

**ACLU OF RI POSITION: OPPOSE**

**TESTIMONY ON 23-H 5756,  
RELATING TO CRIMINAL OFFENSES -- CHILDREN  
March 16, 2023**

The ACLU of Rhode Island opposes this legislation, which would prohibit the production or possession of so-called child pornography. Not only is this bill completely unnecessary, as it is redundant in large part in light of laws already on the books, but to the extent this bill goes beyond Rhode Island's current statute on the topic, it raises serious constitutional questions as well, could be used to punish the distribution of legitimate material with sexual themes to minors, and could encourage wide-ranging censorship in our schools. We further have concerns that the language of the bill could undermine provisions in our state "sexting" statute and needlessly penalize teenagers for certain consensual, and not rare, activities like the sending or receiving of personal nude photos or other types of media.

For almost two decades, Rhode Island has had a "child pornography" law on the books. *See* R.I. Gen. Laws § 11-9-1.3. This legislation is largely duplicative of it, and in fact mirrors much of that statute's language. The bill should therefore be summarily rejected because it is simply redundant.

However, we note that, in a few respects, the bill also goes beyond current law. But to the extent it does so, it transgresses constitutionally dubious territory. For example, in addition to criminalizing material that meets the judicial definition of "sexually explicit conduct" involving minors, the legislation further prohibits the distribution to minors of undefined "lewd or lascivious" material. In doing so, the bill goes far beyond what can be restricted under the First Amendment and, rather than protecting minors, potentially makes criminal a wide range of material that should be available to them. It would give the state the power to ban provocative books and other material with a sexual content that it is perfectly appropriate for minors to read. In light of the disturbing crusade against LGBTQ+-affirming literature that we are witnessing taking place in school libraries across the country, this attempt to expand current law is deeply disturbing and opens up the possibility for a wide range of censorious mischief.<sup>1</sup>

And, finally, this legislation could go further beyond current law by encompassing many circumstances which are already addressed – and exempted from penalty – by the state's current "sexting" statute. This legislation, unlike current law, which contains exceptions from its provisions for sexting activities between minors within a certain age range, has no similar exemption and could instead put all minors in the unwarranted and potentially catastrophic position of being punished for consensual sexting acts. Regardless of personal perspectives on the appropriateness of sexual conduct for minors, it is to subject them to the same penalties as actual producers of child pornography.

For all these reasons, the ACLU of RI urges the committee to reject this legislation.

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<sup>1</sup> Another provision in the bill specifies that a depicted minor does not need to actually exist in order for the image to constitute a crime. [Page 2, lines 33-34]. This is an attempt to ban so-called "virtual child pornography," but the U.S. Supreme Court ruled a similar federal ban unconstitutional many years ago. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).