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POSITION ON PROPOSED LEGISLATION

BILL: HB 0194 - Education - Family Life and Human Sexuality Curriculum - Sexting

FROM: Maryland Office of the Public Defender

POSITION: Favorable with Amendments

DATE: 03/22/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 194.

HB 194 follows legislation enacted in 2021, which aimed to distinguish between consensual sexting and youth who are threatened or victimized by sexting. HB 194 aims to facilitate conversations between educators, parents, and young adults about what sexting is, with a focus on education and safety.

Through such efforts it is important that we 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. However, it is also important that we understand that 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,

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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 194, would provide 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.

MOPD, however, further urges the committee to consider amending the bill in the following ways:

First, adopt a definition of sexting that is age appropriate, focused on safety, inclusivity, and proactive education.

Second, MOPD encourages an addition to the bill that would ensure that there is a standardized curriculum developed by educators with input from students.

Sample language to effectuate these amendments is included below.

For the foregoing reasons, we encourage the Committee to issue a favorable report on this bill with amendments that ensure the focus on this bill is neither on shaming nor punishing youth for the choices they have made but instead proactively educating them on safety and autonomy.

HOUSE BILL 194

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2lr0679

(PRE-FILED)

By: **Delegate Shetty**

Requested: October 7, 2021

Introduced and read first time: January 12, 2022

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Family Life and Human Sexuality Curriculum – Sexting**

3 FOR the purpose of requiring a county board of education to provide age-appropriate 4
instruction on the risks of sexting as part of the Family Life and Human Sexuality 5 curriculum
in every grade in which the curriculum is taught in public schools in the 6 county beginning in
a certain school year; and generally relating to the Family Life 7 and Human Sexuality
curriculum in public schools in the State.

8 BY repealing and reenacting, without amendments,
9 Article – Courts and Judicial Proceedings
10 Section 3–8A–35(a)
11 Annotated Code of Maryland
12 (2020 Replacement Volume and 2021 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Education
15 Section 7–445
16 Annotated Code of Maryland
17 (2018 Replacement Volume and 2021 Supplement)

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

20 ~~Article – Courts and Judicial Proceedings~~

21 ~~3–8A–35.~~

22 (a) ~~(1) In this section, “sexting” means:~~

(i) ~~—The sending of a photograph, image, or video that depicts sexual~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

hb0194

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HOUSE BILL 194

1 ~~conduct, as defined in § 11-101 of the Criminal Law Article, or sexual excitement, as 2 defined~~
 in § 11-101 of the Criminal Law Article, of oneself to another or of oneself and the 3 recipient
 by mobile telephone, computer, or other electronic or digital device; or

4 (ii) ~~—The receipt and retention of a photograph, image, or video~~
 5 ~~described in subparagraph (i) of this paragraph.~~

6 (2) ~~“Sexting” does not include conduct described in paragraph (1) of this~~
 7 ~~subsection if:~~

8 (i) ~~—The sender is more than 4 years older than the recipient;~~

9 (ii) ~~—The recipient is more than 4 years older than the sender;~~

10 (iii) ~~—The child did not consent to committing the conduct~~
 constituting 11 ~~—the violation; or~~

12 (iv) ~~—The child was coerced, threatened, or intimidated into~~
 13 ~~committing the conduct constituting the violation.~~

14 **Article – Education**

15 7-445.

16 (a) **(1)** In this section[, “consent”] **THE FOLLOWING WORDS HAVE THE**
 17 **MEANINGS INDICATED.**

18 **(2)** **“CONSENT”** means the unambiguous and voluntary agreement 19
 between all participants in each physical act within the course of
 interpersonal 20 relationships, including respect for personal boundaries.

21 **(3)** **“SEXTING” HAS THE MEANING STATED IN § 3-8A-35 OF THE**
COURTS AND JUDICIAL PROCEEDINGS ARTICLE. **means:**

25 (i) The sending of a photograph, image, or video that depicts
sexual conduct, as defined in § 11–101 of the Criminal Law Article, or
sexual excitement, as defined in § 11–101 of the Criminal Law Article,
of oneself to another or of oneself and the recipient by mobile
26 telephone, computer, or other electronic or digital device; or
27 (ii) The receipt and retention of a photograph, image, or video
described in subparagraph (i) of this paragraph.

22 (b) Beginning in the 2018–2019 school year, a county board shall provide
23 age–appropriate instruction on the meaning of “consent” and respect for
personal boundaries as part of the Family Life and Human Sexuality
curriculum in every grade in which the curriculum is taught in public schools
in the county.

27 **(C) BEGINNING IN THE 2022–2023 SCHOOL YEAR, A COUNTY BOARD SHALL**
28 **PROVIDE AGE–APPROPRIATE INSTRUCTION ON THE RISKS OF SEXTING AS PART OF**
29 **THE FAMILY LIFE AND HUMAN SEXUALITY CURRICULUM IN EVERY GRADE IN WHICH**
30 **THE CURRICULUM IS TAUGHT IN PUBLIC SCHOOLS IN THE COUNTY. THE**
31 **CURRICULUM SHALL BE DEVELOPED BY EDUCATORS AND**
32 **ADAPTED BASED ON FEEDBACK FROM STUDENTS FOLLOWING**
33 **ITS INTRODUCTION.**

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 32 1,
2022.