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SPECIAL ISSUE ON SEXTING

Sexting Legislation in the United States and Abroad: A Call for Uniformity

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Abstract

In this study, we analyzed the sexting laws of 50 states in the United States (U.S.) and the District of Columbia, as well as five English-speaking international countries (Australia, Canada, England, New Zealand, and South Africa). We also examined laws related to aggravated circumstances, such as in cases of revenge porn. Our analyses revealed considerable variation, both in U.S. and international law, with some jurisdictions relying on archaic child pornography statutes to prosecute teenage sexting cases and others, developing new, extensive legislation that addresses various types of online interactions (e.g., sexting, revenge porn, and cyber bullying). Additionally, in jurisdictions where specific teenage sexting legislation has not been adopted, there is often a disconnect between these child pornography statutes, laws related to age of sexual consent, and typical teenage sexting behavior. This incongruity creates an abstruse landscape for teenagers to determine the legality of their sexting behaviors. Using the psychological research on the topic of sexting as a basis for our discussion, we highlight the state-level and national legislation that attempts to address these issues comprehensively. Moreover, we make legislative recommendations and advocate for more uniformity across jurisdictions and lesser penalties in teenage sexting cases.

Keywords: Sexting, Revenge Pornography, Cyber bullying, Law, Adolescent Psychology.

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Introduction

In 2015, North Carolina high school star quarter back Cormega Copening was charged with possession of child pornography and felony child exploitation after he and his girlfriend, Brianna Denson, were caught sexting each other (McGlaughlin, 2015). Both Copening and Denson were sixteen years old, in a dating relationship, and had allowed authorities to search their phones on an unrelated school matter (Miller, 2015). On Copening's phone, authorities found two sexually explicit pictures that Copening had taken of himself and one nude picture of Denson. Denson admitted that she had taken the nude photograph of herself and transmitted it voluntarily to Copening. Copening also voluntarily sent one of his nude selfies to Denson. Although the photos were shared only with each other, both Copening and Denson were arrested (McGlaughlin, 2015; Miller, 2015).

Under North Carolina law, it is illegal for anyone under the age of 18 to send or receive sexually explicit photos with a cell phone. Additionally, North Carolina minors can be charged with sending and/or possessing sexually explicit photos of themselves. As a result, Copening and Denson's warrants listed them as both the adult perpetrators (minors in North Carolina can be charged as adults starting at 16 years old) and the minor victims (Miller, 2015, Woolverton, 2015). A conviction for either Copening or Denson could have resulted in a 4- to 10-year prison term and lifelong sex offender registration. Both parties, however, were able to plea bargain their cases to one year's probation (Miller, 2015).

Interestingly, while taking and/or possessing nude photographs between minors is illegal in North Carolina, sexual intercourse between 16-year-olds is not, and because of a "close in age exemption" it is legal even for 13, 14, or 15 year olds to have sex with someone who is fewer than four years older (McGlaughlin, 2015). This exemplifies one of numerous inconsistencies that exist with regard to sexting legislation, and Evett (2016) provides a good legal overview of the problems that may occur when a state's age of consent law is not in sync with their sexting regulations. For context, in 30 of 50 U.S. states plus the District of Columbia, the legal age of consent for sexual acts is 16, in 9 states it is 17, and in 11 states, it is 18 (AgeOfConsent.net). Meanwhile, in all of the English-speaking countries analyzed here, the age of consent is 16⁵(AgeOfConsent.net). Additionally, like North Carolina, 23 other U.S. states, Canada, England, and some of the states/territories in Australia have a close-in-age-exemption that can be used as a defense for those who engage in consensual sexual acts with those who are within certain age ranges of each other (e.g., within 2 to 5 years of age, provided that they are both over a certain age).

In another sensationalized U.S. sexting case, teachers in Colorado discovered a massive sexting ring involving more than 100 middle and high school students. The students were using a cellphone application, which had the appearance of a calculator, to store and hide naked or inappropriate photos of themselves and other students. Many of these photos appeared to be taken on school property, thereby launching a federal investigation of the school (Associated Press, 2015; Martinez, 2015). Because Colorado had no specific sexting legislation at the time, charges for students would have fallen under child pornography

⁵ Note that in Australia, although there is a national standard, individual states/territories also have an individual law for legal age of consent, ranging from 16 to 17 years old (Australian Institute of Family Studies, 2016).

statutes and could have amounted to a felony conviction (a crime punishable by a year or more in prison) for all involved, along with mandatory sex offender registration. At the conclusion of the investigation, however, the District Attorney chose not to file charges due to the potential severity of the punishment. In addition, investigators did not find any evidence of aggravating factors, such as adults' involvement, the posting of the images to the Internet, coercion, or unlawful sexual contact (Botelho & Martinez, 2015). The investigators concluded that the pictures were taken and shared by the students consensually, even though Colorado law mandates that those under age 18 cannot provide legal consent (Adelmann, 2015).

This case and others like it, prompted lawmakers in Colorado to take another look at the issue of sexting among teenagers. In 2016 and 2017, Colorado lawmakers grappled with the issue of whether they should legalize “consensual sexting” among teenagers in their state. This would have allowed teenagers to take and share nude photos of each other, with consent, without fear of resulting legal action. However, the consensual sexting legislation ultimately failed. Instead, in May 2017, Colorado passed a law making consensual sexting a civil infraction, which could allow for monetary damages and injunctions against image distribution. Notably, the law also leaves the door open for prosecutors to bring criminal charges against teens who possess or distribute nude images against a victim's will, ranging from a petty offense— a minor crime for which the punishment is a small fine and/or a short term in prison—to a felony conviction (Paul, 2017). This open door might be especially useful in cases of cyber bullying (using electronic means to send intimidating or threatening messages to another; National Crime Prevention Council, 2017) or revenge porn (distribution of a pornographic image without the consent of one or more of the participants, usually with malicious and vindictive intent, such as following a break-up; Bates, 2017).

A sexting case involving both revenge porn and cyber bullying occurred in Victoria, B.C., where a Canadian teenager was convicted of 1) possessing and distributing child pornography; and 2) uttering threats against her boyfriend's ex-girlfriend. Her offense involved sending nude pictures of her boyfriend's ex-girlfriend to a friend, as well as posting one of the pictures to the victim's Facebook page. She also sent thousands of threatening text messages to the ex-girlfriend (Meissner, 2014; Cordasco, 2014). The alleged motive behind these acts was an attempt to humiliate the ex-girlfriend and prevent the romance from being rekindled. Because she was 16 years old, the accused was tried as a minor under Canadian law (Cordasco, 2014). However, because Canada had no specific sexting or revenge porn laws in place, she was convicted in 2015 on child pornography charges and sentenced to a six-month conditional discharge; with no criminal record provided she sent an apology letter to the victim (CBC News, 2015). At about the same time, Canada enacted the Protecting Canadians from Online Crime act (Bill C-13), which specifically protects both minors and adults from online bullying from peers, distribution of intimate images, and sexual predation (Montgomery, 2015).

