

Connecticut Commission on
Women, Children *and* Seniors



CWCS

Testimony before the Judiciary Committee of the General Assembly
Submitted by the
Commission on Women, Children and Seniors
March 13, 2017

Re: House Bill No. 6002, An Act Concerning “Sexting” By A Child

Senator Doyle, and Senator Kissel, and Representative Tong, and distinguished members of the Judiciary Committee: Thank you for the opportunity to provide testimony on behalf of the Commission on Women, Children and Seniors (CWCS).

House Bill No. 6002, An Act Concerning “Sexting” By A Child

The Commission supports the stated purpose of House Bill 6002, to ensure that the penalty for “sexting” by a minor is not considered a felony. We, nonetheless, have concerns about the potential outcome of enacting it in its current form.

Bearing in mind that the proposed subjects of this bill are children—and in particular as the current bill removes the lower age limit, allowing a child of *any* age to be charged with a misdemeanor—we suggest that great care be taken to avoid unintended consequences that may harm children without resulting in any significant improvement to their own outcomes or in community safety. Further, because the bill addresses situations involving *only* children, the Commission believes the legislature should take care to ensure there are very limited situations in which the actions described in the bill might even be considered a misdemeanor.

As you know, in recent years, the state of Connecticut has been engaged in a comprehensive review of its policies with regard to juvenile justice and school discipline, guided by national best practices that protect communities from harm while at the same time protecting children. Those best practices rely less upon penalization and more upon restorative practices, to ensure that the errors made by young people are treated as just that—errors—and that young people are permitted to learn from those mistakes, without suffering perhaps irreparable consequences to their future development or prospects.

The state goes further, in a related policy area, that addressing human trafficking. Under Sec. 53a-82, children under the age of eighteen are explicitly exempt from prosecution for a prostitution Class A misdemeanor. The state further provides for counseling and other social services to homeless and other youth—up to the age of twenty-one—who are at risk for trafficking and duress by an adult and might under prior law have been subject to prosecution as prostitutes. Yet there is no exception in House Bill 6002 for any similar situation in which a child under eighteen might have been pressed into performing a prohibited “sexting” act by an adult. This seems inconsistent, and potentially

damaging to youth who do not always recognize that the connotations of their actions might be sexual or obscene in nature, when observed by adults.

In the case of “sexting,” the Commission would suggest the imposition of any criminal charge be reserved only for those narrowly defined situations in which the perpetrator of the transmission, and the possessor of the content, clearly are demonstrated to have knowingly engaged in the prohibited action and also intentionally exceeded the standards of “obscenity” and “obscene as to minors,” contained in Sec. 53a-193. This narrower definition would, on its face, be inapplicable to very young children, who lack the understanding to form such an intention.

Even in this narrowed form, the Commission has a further concern, regarding inconsistent application of the law under House Bill 6002. Despite the lengthy guidance of the definitions provided under Sec. 53a-193, obscenity remains largely in the eye of the beholder. As with many other potential crimes, this one may be subject to unintentional bias in its application, a danger we suggest it would be well to avoid.

Thank you for the opportunity to offer this testimony.