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Representative Luke H. Clippinger  
Chair  
House Judiciary Committee  
House Office Building, Room 101  
6 Bladen St., Annapolis, MD 21401

February 17, 2020

Dear Representative Clippinger,

**HB 1245 – Juvenile Law – Conduct by Children Involving Sexually Explicit or Nude Images**

I am writing on behalf of Prostasia Foundation, a child protection organization formed by a group of experts, activists, and survivors of child sexual abuse (CSA), to promote an evidence-based approach to CSA prevention that respects the human rights of all.

We write to express our general support for the bill HB 1245, which has been scheduled for hearing by the Judiciary Committee on February 27 at 1pm. As expressed by Judge Joseph M. Getty of the Maryland Court of Appeals last August, there are “compelling policy reasons for treating teenage sexting different from child pornography.” We commend the House for taking this issue seriously.

However, there is one aspect of Bill HB 1245 that does not make sense and should be amended in committee. With some exceptions, the bill protects a child from liability for sending a consensually-taken sexual photo of another child, if the persons receiving the photo have also consented to receive it (3-8D-103(A)(1) and (2)). However, this protection vanishes if a person who received the photo “suffered emotional distress from receiving, observing, or otherwise viewing the sexually explicit or nude image.” (3-8D-103(A)(3)).

Similarly, a child is protected from liability for sending a photo of themselves in similar circumstances (3-8D-103(B)(1)), but once again this protection does not apply if the recipient suffered emotional distress (3-8D-103(B)(2)).

The reason why this provision does not make sense is that once the recipient has consented to receive the image, any distress that they might subsequently suffer from receiving or viewing it is

outside of the control of the child sending the image. They should not be penalized for the fact that the recipient experiences a negative emotional response. There is no other criminal offense in which the emotional response of the victim of a crime is determinative of whether the offense is made out.

The possibility that a child who has consented to receive an explicit image might nevertheless be distressed when they view it is a valid concern. However, this concern is much better addressed as part of the education program that HB 1245 would also establish. It is not fair to place this responsibility on the child sending the image, when they have discharged their responsibility to obtain the recipient's consent.

We therefore recommend that sections 3-8D-103(A)(3) and 3-8D-103(B)(2) be deleted from the bill, which would eliminate this inconsistency and ensure that minors are not being criminalized over the emotional responses of the recipients of photos that are consensually taken and consensually distributed.

If Prostasia Foundation may be of any further assistance in your consideration of this bill, please do not hesitate to call upon us. Thank you once again for giving this important issue the attention that it deserves.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Malcolm', written in a cursive style.

Jeremy Malcolm  
Executive Director