The aforementioned cases, both in the U.S. and abroad, illustrate the quandary lawmakers' face in sexting cases. Grey areas in the language of most child pornography laws have led to the prosecution of teenagers who willingly self-generate images and share them with other teens. This occurs even though child pornography laws were originally enacted to protect minors from *adults* who produce, possess, or distribute images of child nudity or sexual abuse (Bulger, 2015). Child pornography penalties can also be severe—



sentencing guidelines typically mandate prison time, which can be sometimes decades long (Ibtesam, 2017). In about half of the U.S. states, convicted persons must also register as sex offenders for life (Findlaw, 2017). In cases where teenage sexting appears to be consensual, however, some prosecutors are choosing to charge teens with less serious offenses, or even to not charge them at all (such as in the Colorado case) (Eckholm, 2015; Paul 2017). This is due to the fact that a conviction for sexting will have life-altering impact, particularly when it comes to teenagers' future college and career opportunities. Many prosecutors also point to the fact that the legislative intent behind child pornography laws does not apply to teenage sexting cases, particularly when the behavior is not exploitative, calculated, or habitual (Eckholm, 2015; Sweeney, 2011; Ibtesam, 2017).

Although an increasing number of states and countries have considered the issue of teenage sexting over the past decade, there is still a considerable debate as to whether legislatures actually *should* enact sexting laws (Hoffman, 2011; Duncan, 2014) and what the wording and scope of such laws should be. Moreover, some have argued that prosecutions of teenage sexting cases will actually increase in states that have sexting laws, especially as some prosecutors choose not to prosecute sexting cases when child pornography is the only option (Kulze, 2012). As an example of this deliberation, in 2009, Indiana called for its Criminal Law and Sentencing Commission to study the issue of sexting (Szymialis, 2010; Judge, 2012). Issues such as the psychology of sexuality and sexual development, the psychology of sexual deviancy, the mental development of children and young adults, and how development affects the ability to make certain judgments, were all part of this study (Judge, 2012; Gifford, n.d.). Though Indiana was lauded for its extensive consideration of the psychological and social issues surrounding sexting behaviors, Indiana ultimately declined to enact sexting legislation, choosing instead to table a sexting bill that was introduced in 2010. Indiana's rejection of specific sexting legislation reflects the indecision many legislatures face, as they debate what the "right" approach is to dealing with sexting cases.

A Psychological Perspective

There are at least two critical questions one must consider when adopting new legislation about any behavior. One of these questions is "*how prevalent is it?*" If a very high percentage of people are engaging in the behavior, it would indicate that the behavior is normative, and if strict laws are passed, the prosecution of offenders might overburden the justice system. However, the second, more important question is "*What are the public health risks associated with engaging in this behavior?*" If the behavior poses public health risks, then it is prudent for lawmakers to consider legislation for active deterrence, regardless of its prevalence.

Fortunately, a growing number of researchers have been examining both questions over the past decade. Prevalence rates of sending and receiving sexually explicit photos have varied across samples, depending mostly on the method of data collection, the age of the participants, and geographic location (see Klettke, Hallford, & Mellor, 2014, for review). Within the U.S., the lowest sexting statistics were reported by Mitchell, Finkelhor, Jones, & Wolak (2012), who reported that 2.5% and 7.1% of teens (aged 10-17) sent and received nude or nearly nude images, respectively. However, this study used home phone interviews as the method of data collection, which may have led to low reporting of sexting behavior. Most U.S. researchers report significantly higher prevalence

rates of teen sexting. For example, in FleschlerPeskin et al.'s (2013) sample of 1034 black and Hispanic U.S. high-school students (average age = 16.3), 21.2% had sent nude or nearly nude photos of themselves, and 31% had received nude or nearly nude photos. Similarly, Temple et al. (2012) found that 27.6% of their high school students (aged 14-19) reported sending nude or nearly nude photos of themselves, and in Strassberg, McKinnon, Sustaíta, and Rullo's (2013) sample, 20% of high school students had sent a sexually-explicit image of themselves. Meanwhile, in Europe, the teen sexting rates appear to be lower than rates found in the United States. Van Ouytsel, Van Gool, Ponnet, and Walgrave (2014) found that 11% of the 1028 Belgian adolescents (aged 15-18) they surveyed had sent nude or nearly nude photos of themselves. However, researchers from the EU Kids Online project (I and II), involving 15,000 children from 20 European countries, and 25,000 children aged 11-16 from 24 European countries, respectively, report much lower incidents of sexting: 7.8% (Baumgartner, Sumter, Peter, Valkenburg, & Livingstone, 2014) and 3% (Ševčíková, 2016). However, again, teen sexting may have been underreported in these latter two studies, as they utilized face-to-face interviews in interviewees' homes and many of the surveyed children were younger than those in other adolescent samples. Nonetheless, there appears to be some variation in the prevalence of teen sexting worldwide.

In terms of public health risks, research has shown rather consistently that sending sexually-explicit photos is associated with sexual intercourse among adolescents (Ševčíková, 2016; Temple & Choi, 2014; Temple et al., 2012). In the only known longitudinal study examining the temporal effects of sending nude photos, Temple and Choi (2014) found that sending a nude or nearly nude photo in 10th grade predicted being sexually active in 11th grade. Notably, however, sending a nude or nearly nude photo in 10th grade did not predict having unprotected sex, number of sex partners, or using alcohol or drugs prior to engaging in sex in 11th grade. Thus, although sending sexually-explicit images is linked to sexual behavior, it is not necessarily linked to *risky* sexual behavior. Interestingly, recent research has found that sending sexually-explicit words (an act not typically the focus of teen sexting legislation) in 10th grade was related to an early sexual debut, having multiple sex partners, and using drugs during sex in 12th grade (Brinkley, Ackerman, Ehrenreich, & Underwood, 2017). Combined, these results suggest that it might be sexually-explicit words and not images that may be predictive of risky sexual behavior, which calls into question current legislation, policy, and intervention efforts focused only on nude images.

Links between teen sexting and mental health outcomes are more tenuous, with some researchers finding significant correlations and others reporting null effects. For example, in their survey of 1028 adolescents in Belgium, Van Ouytsel et al., (2014) found that depression was significantly predictive of sexting, even after controlling for demographic factors. Temple et al. (2014) also found that teens who send naked pictures of themselves through electronic media had higher rates of depression, anxiety, and substance use; however, once demographic characteristics and prior sexual behavior were controlled for, the correlations between sexting and depression and anxiety were no longer significant. A more recent European study (Ševčíková, 2016) found that sexting (sending text, pictures, or videos) was associated with emotional problems and alcohol use, but demographic characteristics were not controlled for in this study. Considered together, these studies suggest that teens who sext at a higher rate are more likely to have sex and are also more



likely to have other emotional, mental health, or substance use issues. However, until sending sexually-explicit images can be pinpointed as the *cause* and not simply a correlate of these negative mental health symptoms or sexual risk behaviors, it is imprudent to classify sexting as a public health risk.

