



---

**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);