

Q & A: Sexting, Teens and the Law

What is sexting?

Sexting is sending or receiving sexually suggestive text messages and images, including nude or semi-nude photographs, via cell phones or over the Internet.

Who does it and how common is it?

Adults and teens both engage in sexting. Fifteen percent of adults ages 18-24 and 22 percent of adults ages 25-24 have sent sexts. Some researchers estimate that between 20 and 28 percent of teenagers have engaged in sexting—this is not surprising since exploration of one’s sexual identity and relationships is a part of growing up and modern technology has merely created new means for teens to do this. One study found that roughly 70 percent of teens who sexted had sent the image to their significant other.

Does sexting violate the law?

Consensual, private sexting between adults generally is legal.

The story is different for teens, however. Teens who engage in consensual sexting may find themselves in trouble, as the images they create and share may meet the technical definition of child pornography – because they are creating, possessing, and/or distributing sexually explicit images of minors. Teenage sexting is sometimes brought to the attention of school administrators, who in turn may involve law enforcement. In a number of instances, this has triggered criminal prosecutions and convictions.

As explained below, however, sexting by teens should not be treated like child pornography. Sometimes sexting – regardless of the age of the person doing it – is problematic. Where sexting involves coercion, bullying, harassment, or other wrongdoing, it should be taken very seriously, and a range of responses by school administrators or law enforcement may be appropriate.

What’s the harm in applying child pornography laws to sexting?

The purpose of Washington’s child pornography law is to prevent minors from being sexually exploited or abused for someone else’s personal gratification or commercial gain. When teens are sexting consensually, they are voluntarily creating and sharing images of themselves. While they may not appreciate all of the potential consequences of sexting, it is clear that teens who engage in consensual sexting are not victims of sexual exploitation or abuse, and they should not be prosecuted under child pornography laws.

Impulsive adolescent sexual behavior should not be conflated with criminal wrongdoing. Prosecuting teens who engage in consensual sexting as felony sex offenders under child pornography laws has harmful and long-lasting consequences.

If a teen is convicted of possession or distribution of pornography under Washington law, s/he will be guilty of a felony sex offense that requires registration as a sex offender for at least 10 years. Sex offender registration subjects adolescents to serious harms that are disproportionate to the consensual conduct at issue.

Not only do these teens have to comply with Washington's onerous sex offender registration requirements, they will also have to comply with the registration requirements of other states they may travel to for vacation, work, or school. Failure to comply with registration requirements completely may result in additional criminal convictions.

In addition, a teen's status as a registered sex offender may make it more difficult for him/her to successfully proceed with his/her life as an adult. Registered sex offenders often have difficulty finding housing, employment, and schooling. Juvenile sex offenders experience high rates of homelessness and exclusion from school once their registration status is known. They are stigmatized and viewed by the public as dangerous, sometimes resulting in vigilante harassment.

What should be done in cases involving sexting and teens?

Recognizing the harms described above, 20 states have enacted laws exempting juvenile sexting from the harsh punishments imposed by child pornography laws.

Although Washington is not among the states that have exempted juvenile sexting, we don't believe that the state child pornography statute applies to consensual sexting among teens. While adults may consider it unwise or reckless, school administrators, parents, prosecutors, and courts should consider other ways of dealing with consensual sexting among teenagers, as child pornography charges and prosecutions serve only to victimize the youth the laws are intended to protect by prosecuting and treating them like felony sex offenders.

Resources

Amanda Lenhart & Maeve Duggan, *Couples, the Internet, and Social Media* (Pew Research Ctr. Feb. 11, 2014), available at <http://www.pewinternet.org/2014/02/11/couples-the-internet-and-social-media/>

Jeff R. Temple et al., *Teen Sexting and Its Association with Sexual Behaviors*, 166 *Archives of Pediatric & Adolescent Med.* 828, 829 (2012)

Cox Communications, National Center for Missing and Exploited Children, & John Walsh, *Teen Online & Wireless Safety Survey: Cyberbullying, Sexting, and Parental Controls at 11* (2009), available at <http://www.scribd.com/doc/20023365/2009-Cox-Teen-Online-Wireless-Safety-Survey->

Nat'l Campaign to Prevent Teen & Unplanned Pregnancy & Cosmogirl.com, *Sex and Tech: Results from a Survey of Teens and Young Adults at 1* (2008), available at http://www.afim.org/SexTech_Summary.pdf.