Revenge Pornography and Bullying/Cyber bullying

A more promising route to the classification of sexting as a public health risk may be to examine the negative effects one experiences when their pictures are sent to adults, shared, or forwarded. Most teens acknowledge the risk of sending sexually explicit content, and 75% agreed that it could have serious negative effects (NCTTUP, 2008). In fact, 15% of teens reported sending nude or nearly nude images to people known only online, and 25% of teen girls and 33% of teen boys admitted that they had been shown nude or nearly nude images that were intended for someone else.

If these images are sent to or solicited from adults, clearly, there are risks of potential child exploitation (Finkelhor, Mitchell, & Wolak 2000; Wolak, Mitchell, & Finkelhor, 2006; Mitchell, Jones, Finkelhor, & Wolak, 2013; Schulz, Bergen, Schuhmann, Hoyer, & Santtila, 2016). However, the adults who solicit these images would be prosecutable under existing child pornography and child exploitation laws, so there are no additional teen sexting laws needed in these cases.

In cases where teens are sexting other teens, there are still risks of bullying, shaming, and other types of psychological harm when images are shared or forwarded. There are two types of cases that are emerging in the courts that are related to this practice—*revenge porn* and *bullying/cyber bullying* cases. Both revenge porn and bullying have been associated with psychological harm (e.g., Bates, 2017; Olweus, 1991), and the effects of bullying may be especially pronounced among those who have low levels of confidence in their resources to cope with life's stressors (García-Moya, Suominen, & Moreno, 2014). In fact, a number of suicides have been attributed to the sharing of sexually-explicit images beyond the original recipient. Jessica Logan, an 18-year-old Ohio teen, hanged herself in her room after her ex-boyfriend forwarded the nude pictures she had sent him to other girls in their high school and they started bullying her (Celizic, 2009). Similarly, Hope Whitsell, a 13-year-old Florida girl, was bullied and eventually hanged herself when a topless photo that she had sent to a crush was forwarded to other people in her high school and another high school nearby (Inbar, 2009). Even youth perpetrators of these acts have taken their lives due to their own sharing of sexual media. After being confronted in school by a Naperville, Illinois police officer and being told that he was being investigated for child pornography and faced sex offender registration, honor roll student and hockey player, Corey Walgren (16), left the school, walked to a five-story parking garage and jumped to his death (St. Clair, 2017). His offense? Walgren had recorded a video of himself and a female schoolmate engaged in sexual activity, and he showed the video to a few of his friends.

In sum, most negative effects in terms of public health interests are not related to sexting per se, but rather the negative effects of sexting when images are shared or forwarded and the bullying that may ensue because of this sharing. Accordingly, many states have added revenge porn or cyber bullying provisions to their child pornography laws.

Current Study

To provide a cohesive picture of current sexting legislation in the U.S. as compared to other countries, we analyzed the status of sexting and revenge porn laws in the 50 U.S. states (and the District of Columbia), as well as 5 international, English-speaking countries – Australia, Canada, England, New Zealand, and South Africa. We also examined the penalties and possible defenses for teenagers who engage in sexting or revenge porn. Finally, using the existing research literature on the prevalence of sexting behavior and possible links between teenage sexting and sexual activity and mental health as a foundation, we summarized our findings and made recommendations for unified sexting legislation.

Method

In January 2017, we used the Lexis-Nexis and Westlaw databases to search criminal statutes related to teenage sexting for all of the U.S. states and Washington D.C., and we used the World Legal Information Institute website, international government law pages, and international media sources to locate criminal statutes in five English-speaking international jurisdictions: Australia, Canada, England, New Zealand, and South Africa. Various search terms such as “sexting, cyber bullying, revenge porn,” were used to locate appropriate statutes. However, there were numerous current statutes without colloquial terminology (i.e., sexting) within their legislation; thus, we also searched for phrases such as “transmission/dissemination of intimate images.” In cases where a jurisdiction did not have specific sexting laws, we recorded all of the relevant child pornography statutes. In May 2017, we repeated this search so that we could capture the most up-to-date sexting legislation for each state and country included in our analysis.

For sexting, we recorded the type of legislation, the corresponding penal code, whether the law defined indecency or the extent of nudity, the penalty for the crime, whether the penalty included sex offender registration, and any defenses for the criminal charge. For revenge porn, we recorded the type of legislation and penalty, as well as whether the law included provisions for pecuniary (monetary) gain or addressed identifiability of the victim, consent, or victim’s expectation of privacy. All of this data was then collated and summarized.



Table 1. Sexting Legislation in 51 United States including the District of Columbia

	Sexting ^s or Child Porn ^{CP} law, or Legislation Pending ^p	Law defines indecency /extent of nudity	Penalty (felony or misdemeanor)	Penalty includes Sex Offender registration	Defenses
Alabama	CP	Yes	Felony	Yes	Possessed only & ≤ 16
Alaska	CP	Yes	Felony	Yes	Possessed or accessed < 3 depictions of child < 18; Reported to LE; RS to destroy, and didn't allow other than LE to view
Arizona	§8-309 ^s	Yes	Petty offense, Misdemeanor if transmitted depiction to > 1 other person; commit subsequent offense	No	Depiction non-solicited; RS to destroy; Reported to parent, guardian or LE
Arkansas	§5-27-609 ^s	Yes	Minor's first offense- community service; Misdemeanor for subsequent acts	No	Material non-solicited, non-distributed, deleted upon receipt; Created of self but not distributed
California	CP	Yes	Felony	Yes (if 2 nd offense)	Material non-solicited & received without knowledge or consent
Colorado	§18-7-109 ^s	Yes	Possessing image is a petty offense. Exchange of image requires educational program + \$50 fine.	No	Distributed, displayed, or published image of another person (>14 or <4 years younger than juvenile) with permission, or recipient had no emotional distress, or recipient had no privacy expectations. Distributed, displayed, or published image of self if recipient (>14 or <4 years younger than juvenile) solicited or requested & recipient didn't suffer distress. Possessed image (>14 or <4 years younger than juvenile) with depicted person's permission, OR took reasonable steps to destroy or delete or reported to LE or school within 72 hours.

