



Life & Style

Are 'Sext' Messages a Teenage Felony or Folly?

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State lawmakers around the U.S. are struggling to decide if teenage "sexting"—the practice of sending nude or sexually suggestive photos by cellphone—is a serious crime, or juvenile **folly** run amok.

About 20 states have enacted or proposed measures that deal with teenage sexters. Generally, the legislation is aimed at treating minors in a more lenient fashion than if they were prosecuted under existing child-pornography or child-exploitation laws, which include the possibility of prison time and sex-offender status.

Since May, states including Arizona, Connecticut, Louisiana and Illinois have enacted laws that impose relatively modest penalties against minors who sext, while maintaining harsher penalties for adult offenders.

While many of the new rules make sexting punishable by small fines and short stints in a juvenile-detention facility, there is still little agreement on what the appropriate penalty is—or whether prosecutors should be involved at all.

Some attorneys view sexting by teenagers as a comparatively tame activity that is best handled by parents and teachers. Others disagree, stressing the extreme and lasting humiliation that young victims of sexting are likely to experience.

"Many states are struggling with this issue: Do they bring the hammer down ... or take a more individualized approach, such as consulting with the child's family members?" said Chris Newlin, head of the National Children's Advocacy Center, in Huntsville, Ala.

Complicating the debate is the range of forms that sexting can take. It may be the exchange of a revealing photo between two romantic partners or a rapid-fire humiliation campaign, with a photo spreading throughout a school. A single photo may start out as the former and end up as the latter.

And there is the chance that, regardless of its initial purpose, a photo can find a permanent place on the Internet.

Although sexting is high on many parents' worry list, it's difficult to pinpoint exactly how common the practice is. Various surveys have estimated the percentage of teenagers who have engaged in the behavior at anywhere from roughly 4% to 25%.

A new Louisiana law takes a graduated approach to penalizing minors who forward lewd images of other minors. Under the law, a first offense brings a maximum sentence of 10 days in jail; a second offense could draw 30 days in jail.

Some think the legislation goes too far. "Controlling what one does with information about one's self is a serious violation of the First Amendment," says Marjorie Esman, executive director of the American Civil Liberties Union of Louisiana.

Others say, if anything, the legislation is too soft. Damon Baldone, a Louisiana state representative and primary author of the law, says he would have preferred that the law include harsher penalties but said he had to compromise to secure passage of the bill.

Under an Arizona law enacted in May, children from ages eight to 18 who send sexual images of a minor to only one other person are charged with petty offenses, which aren't typically subject to jail time. If offenders

send images to several people, or if they are repeat sexters, they could face more-serious punishments, including incarceration.

The new law provides a "happy middle ground," says Jonathan Paton, a former state lawmaker who sponsored the legislation. "It gives law enforcement the option to put a squeeze on minors, but it also doesn't put something on their records forever."

Christina Phillis, a juvenile-law public defender in Arizona, said she thinks the measure is far too severe. "Any time you have any sort of sex offense next to your name, whether it happened as a juvenile or adult, you now have a scarlet letter," she says. Sexting is an issue that should be handled by parents and schools, not law-enforcement authorities. "If we need to sanction someone, let's look to the parents who gave children the cellphones without properly monitoring" them, Ms. Phillis says.

Sexting has gained notoriety after such recent incidents as one in Tunkhannock, Pa. School officials there discovered photographs of nude and partially-clothed teenage girls on several students' cellphones. Male students, the officials learned, had been trading the images over their phones.

Former local District Attorney George Skumanick Jr. threatened to bring child pornography charges against students unless they agreed to complete an education program dealing in part with sexual harassment.

Last year, parents of three of the girls filed a federal suit against Mr. Skumanick, alleging that the photographs were protected by free-speech rights. The litigation was settled earlier this year; no criminal charges were filed against any of the children involved.

"To suggest that children are exercising protected First Amendment rights by disseminating naked images of themselves is irresponsible," says Michael Donohue, counsel to Mr. Skumanick. "These images can make their way into the public sphere and subject kids to danger."

Few teenage sexters have been prosecuted for child pornography, but many legislators say they want to give law enforcement flexibility in deciding how to charge suspects.

Some states are focusing on education. New Jersey lawmakers have proposed laws that would require schools to provide information on "legal, psychological, and sociological implications" of sexting, and also would require retailers to distribute a brochure on the issue to cellphone purchasers. Teenagers caught sexting could, at the discretion of the prosecutor, attend an educational program and avoid criminal prosecution.

"Look, kids do stupid things, impulsive things, all the time. We need to approach this problem logically," says New Jersey Assemblywoman Pam Lampitt, a sponsor of the proposed approach.

Mary Leary, a law professor at the Catholic University of America in Washington, D.C., who specializes in issues involving the exploitation of children, says, "The notion that this is simply innocuous behavior among juveniles ignores the fact that this involves the circulation of images for eternity, beyond the control of the kids who are the subject of the images."

Related legislation also has been introduced in New York, Pennsylvania, South Carolina, Florida, Mississippi, Ohio, Indiana, Kentucky and Oklahoma.

A proposed Pennsylvania bill proposes requiring some teenager sexters to take educational programs exploring the connection between bullying and the sharing of sexually suggestive material.

Oklahoma has proposed a law that would impose one set of penalties for "consensual" sexting between two people ages 14 to 18, but provide possible stiff jail terms for other types of teenage sexting.

States will have to continue to tweak their criminal laws to cope with changing technologies, lawyers and legislators say.

"Our kids will continue to face problems that we didn't have to face," said Ms. Phillis, the Arizona juvenile public defender.

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