child, against the child's will, and often for monetary or other gain. In contrast, the act of young people sexting one another, which typically involves a completely voluntary and consensual exchange of self-produced images of nudity or consensual sex, is not and should not be considered criminal.

Nonetheless, unfortunately, in a decision that strains common sense, our state's highest court ruled that children can be charged for producing, distributing and/or possessing child pornography for self-produced images as if they were their own exploiters and abusers. *See In Re: S.K.*, 466 Md. 31 (2019). S.K. had sent a video of herself engaged in consensual sexual behavior to two friends. When one of those former friends posted the video on social media, S.K. hoped the school police officer would offer assistance in removing the video; instead, she was interrogated, charged, prosecuted, and eventually convicted of distribution of child pornography. Despite its ultimate ruling that Maryland's laws allowed sexting to be charged as child pornography, the court correctly noted that "there may be compelling reasons for treating teenage sexting different from child pornography." *Id.* at 57. To do so, the court called on a legislative fix to outdated laws, noting that "legislation ought to be considered by the General Assembly." *Id.*

Although HB 180 aims to fix the issues that were highlighted by the Court of Appeals, the legislation as proposed would lead to the same disastrous results of teenagers charged with distribution, possession, and production of child pornography for sending images of themselves. In a legislative session focused on reducing the number of youth in the juvenile justice system, this bill would increase the criminalization of common adolescent behavior. The bill, while well-intentioned, leaves too much to the discretion of police, prosecutors, and judges; that same discretion allowed 16 year old S.K. to be charged, prosecuted, and adjudicated in juvenile court. Instead of excluding sexting from prosecution as child pornography, it only makes it a mitigating factor for the court to

*For further information please contact Michal Gross, Assistant Public Defender and subject matter expert, at [michal.gross@maryland.gov](mailto:michal.gross@maryland.gov) or Krystal Williams, Director, Government Relations Division, at [krystal.williams@maryland.gov](mailto:krystal.williams@maryland.gov) or by phone at 443-908-0241.*

consider at disposition, thus allowing harmful arrest, detention, and prosecution before the fact that this was consensual sexting can even be raised as a mitigating factor.

The bill also does not fix the harms that occur when sexting is treated as child pornography; instead, HB 180 codifies that very harm by endorsing prosecution for sexting within the criminal laws related to child pornography. Continuing to allow this behavior to be prosecuted as a criminal act is likely to prevent youth in S.K.'s position, where a photo or video has been distributed publicly, from approaching trusted adults for help because of the fear of prosecution. The bill does not prohibit detention or out of home placement for youth charged based on sexting, and a judge can still order Community Detention if they make a finding of extraordinary circumstances, a standard which isn't clearly defined in the bill. This furthers the potential that the images might be used nefariously because youth are reluctant to report threats of blackmail or exploitation for fear they may be prosecuted for initially taking or sending the images. Additionally, this bill does not provide any educational component to prevent situations like S.K.'s from occurring and instead provides education only as punishment for those who are prosecuted.

Although attempts were made to fix some of these issues, youth advocates were left out of those conversations. As a result, the bill as written by well-meaning adults offers no actual assistance to youth. For example, by removing the affirmative defense, forced or coerced sending of sexual images is now no longer considered sexting but still isn't excluded from child pornography prosecution. In addition, in defining sexting, too many instances of consensual sexting are still excluded from the definition for the mitigation consideration.

While the loopholes in Maryland's child pornography laws highlighted by In re: S.K. clearly need to be fixed, this legislation would do more harm than good by endorsing selective prosecution of adolescents for ordinary behavior.

\* \* \*

For these reasons, the Maryland Office of the Public Defender urges an unfavorable report on House Bill 180.

**HB 180.pdf**

Uploaded by: Shellenberger, Scott

Position: UNF

**Bill Number: HB 180**  
**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 180**  
**SEXTING BY MINOR**

I write in opposition to the current House Bill 180 as amended. It is confusing and impossible to understand. The original House Bill, which I have attached, approached this difficult issue with a reasoned approach. I ask that you amend back to the original. This House Bill on sexting is in response to the 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 sending 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 court's simple answer was yes. What made this case alarming is that after a fall-out with two friends, the video she had sent to those friends who then sent it to many more students 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 180 is meant to address concerns raised by this case. It is properly placed in the juvenile section of the code.

House Bill 180 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 built into 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.

I urge that HB180 as it currently appears be amended back to its original form so that we have a workable statute.