Connecticut	CP + §53a-196h ^s §53a-196g	Yes	Class A Misdemeanor or juvenile justice penalty for minors are 13-16 and send image; age 13-18 who receive image.	No	Possessed < 3 depictions; received without solicitation or purchase; didn't allow anyone other than LE to access, or RS to destroy, or possessed for bona fide purpose (medical, educational, artistic, etc.).
Delaware	CP	Yes	Felony	Yes	
D.C.	CP	Yes	1 st offense: fine and/or ≤ 180 days prison 2 nd offense: ≥ \$1k fine and/or ≥ 6 months & ≤ 3 years prison	Yes	Dissemination of material was to institutions or individuals having scientific, educational, or other justification for possession of such material.
Florida	§847.0141 ^s	Yes	Minor: non-criminal for 1 st , Misdemeanor for 2 nd offense, Felony for 3 rd offense	No	Depiction non-solicited; RS to report to guardian or LE; did not forward
Georgia	§16-12-100	Yes	Misdemeanor if defenses are met; Felony if not.	No	Minor was ≥ 14 when material was created, defendant was ≤ 17 at time of offense, & image was consented to and not distributed
Hawaii	§ 71-1215.6	Yes	Misdemeanor	No	RS to destroy
Idaho	CP	Yes	Felony; Misdemeanor if defenses met	Yes	≥18 & minor depicted intended person to receive content, & not > 3 years older than minor depicted, & did not use coercion, manipulation, or fraud to secure content
Illinois	§405/3-40 ^s	Yes	Non-Criminal: Counseling or Community Service	No	
Indiana	CP	Yes	Felony	Yes	Defendant not > 4 years older or younger than person depicted in image or received image; defendant & person received/depicted are in dating/personal relationship; < 22 years old & person depicted or received image without protest



Iowa	CP	Yes	Felony	Yes	
Kansas	§21-5610 ^s	Yes	Misdemeanor	No	
Kentucky	CP	Yes	Misdemeanor for 1 st offense, felony for subsequent	No	
Louisiana	§81.1.1 ^s	Yes	1 st offense: \$100-\$250 fine and/or ≤10 days imprisonment or 2, 8-hour days CS. 2 nd offense: \$250 -\$500 fine and/or imprisoned 10-30 days or 5, 8-hour days CS 3 rd offense: \$500- \$750 fine, and/or imprisoned 30 days – 6 months or 10, 8- hour days CS	No	
Maine	CP	Yes	Felony: possession & intent to distribute if depicted person < 12 or < 16 & prior convictions Misdemeanor: Possession & < 16	No	Depicted person is 14 or 15 & possessor < 5 years older than depicted person
Maryland	CP	Yes	Misdemeanor, felony for subsequent offense	Yes	Representation(s) destroyed or reported to LE
Massachusetts	CP	Yes	Felony	Yes	
Michigan	CP	Yes	Felony	Yes	Depicted person is emancipated
Minnesota	CP	Yes	Felony	Yes	
Mississippi	CP	Yes	Felony	Yes	
Missouri	CP	Yes	Misdemeanor	No	
Montana	CP	Yes	Life imprisonment, or ≤ 100 years prison & ≤ \$10k fine. If victim <16, life imprisonment or 4-100 years prison & ≤ \$10k fine. If victim <12 & offender ≥18, 100 years prison & ≤ \$50k	Yes	
Nebraska	§28-813.01 ^s	Yes	Felony	No	No person other than defendant portrayed, or defendant < 19, depicted person ≥15 & is the only person in the image & is voluntarily depicted, image not distributed, no coercion

Nevada	§200.737 ^s	Yes	Delinquent act	No	Did not solicit or cause the sexual image to come into possession in any way; showed only LE or school official; destroyed image(s)
New Hampshire	CP	Yes	Felony	Yes	Possessed < 3 images, does not distribute, reported and gave access to only LE, or destroyed each image
New Jersey	§2A:4A-71.1 ^s	No	Non-Criminal: Counseling program	No	
New Mexico	CP	No	Felony	Yes	
New York	CP + §458-1 ^s	Yes	Felony (CP) Educational reform program for “eligible person” (S)	No	Defendant unable to ascertain age of minor, prevented anyone else access to material, set up mechanisms restricting access to such materials
North Carolina	CP	Yes	Felony	Yes	
North Dakota	§ 12.1-27.1-03.3.	Yes	Misdemeanor	No	
Ohio	CP	Yes	Felony	Yes	
Oklahoma	CP	Yes	Misdemeanor	Yes	Juvenile didn't solicit depiction, & didn't distribute it to anyone other than authorities
Oregon	CP	Yes	Felony	Yes	
Pennsylvania	§ 6321 ^s	Yes	Misdemeanor	No	
Rhode Island	CP + §11-9-1.4 ^s	Yes	Status offense for minor: Referral to family court & possible counseling/educational program Felony if charged with child nudity	Yes (if image(s) of another minor are possessed or shared)	Possessed < 3 images & destroyed or reported them to LE
South Carolina	CP	Yes	Felony	No	
South Dakota	26-10-34 ^s	Yes	Misdemeanor	No	Didn't solicit or distribute image, destroyed images within reasonable time. Visual depiction of a single minor, created by that minor, & not distributed
Tennessee	CP	No	Felony	Yes	
Texas	§43.261 ^s	Yes	Misdemeanor	No	Material depicted actor or another minor ≤ 2 years apart & in dating relationship/married; Not solicited, only possessed after receiving from another minor &



					destroyed within reasonable time
Utah	§ 79-9-6 ^s	Yes	If defendant is 16 or 17 years of age, Class A misdemeanor; If defendant is younger than 16, class B misdemeanor.	No	
Vermont	§2802b ^s	No	Minor is adjudicated delinquent, filed in family court and may be referred to a diversion program if ≥18 & not previously adjudicated ≤\$300 fine and/or ≤ 6 months prison	No	RS to destroy visual depiction
Virginia	CP	No	Felony	Yes	
Washington	CP	Yes	Felony	No	
West Virginia	§49-4-717 ^s 61-8C-3b ^s	Yes	Delinquency or possible diversionary program for minors	No	Minor possessed & didn't solicit depiction or present/ transmit to anyone else
Wisconsin	CP	No	Felony	Yes	
Wyoming	6-4-305 ^{1p,s}	Yes	Status offense: (possesses another's or sends one of themselves): ≤ \$250.00 fine; Misdemeanor: (1) sends another's image to third party ≤ \$500 fine and/or ≤ 3 months juvenile detention (2): possesses and threatens to disseminate, or disseminates with the intention to coerce, intimidate, harass depicted minor: ≤ \$750 fine and/or ≤ 6 months juvenile detention.	No	Inadvertent possession, didn't solicit; promptly took RS to destroy the image or notify LE

Note. RS = reasonable steps. LE = law enforcement. CS = community service. The sexting and/or CP laws for all states apply to possession, distribution, or both.

