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**COMMENTS IN OPPOSITION TO 2010-S 2635,
AN ACT RELATING TO “SEXTING”
March 23, 2010**

Although the Attorney General has stated that this bill is intended to “protect” minors from being prosecuted under child pornography laws, we disagree. Rather, we believe this bill would greatly expand both police and court power over juveniles in a continued and increasing effort to criminalize adolescence. We therefore urge opposition to this bill.

“Sexting,” the practice of sending nude or semi-nude photos of oneself via cell phones or similar technology, has become increasingly widespread among teenagers. A recent survey found that approximately 20% of all teenagers have sent or posted nude or semi-nude pictures of themselves. Obviously, we strongly agree on the importance of counseling teens on how to appropriately and respectfully use technology in order to protect themselves and others, but we should not engage in witch hunts that seek to only punish them for poor decisions. Kids can sometimes be irresponsible and careless; it comes from being a teenager. They should be taught that sharing nude or partially-nude images of themselves can have bad consequences. But criminalizing this conduct does little to prevent future occurrences and may harm a child’s life permanently.

- As for the bill itself, we wish to emphasize that, contrary to the Attorney General’s claims, this bill would authorize the bringing of charges against juveniles for “sexting” when they could never be charged under the child pornography statute. It does so by defining “sexually explicit conduct” to include the display of a female minor’s breasts. This is not child pornography under any interpretation of the term, but by treating it as such for purposes of the new crime of “sexting,” this legislation creates a new crime where none existed before.

- To the extent that police departments are charging minors with “child pornography” for transmitting images that might fall into that term’s very broad definition, we should be condemning those departments for abusing their discretion in such a mean-spirited manner, not creating a new crime to cover it. Nothing requires police to bring such charges, which is one of the key reasons for broad police and prosecutorial discretion in the first place.

Technically, a parent who takes a photo of her baby whose genitalia is showing is guilty of “child pornography.” We would be appalled if a police department claimed to feel obligated to arrest the parent for violating the child pornography statute. By the same token, I doubt we would encourage as an alternative the adoption of a separate statute to address those photos. So too with “sexting.”

- Even though this bill proposes to treat “sexting” as a status offense, once a child is within the jurisdiction of the Family Court, serious consequences can follow. 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. A status offense is still an offense and carries with it potentially significant ramifications that cannot be lightly brushed aside as minor.

- Although we assume this is just a technical flaw, the bill doesn't even prevent teens from being charged with child pornography for "sexting." All that the bill does is prevent a child who has been adjudicated under the sexting law from being charged with child pornography. However, nothing in this legislation would bar a police department from charging the child with pornography *in lieu of* charging them with sexting.

- If people are truly concerned about rogue police departments inappropriately charging with child pornography the very people that law was designed to protect, the solution is simple: amend the child pornography law to make it clear that it does not apply to this type of activity by minors.

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. A news article quoted a spokesperson for the Attorney General as saying that sexting was a "warning sign that this young person needs to be assessed to figure out if there are deeper causes for this unwise decision." We respectfully submit that it is not for the courts to be involved every time a teenager makes an "unwise" decision. We urge rejection of this bill.