# HOUSE BILL 180

E3

11r0913

HB 272/20 – JUD

(PRE-FILED)

---

By: **Delegate Clippinger**

Requested: October 12, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Juveniles – Sexting**

3 FOR the purpose of establishing a certain mitigating factor in a certain juvenile court  
4 proceeding against a child for a certain violation; requiring and authorizing the  
5 juvenile court to take certain actions in making a certain disposition on a certain  
6 finding; prohibiting the juvenile court from taking certain actions in making a  
7 certain disposition on a certain finding; establishing a certain affirmative defense in  
8 a certain juvenile court proceeding for a certain violation; establishing that a child  
9 who is found by the juvenile court to have violated a certain provision of law is not  
10 subject to certain sex offender registration; defining a certain term; and generally  
11 relating to juveniles, obscene matter, and sexting.

12 BY repealing and reenacting, without amendments,  
13 Article – Courts and Judicial Proceedings  
14 Section 3–8A–19(d)(1)  
15 Annotated Code of Maryland  
16 (2020 Replacement Volume)

17 BY adding to  
18 Article – Courts and Judicial Proceedings  
19 Section 3–8A–35  
20 Annotated Code of Maryland  
21 (2020 Replacement Volume)

22 BY repealing and reenacting, without amendments,  
23 Article – Criminal Law  
24 Section 11–203, 11–207, and 11–208  
25 Annotated Code of Maryland  
26 (2012 Replacement Volume and 2020 Supplement)

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
2 That the Laws of Maryland read as follows:

3 **Article – Courts and Judicial Proceedings**

4 3–8A–19.

5 (d) (1) In making a disposition on a petition under this subtitle, the court may:

6 (i) Place the child on probation or under supervision in his own  
7 home or in the custody or under the guardianship of a relative or other fit person, upon  
8 terms the court deems appropriate, including community detention;

9 (ii) Subject to the provisions of paragraphs (2) and (3) of this  
10 subsection, commit the child to the custody or under the guardianship of the Department  
11 of Juvenile Services, the Maryland Department of Health, or a public or licensed private  
12 agency on terms that the court considers appropriate to meet the priorities set forth in §  
13 3–8A–02 of this subtitle, including designation of the type of facility where the child is to  
14 be accommodated, until custody or guardianship is terminated with approval of the court  
15 or as required under § 3–8A–24 of this subtitle; or

16 (iii) Order the child, parents, guardian, or custodian of the child to  
17 participate in rehabilitative services that are in the best interest of the child and the family.

18 3–8A–35.

19 (A) IN THIS SECTION, “SEXTING” MEANS THE SENDING OF A SEXUALLY  
20 EXPLICIT PHOTOGRAPH, IMAGE, OR VIDEO OF ONESELF TO ANOTHER BY MOBILE  
21 TELEPHONE, COMPUTER, OR OTHER ELECTRONIC OR DIGITAL DEVICE.

22 (B) IT IS A MITIGATING FACTOR IN A PROCEEDING AGAINST A CHILD UNDER  
23 THIS SUBTITLE FOR A VIOLATION OF § 11–203, § 11–207, OR § 11–208 OF THE  
24 CRIMINAL LAW ARTICLE THAT THE VIOLATION INVOLVED OR AROSE OUT OF  
25 SEXTING.

26 (C) IN MAKING A DISPOSITION UNDER § 3–8A–19 OF THIS SUBTITLE ON A  
27 FINDING THAT THE CHILD COMMITTED A VIOLATION OF § 11–203, § 11–207, OR §  
28 11–208 OF THE CRIMINAL LAW ARTICLE, THE COURT:

29 (1) SHALL TAKE INTO CONSIDERATION WHETHER THE MITIGATING  
30 FACTOR DESCRIBED IN SUBSECTION (B) OF THIS SECTION APPLIES TO THE CASE;

31 (2) MAY NOT MAKE A DISPOSITION OF COMMUNITY DETENTION  
32 UNDER § 3–8A–19(D)(1)(I) OF THIS SUBTITLE OR A DISPOSITION UNDER §  
33 3–8A–19(D)(1)(II) OF THIS SUBTITLE IF THE VIOLATION INVOLVED OR AROSE OUT  
34 OF SEXTING, UNLESS THE COURT FINDS AND EXPLAINS ON THE RECORD, VERBALLY

1 AND IN WRITING, THAT EXTRAORDINARY CIRCUMSTANCES EXIST TO WARRANT THE  
2 DISPOSITION; AND

3 (3) MAY ORDER A CHILD WHOSE VIOLATION INVOLVED OR AROSE OUT  
4 OF SEXTING TO PARTICIPATE IN AN AGE-APPROPRIATE EDUCATIONAL PROGRAM ON  
5 THE RISKS AND CONSEQUENCES OF POSSESSING, SENDING, DISPLAYING, AND  
6 PUBLISHING SEXUALLY EXPLICIT PHOTOGRAPHS, IMAGES, AND VIDEOS.