Table 2. Sexting Legislation in Australia, Canada, England, New Zealand, and South Africa

	Sexting ^s /Child Porn law ^{CP} /law pending ^P	Law applies to send/receive or both	Law defines indecency or extent of nudity/act	Penalty (felony or misdemeanor)	Penalty includes Sex Offender registration	Defenses
Australia	<i>New South Wales</i> : Crimes Act 1900 with revisions: 91H ^{CP} ; Criminal Law Consolidation Act of 1935 with current revisions: s. 63 & 63A ^{CP}	Both	Yes	≤ 10 years prison	Yes	Innocent production, possession, dissemination; material unsolicited
	<i>Northern Territory and Australian Capital Territory</i> : Federal Criminal Code Act 1995 with current revisions: 473.1 ^{CP} , 474.19 ^{CP} , 474.20 ^{CP} , 474.21 ^{CP}	Both	Yes	≤ 15 years prison	Yes	Conduct is of public benefit
	<i>Queensland</i> : Criminal code 1899, with current revisions: 207A, 210, 228, 228A, 228B, 228C, 228D ^C	Both	Yes	Maximum penalties: Production ≤ 20 years prison; Possession ≤ 14 years prison Involving a child ≤ 20 years prison	Yes	There was a genuine purpose
	<i>South Australia</i> : Criminal Law Consolidation Act 1935 with current revisions: 62 ^{CP} , 63 ^{CP} , 63A ^{CP}	Both	Yes	Maximum penalty: Production and dissemination: basic offense = 10 years prison, aggravated = 12 years prison; Possession: first offense = 5 years prison; subsequent ≤ 7 but not ≥ 10 years prison	Yes	Unsolicited; RS to dispose
	<i>Tasmania</i> : Classification Enforcement Act 1995 (consolidated in 2015) with addition of: 73A, 74A ^{CP} ; Criminal Code Act 1924 with current revisions: 1A, 130B, 130C, 130D	Both	Yes	≤ 2 years prison /or ≤ 200 penalty units (74A); ≤ 3 years prison and/or ≤ 300 penalty units (1=\$157, until June 30, 2017)	Yes	Image unsolicited; RS to dispose when became aware it was child exploitation material
	<i>Victoria</i> : Crimes Amendment (Sexual	Both	No	≤ 5 years prison	No	Belief that minor was ≥



	Offences and Other Matters) 2014 ³ ; (Amended Crimes Act of 1958 & Summary Offenses Act of 1966).					18; accused \leq 2 years older than minor; or picture of themselves
	<i>Western Australia:</i> Criminal Code: S. 220 ^{CP} , S. 219 ^{CP} , 204B ^{CP} , 217A ^{CP} , 219 ^{CP} , 221A ^{CP}	Both	Yes	Possession \leq 7 years prison Distribution \leq 10 years prison	Yes	Material unsolicited
Canada	Protecting Canadians from Online Crime Act S.C. 2014, c.31 in Canada's Criminal Code: s. 163.1 ^{CP}	Both	Yes	\leq 5 years prison	Yes	Conduct depicted serves the public good
England	The Protection of Children Act 1978, and Sexual Offences Act 2003 ^{CP} ;Criminal Justice Act of 1988 with current revisions: S. 160 ^{CP}	Both	No	\leq 5 years prison and/or fine	Yes (for both)	Photo of child \geq 18, or they were married or in relationship; Child consented, or image not distributed
New Zealand	Crimes Act of 1961 131(B), 132, 134; Children, Young Persons and Their Family's Act of 1989; Films, Videos, Publications Classification Act of 1993: 145A ^{CP} , 131A ^{CP} , 127 ^{CP}	Both	Yes	\leq 10 years prison or \leq \$50,000 fine	No	No
South Africa	Sexual Offenses Act of 2007: S. 1 ^{CP} , S. 18 ^{CP} , S.17 ^{CP}	Both	Yes	Judge's discretion	Yes	No

Note. RS = reasonable steps

Table 3. Revenge Porn Legislation in 51 United States including the District of Columbia

	Revenge porn ^f , Nonconsensual pornography ⁿ , cyberexploitation ^c , or dissemination of obscene material ^o law	Law includes pecuniary gain or “sextortion”	Law addresses identifiability of victim	Law addresses consent	Law addresses victim’s expectation of privacy	Penalty [*]
Alabama	§ 13A-12-200.2 ^o	Yes	No	No	No	Misdemeanor for 1 st offense; Felony for subsequent
Alaska	§11.61.120 ^o	No	No	No	No	Misdemeanor
Arizona	§13-1425 ^f	Yes	Yes	No	Yes	Misdemeanor if disclosure was only threatened; Felony if the image is electronically disclosed
Arkansas	§5-26-314 ^f	Yes	No	Yes	No	Misdemeanor
California	§647 ^{r,n}	No	Yes	Yes	Yes	Misdemeanor
Colorado	§18-7-108 ^c 18-7-107 ^c HB17-1302 ^{h,o}	Yes	Yes	Yes	Yes	Misdemeanor
Connecticut	§53a-189c ^f	No	No	Yes	No	Misdemeanor
D.C.	§22-3052 ⁿ	Yes	Yes	Yes	No	Misdemeanor
Delaware	§1335 ⁿ	Yes	Yes	Yes	Yes	Misdemeanor or felony, depending on past violations & also what the act involved
Florida	§784.049 ^f	No	Yes	Yes	Yes	Misdemeanor for 1 st offense; Felony for subsequent
Georgia	§16-11-90 ^f	No	No	Yes	No	Misdemeanor for 1 st offense; Felony for subsequent
Hawaii	§711-1110.9 ⁿ	No	Yes	Yes	Yes	Felony
Idaho	§18-6609 ⁿ	Yes	No	Yes	Yes	Felony
Illinois	§5/11-23.5 ^f	No	Yes	Yes	Yes	Felony
Indiana	None					
Iowa	§709.21 ⁿ	No	No	Yes	Yes	Misdemeanor
Kansas	§21-6101 ⁿ	Yes	Yes	Yes	Yes	Misdemeanor for violation of one’s privacy; Felony if disseminated
Kentucky	None					
Louisiana	§283.2 ^f	Yes	Yes	Yes	Yes	Fined not more than \$10k and/or imprisoned with



