



April 2, 2009

Subject: How to responsibly combat "sexting"

Sent to all members of the Ohio General Assembly

The American Civil Liberties Union of Ohio (ACLU of Ohio) is deeply concerned about the flood of recent prosecutions for "sexting" - the practice by teens of sending nude or semi-nude pictures of themselves via cellphone or Internet. **The Ohio General Assembly needs to clarify our laws to address the problem of "sexting" in a responsible manner that does not further harm these teens.**

We can all agree that young people often do not appreciate the consequences of their actions. This is certainly one of those situations. Teens who send compromising pictures rarely realize those photos may well be shared with others who were not intended to see them. There is no question that we need to find a way to address this problem, but we need to do so responsibly.

There are better ways to discourage this behavior than by lashing out and criminalizing the victims for what they have naively done to themselves. Teens need to be taught the risks and potential consequences of sending explicit photos. But that should be done by education, not prosecution.

Prosecuting teens who send photos of themselves, in an attempt to protect them from themselves or to serve as a warning to others, could have dire and unintended consequences on these kids.

- A conviction for sexting does far more than teach a lesson – it can ruin a life. Certainly, any conviction carries with it punishment – fines, a term of imprisonment, community service requirements, et cetera. Findings of delinquency can carry similar consequences.
- The most onerous of those consequences, applicable both to criminal and delinquency adjudications, are a result of the Adam Walsh Act. The child who foolishly sends a photo of herself or receives a photo (and frankly, even the one who maliciously shares it with friends) can be labeled a "sex offender." The youthful indiscretion then leads, at least potentially, to decades of registration with law enforcement, internet access for the world to the misbehavior, possible community notification, what may be a lifetime of residence and perhaps employment restrictions (and under H.B. 13, currently pending in the General Assembly, a prohibition against entering a school). Sexting prosecutions, then, may and likely will limit opportunities for decades if not for the rest of the teens' lives. It is a consequence far beyond any benefit that might flow.

Even when a teen is arguably harmed by taking, sending, or receiving an inappropriate photo, the intent to harm and the nature of the harm is not the same as that inflicted by those ordinarily charged with child pornography or labeled as sex offenders.

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- The child pornography laws and sex offender restrictions were intended to protect victims from others who do them harm.
- Applying these laws to teens for sexting is an imperfect fit and inappropriate use of those laws.
- It is also demeaning to the true victims of sex offenses who these laws were designed to protect. Maureen Kanka, the mother who lost her child and advocated for Megan's Law in her honor, has spoken out and said these sexting prosecutions are wrong – teens need intervention and counseling, not legal trouble. (See "Girl Faces Child Porn Charges for Posting Nude Photos of Herself on MySpace," by Beth DeFalco, 03-27-2009, Law.com.)

Our current laws never contemplated the problem of sexting, nor should they be (mis)used as a substitute for taking the time to address the root problems of sexting. Certainly we can protect our youth without harming them in the process. To that end, we suggest the General Assembly do the following:

- Clarify that criminal offenses relating to taking or sending nude photos do not apply to adolescents who naively take and send their own picture (i.e., the "sexting" sender).
- Clarify that criminal and delinquency offenses relating to possession of nude photos of a minor do not apply to adolescents who just happened to receive a nude picture from another minor (i.e., the "sexting" recipient).
- Clarify that the Adam Walsh Act and other sex offender laws do not apply to minors who send their own photos or inadvertently receive those photos.
- Amend the school health curriculum to require instruction in the sexual health unit about respect and privacy of ones self and others, and to warn teens of the dangers of sending explicit messages via cellphone or over the Internet.

Naivety is part of adolescence, and society has a responsibility to teach young people to protect themselves. Threatening teens with criminal prosecution, and all its attendant life-ruining consequences, is not the solution. We need to help our teens better understand the consequences of sexting. We do that through intervention and education, not by causing them further harm.

We look forward to working with members of the General Assembly on crafting a responsible solution to this problem.

Should you have any questions regarding this matter please do not hesitate to contact me directly at (216) 472-2220 or by e-mail at jmgamso@acluohio.org.

Sincerely,

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