7 (D) IT IS AN AFFIRMATIVE DEFENSE IN A PROCEEDING UNDER THIS  
8 SUBTITLE FOR A VIOLATION OF § 11-203, § 11-207, OR § 11-208 OF THE CRIMINAL  
9 LAW ARTICLE THAT THE CHILD WAS COERCED, THREATENED, OR INTIMIDATED  
10 INTO COMMITTING THE CONDUCT CONSTITUTING THE VIOLATION.

11 (E) A CHILD WHO IS FOUND BY THE COURT TO HAVE VIOLATED A PROVISION  
12 OF TITLE 11, SUBTITLE 2 OF THE CRIMINAL LAW ARTICLE IS NOT SUBJECT TO SEX  
13 OFFENDER REGISTRATION UNDER TITLE 11, SUBTITLE 7 OF THE CRIMINAL  
14 PROCEDURE ARTICLE.

15 Article - Criminal Law

16 11-203.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) "Distribute" includes to rent.

19 (3) "Illicit sex" means:

20 (i) human genitals in a state of sexual stimulation or arousal;

21 (ii) acts of human masturbation, sexual intercourse, or sodomy; or

22 (iii) fondling or other erotic touching of human genitals.

23 (4) "Item" means a:

24 (i) still picture or photograph;

25 (ii) book, pocket book, pamphlet, or magazine;

26 (iii) videodisc, videotape, video game, film, or computer disc; or

27 (iv) recorded telephone message.

28 (5) "Obscene" means:

1 (i) that the average adult applying contemporary community  
2 standards would find that the work, taken as a whole, appeals to the prurient interest;

3 (ii) that the work depicts sexual conduct specified in subsection (b)  
4 of this section in a way that is patently offensive to prevailing standards in the adult  
5 community as a whole with respect to what is suitable material; and

6 (iii) that the work, taken as a whole, lacks serious artistic,  
7 educational, literary, political, or scientific value.

8 (6) "Partially nude figure" means a figure with:

9 (i) less than completely and opaquely covered human genitals, pubic  
10 region, buttocks, or female breast below a point immediately above the top of the areola; or

11 (ii) human male genitals in a discernibly turgid state, even if  
12 completely and opaquely covered.

13 (b) (1) A person may not willfully or knowingly display or exhibit to a minor  
14 an item:

15 (i) the cover or content of which is principally made up of an obscene  
16 description or depiction of illicit sex; or

17 (ii) that consists of an obscene picture of a nude or partially nude  
18 figure.

19 (2) A person may not willfully or knowingly engage in the business of  
20 displaying, exhibiting, selling, showing, advertising for sale, or distributing to a minor an  
21 item:

22 (i) the cover or content of which is principally made up of an obscene  
23 description or depiction of illicit sex; or

24 (ii) that consists of an obscene picture of a nude or partially nude  
25 figure.

26 (3) If a newsstand or other place of business is frequented by minors, the  
27 owner, operator, franchisee, manager, or an employee with managerial responsibility may  
28 not openly and knowingly display at the place of business an item whose sale, display,  
29 exhibition, showing, or advertising is prohibited by paragraph (2) of this subsection.

30 (c) The provision of services or facilities by a telephone company under a tariff  
31 approved by the Public Service Commission is not a violation of subsection (b) of this section  
32 relating to recorded telephone messages.

33 (d) A person who violates this section is guilty of a misdemeanor and on conviction

1 is subject to:

2 (1) for a first violation, imprisonment not exceeding 1 year or a fine not  
3 exceeding \$1,000 or both; and

4 (2) for each subsequent violation, imprisonment not exceeding 3 years or a  
5 fine not exceeding \$5,000 or both.

6 11-207.