						or without hard labor for ≤ 2 years
Maine	§511-A ^r	No	Yes	Yes	No	One year in county jail and/or a fine ≤ \$2k
Maryland	§3-809 ^r	No	Yes	No	Yes	Misdemeanor
Massachusetts	None					
Michigan	§750.145e ^c	Yes	Yes	Yes	Yes	Misdemeanor
Minnesota	§617.261 ^r	No	Yes	Yes	Yes	Misdemeanor
Mississippi	None					
Missouri	None					
Montana	None					
Nebraska	None					
Nevada	§200.780 ^r	Yes	No	Yes	Yes	Felony
New Hampshire	§644:9 ^f	Yes	Yes	Yes	Yes	Felony
New Jersey	§2C:14-9 ^u	No	No	Yes	Yes	3-5 yrs. imprisonment & fine ≤ \$1k
New Mexico	§30-37A-1 ^r	Yes	Yes	Yes	No	Misdemeanor for 1 st offense; Felony for subsequent
New York	§250.40 250.45 250.50 250.60 ^u	Yes	No	Yes	Yes	Felony
North Carolina	§14-190.5A ^r	Yes	Yes	Yes	Yes	Misdemeanor if defendant < 18 + 1 st offense; Felony if defendant ≥ 18 or subsequent offense
North Dakota	§12.1-17-07.2 ^r	Yes	No	Yes	Yes	Misdemeanor
Ohio	None					
Oklahoma	§1040.13b ^r	Yes	Yes	Yes	Yes	Misdemeanor if image is removed (if possible)
Oregon	§163.472 ^r	Yes	Yes	Yes	No	Misdemeanor for 1 st offense; Felony for subsequent
Pennsylvania	§3131 ^r	Yes	No	No	No	Misdemeanor (1 st degree) if victim is a minor; 2 nd degree if victim is not a minor
Rhode Island	None					
South Carolina	None					
South Dakota	None					
Tennessee	§39-17-318 ^r	No	Yes	No	Yes	Misdemeanor
Texas	§21.16 ^r	Yes	Yes	Yes	Yes	Misdemeanor
Utah	§76-5b-203 ^r	No	No	Yes	Yes	Misdemeanor for 1 st offense; Felony for subsequent
Vermont	§2606 ^r	Yes	Yes	Yes	No	≤ 5 yrs.

						imprisonment and/or ≤ \$10k fine if received profit from dissemination; ≤ 2 yrs. imprisonment or ≤ \$2k fine for disclosure
Virginia	§18.2-386.2 ^r	Yes	No	No	No	Misdemeanor
Washington	§9A.86.010 ^r	No	Yes	Yes	Yes	Misdemeanor for 1 st offense; Felony for subsequent
West Virginia	None					
Wisconsin	§942.09 ⁿ	Yes	No	Yes	Yes	Misdemeanor if depicted person ≥ 18, felony if depicted person < 18
Wyoming	None					

Note. All states except Arkansas and Nevada define indecency or the extent of nudity in their respective statute. *Pennsylvania and Wisconsin have separate penalties if victim is a minor. Thirteen states currently have no relevant revenge porn legislation.

Summary

1. Sexting Laws in U.S. and Abroad

As depicted in Table 1, there are 23 U.S. states with specific sexting laws and 6 states, plus Washington D.C. (“District of Columbia”) that have provisions to their child pornography statutes that would limit penalties for teen sexters in certain cases. In the states that have adopted sexting legislation or amended their child pornography legislation to include teen sexting provisions, the penalties are much more lenient, usually amounting to a misdemeanor or petty offense, punishable by community service, fines, or even warnings. Although these charges and penalties are generally less onerous, there is considerable variation across states. For example, in six states with sexting laws, the first offense is a non-criminal or status offense, with possibly either a counseling program or community service that is mandated. In three states, the juvenile is deemed to be delinquent with the first offense, and in eleven states with sexting laws, a first offense is a misdemeanor. Repeat offenses are sometimes mentioned in these sexting laws, and in four states, punishments increase with subsequent acts, whereas in one state, after three sexting acts, the crime is a felony. Notably, though Nebraska has a sexting law, the punishment for teenage sexting in that state is still a felony, but teens convicted of sexting are not required to register as sex offenders. Under Rhode Island’s sexting law, teenage defendants may still be required to register as sex offenders, but only if they possess or share another minor’s image(s). Meanwhile, defenses to prosecution in sexting cases (whether or not the state has a specific sexting law) exist in 26 states, plus the District of Columbia, but these defenses also vary. For example, eleven states require that the recipient did not solicit the image(s) for a defense to apply, eleven states require that recipient did not transmit the image(s), and thirteen states require that the recipient deleted the image(s). Additionally,



eight states require that defendants notify law enforcement, a parent/guardian, or a school official. In seven states, there is a close-in-age exemption for sexting, in four states, a defense exists if the minor possessed fewer than three nude pictures, and in two states, there is a defense if the sender and recipient are in a dating relationship. Finally, in three states, there is a defense if the nude image(s) that the teenager possesses depict only himself or herself and were not shared or distributed.

Our examination of international teenage sexting law (see Table 2) reveals a fragmented set of systems that largely involves dependence on a combination of existing criminal and civil laws, most of which were in place long before the technology age began. For example, in England, teenagers who sext are prosecuted under parts of that country's child pornography law and criminal justice act (Emm, 2016). In New Zealand, courts have a piecemeal framework of laws in place to deal with sexting cases, including three acts from 1961, 1989, and 1993—legislation enacted long before sending electronic media was commonplace (Stewart, 2014). Among the international countries we surveyed, Canada has the newest and most comprehensive laws in place. In 2015, Canada enacted the Protecting Canadians from Online Crime Act. This act is all-encompassing, meaning that it applies to online crimes such as cyber bullying, sexting, and revenge porn, among other online crimes. Under this act, a young person found guilty of a sex-based offense may not be placed on the national sex offender registry, unless he or she receives an adult sentence. The law itself prohibits the non-consensual distribution of intimate images, empowers a court to prevent the distribution of intimate images, and allows a court to order removal of intimate images from the Internet (Montgomery, 2015).

With regard to the specific dimensions we analyzed, again, much of the relevant legislation is housed within existing child pornography laws. Across all five countries, the laws apply to both the sender and receiver, and there is also jail time in each state as a punishment. The length of imprisonment for child pornography offenses varies considerably from a low of one year to a high of 20 years, but only two countries (New Zealand and South Africa) do not currently have defenses in place (e.g., child consented, or image was unsolicited) that would limit the penalty imposed in teen sexting cases. Additionally, although all of these international jurisdictions have sex offender registration as a penalty for conviction under child pornography law, they have a number of defenses that may apply.

2. Revenge Porn Laws in U.S. and Abroad

In contrast to the sexting legislation (where many states have just made adaptations or added defenses to existing child pornography laws), 39 states, plus the District of Columbia, have specific statutes that address revenge pornography (see Table 3). However, the nomenclature varies across states: 25 states specifically call the crime “revenge porn,” nine states plus the District of Columbia, refer to it as “non-consensual pornography” (one statute bans both revenge porn and non-consensual pornography), two states have “cyberexploitation” statutes, and three states have statutes addressing “dissemination of obscene material.” With regard to penalties, there is also dissimilarity: 28 states, plus the District of Columbia, classify revenge porn as a misdemeanor crime (at least for the first offense), in six states revenge porn is a felony (at the time of the first offense), and in eight states, revenge porn is a misdemeanor for the first offense and a felony thereafter. Still others classify it either as a misdemeanor or a felony depending on the

characteristics of the crime. For example, Arizona classifies revenge porn as a misdemeanor crime if the accused only *threatens* the publication of image(s). In this state, the crime becomes a felony if the image is transmitted or published. There is also some variation on the terminology used within the statutes. In 22 states, plus the District of Columbia, statutory language includes whether the victim was identifiable in the image or was identified by the perpetrator. In 26 states, the law addresses the victim’s expectation of privacy in the images. In 30 state statutes, plus the District of Columbia, non-consent by the victim is included in the language of the statute. Meanwhile, in 22 states plus the District of Columbia, the statute addresses sextortion (blackmail in which sexual information or images are used to extort sexual favors and/or money from the victim; Interpol, 2017) or pecuniary gain (i.e., a gain of monetary value).

