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**Working to end sexual violence in Maryland**

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**Testimony Supporting Senate Bill 365  
And Regarding Senate Bill 45  
Lisae C. Jordan, Executive Director & Counsel  
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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 Senate Bill 365.

**Senate Bill 365 – Sexting**

This bill is one of at least four introduced in the Maryland General Assembly in response to *In re: S.K.*, filed by the Court of Appeals on August 28, 2019. 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.

Senate Bill 365 is a carefully crafted attempt to balance these concerns.

Child pornography is a serious crime. The sexual abuse of children by photographing their abuse can never be condoned. But prosecuting consenting teenagers for sexting with other teenagers is not the

solution. Instead, in cases where the authorities choose to intervene (which are hopefully rare), SB365 would permit issuing a civil citation. Upon a finding of a code violation, minors would be mandated to receive education about the risks and consequences of sexting. Mandatory education would be the response only for first time sexting citations and this response would not apply to teens who have histories of crimes of sexual violence or abuse.

SB365 includes provisions that address concerns that a teen who created these images may be facing pressure to do so. While repealing criminal charges against voluntary teen sexting, SB365 also seeks to protect minors from being manipulated or coerced into taking or sending sexually graphic images. Images created without consent or in violation of sex crimes laws could not result in citation, see §11-212(d) beginning on page 15, line 19. If a citation is issued, a teen who was coerced, threatened or intimidated into producing the image would have an affirmative defense, §11-212(f), page 21, lines 3-5.

This bill also protects flirtatious sharing of images with one person, on the one hand, and sets a clear prohibition on the recipient republishing the image to others, §11-212(d)(3), page 16, lines 12-13. Teens who distribute images to a larger group without consent would still be subject to the criminal law via the juvenile justice system.

The educational program which could be mandated would be developed by the Department of Juvenile Services. Education has been proven to deter the act of sexting.<sup>1</sup> 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/>

SB45 clearly also seeks to address the concerns raised by the *SK* case. While we appreciate its simplicity, MCASA is concerned that it lacks the necessary language to protect against coercion and does not go far enough in protecting recipients of a sext.

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>2</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. Senate Bill 365 would create an appropriate balance.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on Senate Bill 365**

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<sup>1</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);

<sup>2</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)