

Sexting: Child Pornography or Innocent Courtship Ritual?

A Review of Relevant Caselaw

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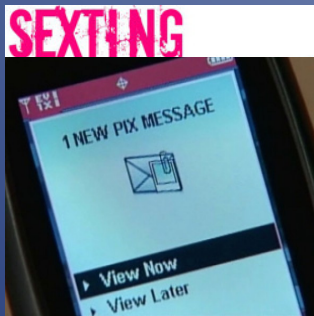


Abstract

The use of cell phones by adolescents has continued to grow over the past decade; approximately seventy-five percent of teenagers have cell phones. With this increase in access, a new area of concern has developed. Sexting, or the act of taking nude or semi-nude videos or pictures and sending them to another person via cell phones, instant messaging programs, social networks, and video chat, is becoming more recognized by lawmakers as an issue that needs to be addressed. What some teens fail to realize is that the act of sexting is actually deemed production and distribution of child pornography, which comes with it serious legal and social consequences. This research project analyzes, compares, and contrasts laws passed by various states to address this issue. These data were then separated and recorded in a table of common characteristics and attributes of the different laws, followed by individual summaries of each law. The majority of state laws regarding sexting view it as either a misdemeanor offense and/or attempt to address the issue by compelling these teenagers to attend educational or counseling programming designed to instruct the adolescent on the potential consequences associated with sexting.

Sexting

“The sending or receiving of sexually explicit or sexually suggestive nude or seminude images or video, usually via a cell phone.” (Hinduja & Patchin, 2012)



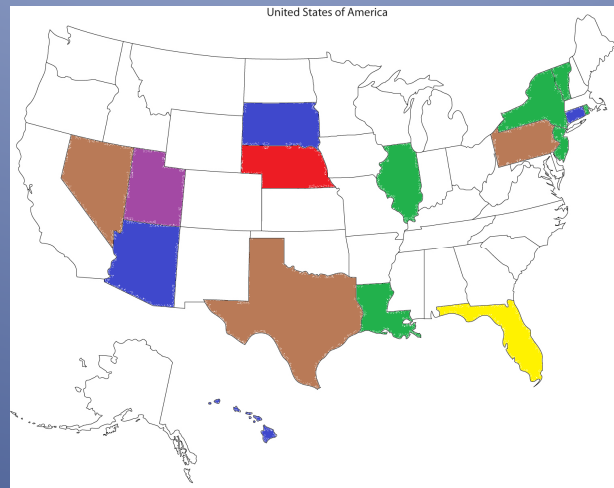
Child Pornography

In states that currently do not have a separate law for sexting, those children accused of distribution or possession of nude images of minors may be charged with sexual exploitation of a child, also known as child pornography. In states such as Wisconsin, penalties associated with child pornography, which is considered a felony if convicted, may include fines and/or several years of imprisonment. In addition, probation, mandatory reporting, sex offender registration, and certain living restrictions may be ordered by the court.

“12.9 percent of youth aged 11-18 had received a naked or semi-naked image of someone from their school.”

State’s Reactions

Over the past few years, several states have enacted legislation concerning sexting, in order to address this new area of concern. The following map illustrates some of the primary aspects of these laws.

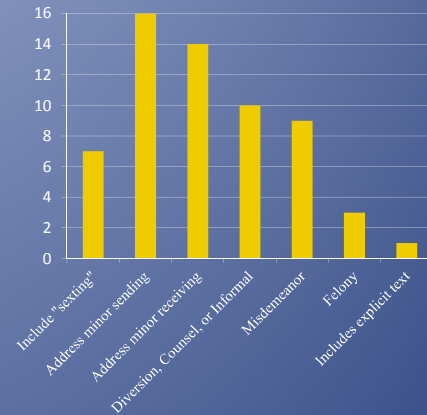


The colors used above represent the potential punishments minors would receive in the respective states:

- Blue - represents that there is the potential for a misdemeanor punishment
- Red - represents that there is the potential for a felony punishment
- Green - represents that there is the option of diversion, or to pursue the case outside of the criminal/juvenile justice system, and allows for the court to prescribe counseling or another informal sanction
- Purple - represents that there is the potential for either a misdemeanor or a felony punishment
- Brown - represents that there is the potential for either a misdemeanor punishment or that the court may pursue an option of diversion, and/or counseling or informal sanction
- Yellow - represents that there is the potential for a misdemeanor or felony punishment, an option for diversion, and/or counseling or informal sanction

Results/Findings

Key Attributes of State Statutes



There are three primary interpretations on the potential punishments for sexting, including that an offense may be considered a felony, a misdemeanor, or that the response should be that of diversion and/or counseling or informal sanctions. In addition to potential punishments, other factors that were considered in this project included whether the law contained the word “sexting” in the statute, minors sending and/or receiving sexually explicit images of other minors, and/or explicit text in addition to images.

Discussion

The results of the current study indicate that several states have recognized the potential problem of not creating a separate law for minors concerning this new courtship ritual. However, states that have established statutes to address this issue vary regarding what they deem to be an appropriate response to sexting. The majority of these states hold that minors, if convicted of sexting, should either be diverted from the court system and required to attend counseling or educational programs, designed to instruct them about the potential legal and social consequences of sexting, or to potentially be charged with a misdemeanor. These states recognize that there should be a difference between minors and adults, as committing such an offense by an adult would be considered distribution or possession of child pornography, which may result in felonious penalties if convicted. For the majority of states with sexting statutes, minors convicted of sexting are not required to register as a sex offender. It is important to note that for many states, upon successful completion of these educational or informal programs, the individual's record of this crime is expunged. However, failure to complete these programs or re-offending can result in additional consequences. As these laws continue to develop, future research should examine whether these informal, educational programs or more lenient punishments are effective in eliminating the issue of sexting; or if other alternatives should be considered.