Table 4. Revenge Porn Legislation in Australia, Canada, England, New Zealand, and South Africa

	Revenge porn ^f , Nonconsensual pornography ^g , cyberexploitation or dissemination of obscene material ^o law	Law includes pecuniary gain or “sextortion”	Law addresses identifiability of victim	Law addresses consent	Law addresses victim’s expectation of privacy	Penalty
Australia	<i>New South Wales</i> : Crimes Act 1900: 91K ⁿ , 91L ⁿ	No	No	Yes	Yes	General offense: ≤ \$11k fine and/or ≤ 2 years prison Aggravated offense: ≤ 5 years prison
	<i>South Australia</i> : Summary Offenses Act of 1953, as is currently revised: 26C ^r , 26D ⁿ , 26DA ^{ro}	No	No	Yes	No	Depicted person < 17: ≤ \$20k fine or ≤ 4 years prison; Depicted person > 17: ≤ \$10k fine or ≤ 2 years prison
	<i>Queensland</i> : 227A ⁿ 227B ^o	No	No	Yes	Yes	≤ 2 years prison
	<i>Tasmania</i> : Police Offences Act 1935 as revised in 2015: s.13A ⁿ , 13B ^o	No	No	Yes	Yes	≤ \$7850 fine and/or ≤ 12 mos. prison
	<i>Victoria</i> : Crimes Amendment Act 2014; the Summary Offences Act 1966: 41DA ^r , 41DB ^{ro} 34C (consent statute definition)	Yes	No	Yes	No	41DB: ≤ 1 year prison; 41DA: ≤ 2 years prison
	<i>Western Australia, Australian Capital Territory, and</i>	No	No	No	No	≤ 3 years prison



	<i>Northern Territory: Federal-Criminal Code Act 1995 474.17^o</i>					
Canada	Protecting Canadians from Online Crime Act, in Canada's Criminal Code: s.162.1 ⁿ	No	No	Yes	No	≤ 5 years prison
England	Criminal Justice and Courts Act 2015: S. 33 ^f ; Communications Act 2003: S. 127 ^o	Yes	No	Yes	No	Conviction on indictment: ≤ 2 years prison or fine (or both); Summary conviction: ≤ 12 months prison or fine (or both)
New Zealand	Harmful Communications Act of 2015: 4, 6 ⁿ , 22 ^f	No	Yes	Yes	Yes	≤ 2 years prison or ≤ \$50k fine
South Africa	None	No	No	No	No	No

Interestingly, even abroad, countries are more likely to have revenge porn statutes than sexting laws. In fact, four of the five countries we examined have laws against revenge porn (see Table 4). For example, under Canada's Protecting Canadians from Online Crime Act, maximum penalties for revenge porn are 5 years in prison for "serious" crimes, such as sextortion, with less serious crimes resulting in up to 6-months in jail and up to \$5,000 in fines (Montgomery, 2015). New Zealand also has some recently-enacted legislation—the Harmful Digital Communications Act of 2015—that encompasses cases of revenge porn. Meanwhile, only certain states in Australia (Victoria and South Australia) have laws protecting against revenge porn, and there is currently no law prohibiting revenge porn at the federal level in Australia.

As in the U.S., there is variation in the terminology used to represent revenge porn in the law. Only one country and 2 Australian states actually use "revenge porn" terminology in their statute. Additionally, in only one country (New Zealand) does the law address the identifiability of the victim, whereas all jurisdictions except South Africa and some Australian Territories mention non-consent of the victim in their statutes. Meanwhile, in three Australian states and one country, the law addresses the victim's expectation of privacy, and in two countries, the law addresses sextortion, or pecuniary gain.

Discussion

Our analysis of sexting legislation in the U.S. and abroad showed that there is considerable variation among the laws and penalties associated with prosecution and defenses of sexting crimes. Overall, there is no clear consensus on how sexting cases should be handled either in the U.S. or internationally, and not all states or international countries have adopted laws that specifically address sexting and/or revenge porn. Many rely heavily on archaic laws that, at least in sexting cases, are pieced together to deal with this new technological phenomenon. With regard to revenge porn, there is better

legislative support. However, the reality is that there are numerous contradictions in the law and inconsistency among the jurisdictions, as well as inequitable, highly-varied results for teenage sexting defendants (Ibtesam, 2017).

In the United States, most states still rely upon child pornography statutes, sometimes with provisions that allow for teen sexting defenses. However, prosecutors are hesitant to prosecute teens under the strict pornography statutes (Eckholm, 2015; Paul, 2017), which has resulted in sexting laws (or defenses) that are more lenient, mostly allowing consensual teen sexting between similar-age peers provided the images are not forwarded or posted. These new sexting laws (and child pornography defenses) align well with the psychological research that shows that there are moderate sexting rates among teens (see Klettke et al., 2014, for review) and inconsistent links between sexting and various indicators of psychological distress (Ševčíková, 2016, Temple et al, 2014; Van Ouytsel et al., 2014). Nonetheless, the links between sexting and sexual activity are consistent (Ševčíková, 2016; Temple & Choi, 2014; Temple et al., 2012), and thus, some type of education programming regarding teen sexting seems warranted. As an example, our research revealed that Texas requires their school districts to develop and implement sexting education programs for *all* youth, which includes education about possible legal consequences (including criminal penalties) that may occur if teens are caught sexting. In addition, schools are required to address the psychological and social impact that sexting has on youth, including the negative effects on relationships, loss of educational and employment opportunities, possible removal from school programs or extracurriculars, as well as the connection sexting has with bullying, cyber bullying, and harassment (Duncan, 2014; Tex. Educ. Code Ann. §37.218). The system in Texas seems promising as an effective prevention measure, especially as state laws are so disparate in how they define and punish teen sexting (e.g., in some states, it would be legal for a 14-year-old to sext an 18-year-old, but in some states this would be illegal). Unless there is consistent and comprehensive education on sexting legislation, it would be difficult for minors to ascertain whether or not their actions are lawful in their jurisdiction. Moreover, education programs that target all youth might better address some of the relationship issues that may underlie teen sexting behavior.