7 (a) A person may not:

8 (1) cause, induce, solicit, or knowingly allow a minor to engage as a subject  
9 in the production of obscene matter or a visual representation or performance that depicts  
10 a minor engaged as a subject in sadomasochistic abuse or sexual conduct;

11 (2) photograph or film a minor engaging in an obscene act, sadomasochistic  
12 abuse, or sexual conduct;

13 (3) use a computer to depict or describe a minor engaging in an obscene act,  
14 sadomasochistic abuse, or sexual conduct;

15 (4) knowingly promote, advertise, solicit, distribute, or possess with the  
16 intent to distribute any matter, visual representation, or performance:

17 (i) that depicts a minor engaged as a subject in sadomasochistic  
18 abuse or sexual conduct; or

19 (ii) in a manner that reflects the belief, or that is intended to cause  
20 another to believe, that the matter, visual representation, or performance depicts a minor  
21 engaged as a subject of sadomasochistic abuse or sexual conduct; or

22 (5) use a computer to knowingly compile, enter, transmit, make, print,  
23 publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice,  
24 statement, advertisement, or minor's name, telephone number, place of residence, physical  
25 characteristics, or other descriptive or identifying information for the purpose of engaging  
26 in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or  
27 sexual conduct of or with a minor.

28 (b) A person who violates this section is guilty of a felony and on conviction is  
29 subject to:

30 (1) for a first violation, imprisonment not exceeding 10 years or a fine not  
31 exceeding \$25,000 or both; and

32 (2) for each subsequent violation, imprisonment not exceeding 20 years or  
33 a fine not exceeding \$50,000 or both.

1 (c) (1) (i) This paragraph applies only if the minor's identity is unknown  
2 or the minor is outside the jurisdiction of the State.

3 (ii) In an action brought under this section, the State is not required  
4 to identify or produce testimony from the minor who is depicted in the obscene matter or in  
5 any visual representation or performance that depicts the minor engaged as a subject in  
6 sadomasochistic abuse or sexual conduct.

7 (2) The trier of fact may determine whether an individual who is depicted  
8 in an obscene matter, or any visual representation or performance as the subject in  
9 sadomasochistic abuse or sexual conduct, was a minor by:

10 (i) observation of the matter depicting the individual;

11 (ii) oral testimony by a witness to the production of the matter,  
12 representation, or performance;

13 (iii) expert medical testimony; or

14 (iv) any other method authorized by an applicable provision of law or  
15 rule of evidence.

16 11-208.

17 (a) (1) In this section, "indistinguishable from an actual and identifiable child"  
18 means an ordinary person would conclude that the image is of an actual and identifiable  
19 minor.

20 (2) "Indistinguishable from an actual and identifiable child" includes a  
21 computer-generated image that has been created, adapted, or modified to appear as an  
22 actual and identifiable child.

23 (3) "Indistinguishable from an actual and identifiable child" does not  
24 include images or items depicting minors that are:

25 (i) drawings;

26 (ii) cartoons;

27 (iii) sculptures; or

28 (iv) paintings.

29 (b) A person may not knowingly possess and intentionally retain a film,  
30 videotape, photograph, or other visual representation showing an actual child or a  
31 computer-generated image that is indistinguishable from an actual and identifiable child

1 under the age of 16 years:

2 (1) engaged as a subject of sadomasochistic abuse;

3 (2) engaged in sexual conduct; or

4 (3) in a state of sexual excitement.

5 (c) (1) Except as provided in paragraph (2) of this subsection, a person who  
6 violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment  
7 not exceeding 5 years or a fine not exceeding \$2,500 or both.

8 (2) A person who violates this section, having previously been convicted  
9 under this section, is guilty of a felony and on conviction is subject to imprisonment not  
10 exceeding 10 years or a fine not exceeding \$10,000 or both.

11 (d) Nothing in this section may be construed to prohibit a parent from possessing  
12 visual representations of the parent's own child in the nude unless the visual  
13 representations show the child engaged:

14 (1) as a subject of sadomasochistic abuse; or

15 (2) in sexual conduct and in a state of sexual excitement.

16 (e) It is an affirmative defense to a charge of violating this section that the person  
17 promptly and in good faith:

18 (1) took reasonable steps to destroy each visual representation; or

19 (2) reported the matter to a law enforcement agency.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2021.

**HB0180 MD NARAL INFORMATION ONLY.pdf**

Uploaded by: Philip, Diana

Position: INFO



## **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.<sup>i</sup> 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.<sup>ii</sup> 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.

---

<sup>1</sup> 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>

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