



April 2, 2009

Subject: How to combat "sexting" without criminalizing the victims

*Sent to all Ohio County prosecutors*

The American Civil Liberties Union of Ohio (ACLU of Ohio) is deeply concerned about the flood of recent prosecutions for "sexting" - the practice, often by teens, of sending a nude or semi-nude picture of themselves via cellphone or Internet.

We can all agree that minors 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 will in all probability be shared with others who were not intended to see them.

There are better ways to discourage this behavior than by lashing out and criminalizing the victims for what they have done to themselves. Teens need to be taught the risks and potential consequences of sending nude 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.

- The child pornography laws are intended to protect victims from those who do them harm. In these sexting cases, the victim and accused offender are often one and the same. Charging teens for sexting under the child pornography laws is an imperfect fit and inappropriate use of those laws.
- 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 a bill 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.
- Ohio, like many states, criminalizes taking or sending nude pictures of a minor. Ohio also places strict prohibitions and requirements on those designated as sex offenders. But those

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laws were designed to punish people who victimize others, not to punish teens who naively victimize themselves. 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. Ohio laws need to be rewritten by the General Assembly to clarify what behavior is punishable by law and what calls for lesser forms of intervention. Until that happens, prosecutors must exercise their discretion to assure that what is designed to protect does not punish. Certainly we can protect our youth without harming them in the process.

- We are aware that in at least some counties prosecutors are attempting to educate teens about the dangers of sexting. Yet we read that in these same counties there will be “zero tolerance” for those who, once put on notice, act anyway. But young people make mistakes, even when they should know better. And lifetime consequences for a teen acting against his or her best interest, even when on notice of that interest, is a consequence entirely out of proportion to the offense.

Naivety is part of adolescence, and we as a society – jurists, educators, and parents – should help protect young people by cautioning them to avoid risky behavior. 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 outreach and education, not by causing them further harm.

Thus, we ask for your help in finding a better a solution. Please join us in (A) calling on the General Assembly to clarify the law so that teens caught “sexting” are not subjected to felony sex offense charges, and (B) working with parents and educators to teach young people to respect their own dignity and privacy and the dignity and privacy of others.

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](mailto:jmgamso@acluohio.org).

Sincerely,

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