Internationally, we found similar trends—recent sexting legislation and child porn defenses have created provisions for legal teen sexting. In 2014, for example, the Australian state of Victoria enacted a law that effectively exempts teens who sext from prosecution under federal child pornography laws. Victoria's new law also eliminates the possibility that these teens may have to register as sex offenders, unless the image depicts a criminal act (Maddocks, 2014). Moreover, the international landscape offers a contemporary framework for comprehensive sexting laws. Canada's recently enacted legislation, for example, covers cyber bullying, sexting, and revenge porn, among other online crimes. As jurisdictions move forward with consideration of sexting legislation, they may want to follow this model of comprehensive, national legislation. However, even if sexting continues to fall under state jurisdiction and the legislation remains fragmented across statutes, it will be important for legislators to consider all of these online criminal acts contemporaneously when creating new legislation on these types of cyber crime.

Meanwhile, with regard to revenge porn, the majority of U.S. states currently *do* have revenge porn laws. There is even proposed federal legislation (Intimate Privacy Protection



Act of 2016, which was re-introduced in 2017) that would make it illegal to "...knowingly distribute a private, visual depiction of a person's intimate parts or of a person engaging in sexually explicit conduct, with reckless disregard for the person's lack of consent to the distribution, and for other purposes." However, this bill, if enacted into law, would not apply to cases of *teenage* sexting or revenge porn. Moreover, even in cases where both parties are over 18, if the images were taken consensually, there are some potential First Amendment issues that would need to be overcome (Portman, 2017). Thus, although there is clearly progress in terms of U.S. revenge porn legislation, there are still gaps that exist regarding teen revenge porn, which, as outlined in the introduction, can do significant psychological harm to both teen victims and perpetrators.

Within the other countries we analyzed, it is promising to note that revenge porn laws are being implemented, and countries and states without these laws are considering enacting relevant legislation. In England, for example, since 2015, over 200 cases have been prosecuted under England's revenge porn law, which carries a maximum sentence of 2 years in prison (Shaw, 2016). Meanwhile, at least one recent case in New Zealand was tried under the Harmful Digital Communications Act of 2014 (Kidd, 2016). With regard to pending legislation, the Cyber crime and Cybersecurity Bill in South Africa, similar to New Zealand's law, would provide for protection against a host of online crimes, including revenge porn (Lovells, 2017). This bill aims to criminalize the disclosure of pornographic images, threats to disclose pornographic images, or threats to disclose pornographic images for the purposes of obtaining an advantage over a person (Cruywagen, 2017). The state of New South Wales is also in the process of writing revenge porn legislation, and the remaining Australian states are considering the same (McNally, 2016; Courier-Mail, 2016). Additionally, Australia's national legislature recently committed to introducing civil penalties in the near future, which would allow victims to report instances of revenge porn and also have the images removed from the Internet (Powell, Flynn, & Henry, 2017).

In sum, although disparities exist in the criminal statutes that address sexting in the U.S. and internationally, it is encouraging to see that many states and countries have moved quickly to propose and/or enact relevant legislation that addresses teen sexting. An overarching analysis of the trends reveals: (1) a tendency to create more lenient statutes (than existing child pornography legislation) for consensual teen sexting, which, in some states, align well with existing sexual consent laws and accompanying close-in-age exemptions; and (2) specific legislation (with stiffer penalties) for cases that involve revenge porn or cyber bullying. Both of these trends appear to align well with existing psychological research on the topic of teen sexting.

Recommendations

Though many states have considered, or are considering enacting sexting laws, many state legislatures wrestle with the question of where to draw the line. As discussed, there is no clear consensus among the states about who should get prosecuted, what defenses apply, and what content should be criminalized (Hoffman, 2011). Additionally, states are inconsistent as to whether they have considered aligning their legislation with potential psychological harm or prevalence rates. This is even as prior studies have shown that teenage sexting behavior is somewhat prevalent among teens and that public health risks

exist, especially when images are shared with third parties and bullying or shaming is involved.

The primary purpose behind enacting sexting laws is to better match the punishment to the crime (Duncan, 2014; Ibtesam, 2017). This is not accomplished when a minor faces child pornography charges for sending a nude selfie to her boyfriend. The contradictions and inequities that currently exist in the law, the potential for aggravating circumstances such as cyber bullying or revenge porn, as well as the potential psychological and social impact, should tip the balance for legislatures in favor of sexting legislation. We maintain that these laws are necessary and advocate for the uniform adoption of them, both in the U.S. and abroad (Rollins, 2015). We concur with previously-articulated rationales, which include moderating self-exploitation and the exploitation of others, preventing psychological harm (from sexting, cyber bullying and revenge porn), and future deterrence of sexting, cyber bullying, and revenge porn behaviors (Ryan, 2010; Szymialis, 2010, Ibtesam, 2017).

Moreover, considering the widespread disparities, we advocate for uniformity among the states, possibly through federal law that encompasses sexting, cyber bullying, and revenge porn, such as in Canada. Although the Federal Juvenile Delinquency Act (FJDA) recommends that, generally, juveniles should be prosecuted in state and not federal court (18 U.S.C. § 5032), uniformity in the law (or a federal law) would promote predictability and understanding of the legal issues involved, and possibly lead to increased awareness of these behaviors among teens. Lawmakers enacting sexting legislation should first make a clear distinction in the law as to whether or not the image was taken consensually. If so, then lesser punishments, such as community service and psychological counseling/mandatory relationship education, should be in place. If there is no consent between the parties, we advocate for stricter penalties, including jail time or juvenile detention; however, we concur with state and international sexting legislators that minors should be exempt from sex offender registration, unless a crime is depicted in the image(s).

Additionally, we advocate for strict prohibitions in the law against transmitting images to third parties. This is due to the psychological and social impact that sharing the images has on teens, including possible depression and suicide. Further, and importantly, we concur with those who advocate for mandatory educational programming in middle schools and high schools as a means of prevention for all types of sex-related online crimes, such as occurs in the state of Texas (Spooner & Vaughn, 2014). This should not only deter young people from future sexting, cyber bullying, and revenge porn behaviors, but also teach students that such images may derail future educational and employment opportunities. This is a more certain reality for teens who have lasting criminal records as a result of these behaviors.

Conclusion

With the availability and access that today's young adults have to cellphones, instant messaging, and social media, sexting among teenagers has become a prominent social and legal issue. Of serious concern is the long-term impact that sexting behaviors can have on young adults, many of whom may not even realize that there are social and legal consequences associated with taking and transmitting these images. Because of numerous inconsistencies in the legislation, as well as the probable long-term psychological, social, and legal impact on young adults, we advocate for uniform adoption of sexting legislation



in the U.S. and abroad. We also advocate for the utilization of lesser penalties, such as community service, in cases that do not involve revenge porn or cyber bullying, so as to lessen the long-term impact on youth who may not even realize that they have committed a crime.

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