

# Sexting

## A civil liberties briefing from the ACLU of Ohio



### What is sexting?

Sexting is the phenomenon of taking, sending, receiving or displaying nude images via cell phone, email, blog or other online communication. It is so common that according to a 2009 study by the National Campaign to Prevent Teen and Unplanned Pregnancy, one in five teens admitted to sexting.

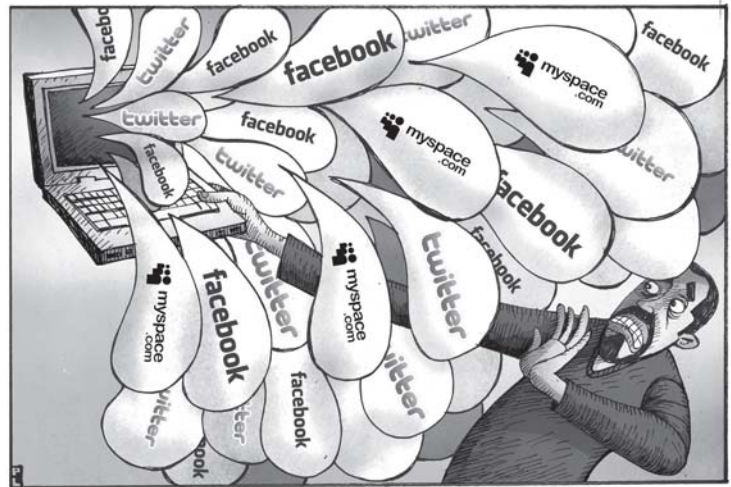
### Prosecutions are too varied

Prosecutors have **broad discretion to decide how to charge young people with sexting, or whether to prosecute them at all.** Current laws were not written with sexting in mind and provide no guidance. They might pursue felony convictions, which label the young person as a sex offender and carry mandatory registration requirements. Or they may charge a young person with misdemeanors without registration requirements, or impose hours of community service, or they may decide not to pursue charges at all.

### Current law

Currently in Ohio, sexting **may result in two potential felony charges.** The first is a violation of Ohio Revised Code section 2907.322, "Pandering Sexually Oriented Matter Involving a Minor," which is a fourth-degree felony. The other is a violation of Ohio Revised Code section 2907.323, "Illegal Use of Minor in Nudity Oriented Material or Performance." The degree of the felony conviction depends on whether someone transfers material (second degree), consents to photographing (fourth degree), or possesses or views the material (fifth degree). If convicted with the second or fourth degree felony a **mandatory prison term** will be imposed.

Furthermore, the federal Adam Walsh Act **may label teens** who send, receive or even share the photos as **sex offenders.** This will require the teens to register with law enforcement for decades, if not for life, after the completion of their sentence. If the conviction falls under the second or third tier of sex offender registration crimes, then the teens will be subjected to mandatory community notification (accessible by Internet). As a devastating result, these



teens will be easily confused with adults convicted of rape, gross sexual imposition and other heinous sex crimes against children.

### Child pornography laws are designed to protect children

The text and legislative intent of current laws aim to prevent adults from taking advantage of children. **Under current law, a young person could be charged as a sex offender for disseminating their own picture.** As a result, the victims may be the ones punished. In addition, these laws may be used against children who foolishly circulate pictures of their significant other. While this is inappropriate, it goes against the foundations of justice to ruin a young person's life because of one careless and immature action. Current legislation does not accurately address sexting, and the convictions under these codes are inappropriate for minors.

### Proposed sexting bills

Several bills were proposed in the Ohio General Assembly in 2010 to address sexting. **The bills come up short because they still treat sexting behavior as a crime. However, they would reduce sexting to a misdemeanor and would not label the teens as sex offenders.**

In 2011, Rep. Ron Maag (R-Lebanon) introduced House Bill 53, which was nearly identical to bills proposed in 2010.

### ACLU position on proposed bills

Although both pending bills are designed specifically to address sexting as opposed to other acts and have reduced the criminal penalties to a misdemeanor, the ACLU opposes criminalizing sexting altogether. Child pornography laws were designed to protect one group, child victims, from others who do them harm. Sexting only has one group involved in the act, the children themselves. Since the bills specifically do not make a distinction between the victim and the offender, the victim is ultimately being pun-



ished for his/her acts.

### ACLU recommendations

The ACLU advocates the non-criminalization of teen sexting.

Existing criminal laws, that carry the potential for a felony conviction and sex offender restrictions, are not meant to address teen sexting. Under the existing laws and their extensive punitive effects, these teens will be stripped of a future as their education and work prospects will be bleak. These offenses currently impose a ban on living within 1,000 feet of schools and day care facilities. The ultimate impact of such convictions can ruin a teen's life.

Furthermore, the traditional role of juvenile courts supports rehabilitation of child offenders by keeping court records and proceedings confi-

dential. This is substantially undermined by the current state of child pornography laws when applied to sexting. The juvenile court, under current laws, will not be able to continue to limit the public stigma experienced by child offenders.

While the sexting bills proposed do make a positive step in that they at least remove felony charges and sex offender labeling, they continue to treat adolescent behavior as a crime. **Laws are designed to protect victims from offenders, but attempts to criminalize sexting blur those lines.**

Certainly teens need to be taught responsible behavior, and how to respect their own and others' privacy. But that should be done by education, not threatening young people with criminal charges. Instead, current criminal offenses should be clarified to exempt adolescents who take, send and receive nude photos. In addition, current laws should exempt sexting adolescents from the Adam Walsh Act requirements. Schools should be encouraged to adopt curricula to teach young people how to use telecommunications responsibly.

There are other legal avenues to address sending or sharing private photos against someone's wishes, such as when a sexting recipient resends the photo in question to others who were not intended to see it. Tort laws provide a mechanism to sue when someone shares highly personal information without consent. The ACLU recommends strengthening Ohio's privacy laws to combat such intrusions of privacy and for the laws to provide a remedy, not to render sexting criminal.

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