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**TESTIMONY ON 14-S 2610,
RELATING TO CRIMINAL OFFENSES
March 11, 2014**

The ACLU strongly opposes this bill, which would create the crime of “Electronically Disseminating Indecent Material to Minors.” We believe this legislation raises significant constitutional concerns.

Included in the definition of “indecent materials” is “graphic or lascivious exhibition of the genitals or pubic area of any person”, with no discussion or guidance as to what “graphic or lascivious” entails. This definition could encompass encompass films containing full frontal nudity, art pieces, and even sex education texts. Any individual who transmits these images to a minor is subject to felony charges, five years in prison, a \$5,000 fine, and mandatory sex offender notification requirements.

We wish to give just a few examples of the incredible scope of this criminal prohibition. A streaming video company like Netflix would be in clear violation of the law every day. Netflix knows and intends that its films be available to minors, yet readily available for streaming on its website are movies, including award-winning films, that include so-called “sexually explicit conduct.” This would apply to the users of the service as well. For instance, if a parent uses her computer to let her 17 year old daughter watch the recently-released Cannes film festival winner “Blue is the Warmest Color” – which is available for streaming on Netflix – she too would appear to have engaged in a felony.

An even more direct example emanates from a Rhode Island doctor’s website that was the subject of a lawsuit that the ACLU handled, in a different context, a decade ago. In the 1990’s, the doctor created a web site designed to answer common questions that teenagers and young adults have about sexual matters. He started the website after he noticed that his young patients were, not surprisingly, uncomfortable asking him questions on sexual topics of importance to them. The website includes explicit photos and text. Because of the clearly graphic images contained on the web site, this bill would make the doctor a felon, or force him to take down his website.

We would also note that the bill’s penalties apply just as equally to minors who transmit “indecent” images to each other. While language in the bill states that no minor can be charged under this section if their actions are considered “sexting,” any other transmission of “indecent” materials among minors subjects them to a felony record and mandatory sex offender status.

Because this bill would unconstitutionally criminalize a wide range of speech protected by the First Amendment, we urge the committee to reject it.