



## POSITION ON PROPOSED LEGISLATION

BILL: HB 382 Juvenile Law - Conduct by Children Involving Sexually Explicit or Nude Images  
POSITION: Favorable  
DATE: January 19, 2021

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 382.

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. 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 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 in 2019 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. 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 her now former friends posted the video on social, S.K. had hoped the police officer at her school 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, the court correctly noted, however, 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 To do so, the court called on a legislative fix to the outdated laws, noting that "legislation ought to be considered by the General Assembly." Id.

HB 382 therefore aims to ensure that these two completely different situations are dealt with separately and appropriately in our law, treating teenagers who sext as an entirely different situation from adults who possess, produce, or distribute sexually explicit images of children. 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: the potential for unhealthy body image and problematic relationships, that the images be shared widely via social media, or that the images might get into the wrong hands or be used as blackmail.

HB 382, in contrast to other proposed legislation, mandates school-based education on these issues in an effort to prevent these harms, rather than punish them after they happen and further traumatize individuals such as S.K. through the prosecutorial process. For this same reason, the bill authorizes the intervention of local social services agencies, where a confidential family-based approach can address these risks and issues with children and their families in a compassionate manner under the CINS and CINA systems instead of through the adversarial delinquency process. The legislation proposed would avoid the public shaming and retraumatization that S.K. faced throughout the juvenile court process. Thus, we believe HB 382 is the most comprehensive and best-balanced approach to this issue.

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For these reasons, the Maryland Office of the Public Defender respectfully urges a favorable report on House Bill 382.