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ACLU OF RI POSITION: OPPOSE/AMEND

TESTIMONY ON 25-S 955, RELATING TO CRIMINAL OFFENSES – CHILDREN May 8, 2025

While we appreciate and support what we believe is the intent of this legislation, we must respectfully oppose it without a major change in its approach.

It is our understanding that the bill is intended to protect minors who engage in sexting from being prosecuted under child pornography laws. We fully support that goal, and it is one of the reasons that the ACLU of Rhode Island opposed the passage of the sexting statute over a decade ago. However, we disagree with the method being used in this legislation to address the problem, as we believe it would greatly expand both police and court power over juveniles in a continued and increasing effort to criminalize adolescence. We believe the proper solution to this problem is not to funnel more children into the court system but to instead amend the child pornography law to make absolutely clear that it does not apply to this particular type of conduct between minors.

“Sexting,” the practice of sending nude or semi-nude photos of oneself via cell phones or similar technology, is widespread among teenagers. Surveys have conservatively reported that approximately 20% of all teenagers have sent or posted nude or semi-nude pictures of themselves, and a greater percentage have received them. By greatly expanding the definition of sexting to cover the mere possession of sexts sent from another minor or the voluntary solicitation of a sext from another minor, this bill will subject literally thousands more young people to potential family court involvement for this common activity. Yes, it is irresponsible activity, but children can sometimes be irresponsible and careless; that is almost inherent in being a teenager. They need to be taught that sharing nude or partially nude images of themselves can have bad consequences, but not via the judicial system, with the stigma and potential adverse consequences that entails.

To the extent that police departments are charging minors with “child pornography” for transmitting or possessing images of themselves or underage friends, we should be condemning those departments for abusing their discretion in such a mean-spirited manner, not expanding the sexting statute to try to prevent that.

Even though the law treats “sexting” as a status offense, once a child is within the jurisdiction of the Family Court, serious consequences can follow. A status offense is still an offense and carries with it potentially significant ramifications that cannot be lightly brushed aside as inconsequential. The judge can set various onerous conditions on the child, the violation of

which could lead to his or her incarceration at the Training School. In any event, the burden and trauma of having to go to court at all cannot be underestimated either. Further, by establishing a broader separate explicit ban on possessing or soliciting sexts, police may routinely use this new law to charge minors with this status offense when they otherwise never would have been charged with anything at all.

In short, if rogue police departments are cruelly charging with child pornography the very individuals that law was designed to protect, the solution should be to amend the child pornography law to specify that it does not apply to this type of activity by minors. We would be happy to work with the sponsor and the committee to come up with language to accomplish that purpose.

Ultimately, we believe this is a matter for parents to address with their children. It is a matter for schools and others to provide increased education to teens about the dangers of this practice. But it should not be a matter for the courts. We therefore urge rejection of this bill or its revision to instead amend the child pornography statute as suggested above without expanding the sexting statute's reach.¹

Thank you for considering our views.

¹ Leaving aside our broad concerns about this bill's approach to the issue, we also have other, more specific concerns with the bill's drafting and scope. For example, "soliciting" visual depictions, which this bill would make illegal, does not appear to be illegal under the child porn statute, so the bill would be adding an offense that is currently not unlawful. In addition, the new subsection (d) doesn't require that the possession of a sext be knowing, something the child porn statute requires. Finally, we still find the new subsection (d) problematic; a child should not be guilty of an offense merely for possessing a picture that they may never have asked to receive.