

Erin Davies, Executive Director, Juvenile Justice Coalition
Testimony on HB 355
House Criminal Justice Committee
March 20, 2018

Chair Manning, Vice Chair Rezebek, Ranking Member Celebrezze, and members of the House Criminal Justice Committee, thank you for the opportunity to testify on HB 355. The Juvenile Justice Coalition (JJC) is an organization that works to ensure that approaches to Ohio youth who are at-risk of involvement or involved in the juvenile court system are research-based and cost-effective. In addition, JJC engages youth leaders to get their perspective on what would be most effective for them and other youth across the state.

HB 355 addresses sexting among young people in Ohio. Under current law, youth sexting is only addressed through child pornography laws, which does not adequately address the complexities and nuances of these situations, particularly given youths' unique developmental characteristics. JJC appreciates the ultimate goal of HB 355 to acknowledge the differences between sexting and child pornography. In addition, we support the bill's focus on diversion programs to address sexting offenses. Diversion is a more solutions-based approach to adolescent behavior that can help youth understand the consequences of their actions and prevent future incidents from occurring.

After talking with Ohio youth, JJC has several concerns with HB 355, including:

- **Age limit and consent:** Ohio law allows youth to consent to sexual activity at age 16; however, HB 355 criminalizes sexting for individuals over the age of 16 and even over the age of 18. This age difference creates a gap between when a person can consent to in person sexual activity, but cannot consent to sending electronic pictures.
- **One-size-fits-all approach:** JJC is concerned that HB 355 creates a one-size-fits-all offense that does not allow the nuances of specific sexting incidents to be taken into account, including the relative age of the sender and recipient, whether the material was distributed beyond its intended recipient, whether coercion was involved in obtaining the material, and the extent of the harm – or lack thereof – that is caused.
- **Lack of prevention and education:** Unfortunately, HB 355 does not have a prevention or education component. Many of the youth we work with expressed concern that they and their peers do not understand or consider the potential consequences of pressing send on sexts. This is particularly true with adolescents, who the U.S. and Ohio Supreme Court have recognized are developmentally more impulsive, more susceptible to peer pressure, and more likely to take risks. We certainly appreciate the diversion component of this bill, but believe that there must be an educational component that engages youth before they become involved with the juvenile court.
- **Allowing for double charging:** HB 355 does not specify that the sexting offense must be used as an alternative to a child pornography charge, meaning a youth could be charged with both sexting and child pornography. Therefore, HB 355 may actually widen the net of youth who become involved in the court system and could impact plea bargaining with youth on these offenses.

JJC acknowledges the changing landscape of technology and appreciates the legislature acknowledging this shifting ground. However, we are concerned that the approach taken by the bill may over-criminalize relatively typical, age-appropriate sexual exploration between adolescents that becomes amplified by advances in technology. We must have a response that strikes a balance that leaves room for youth to learn and make mistakes while being held accountable for their actions; however, this accountability does not necessarily have to come through the court system. Thank you for the opportunity and I welcome any questions you may have.