**Sexting**

**Risky Actions and Overreactions**

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Juvenile sexting is increasing in frequency.1 A recent study found that 20 percent of teenagers (22 percent of girls and 18 percent of boys) sent naked or seminude images of themselves or posted them online.2 Another survey indicated that nearly one in six teens between the ages of 12 and 17 who own cell phones have received naked or nearly nude pictures via text message from someone they know.3

Many disturbing examples of such behavior exist. For instance, two 15-year-olds, a male and a female, were sentenced in juvenile court for possessing and sending nude photos on their cell phones; the girl sent a picture of herself to the boy, and another image allegedly was taken on his camera.4 A 15-year-old boy received 12 months of probation for forwarding a picture of his private parts to a 13-year-old girl’s cell phone.5 An 18-year-old high school graduate committed suicide after a nude photo she had transmitted via her cell phone to her boyfriend also was sent to hundreds of teenagers in her school. Other students, who apparently continued to forward the image, allegedly harassed the girl.6

Law enforcement officers and prosecutors face increased pressure to handle these cases as effectively as possible.7

Sexting can result in tragic circumstances, such as the previously noted suicide. Additionally troubling, adults may participate in the activity. However, aggressive prosecution of all juvenile sexting cases also can present problems. In one instance, a local prosecutor was named as a federal defendant in a civil lawsuit after he attempted to take corrective action over images he considered questionable. Through their parents, the involved juveniles brought the suit to prevent their prosecution after they refused to complete the prosecutor’s suggested diversion/education program. The U.S. District Court in Pennsylvania granted a temporary restraining order to prevent the prosecutor from bringing criminal charges against the juvenile plaintiffs over the images.8 Also problematic, the social implications for an inappropriate sex offender registration label resulting from juvenile adjudication require careful consideration. The registration requirements can apply to young people and, depending upon the circumstances, can extend well into adulthood.9 Investigators, with prosecutorial direction, can develop appropriate guidelines to chart a legal course to avoid extreme actions.

**Misconduct**

To determine the appropriate response, law enforcement officers must carefully consider the alleged misconduct and determine if it falls into one of two categories. First, is the image or communication illegal? For instance, the definition found in the federal child pornography statute, 18 U.S.C. § 2256, refers to illegal images with minors as those involving sexually explicit conduct.10 Does the picture meet this definition or one in a particular state statute? Additionally, investigators should consider whether the communication might be harassing or menacing to the party in the image or the recipient of it.

Second, did any illegal use of a computer occur in the communication? For instance, a youth involved in viewing, transmitting, or storing inappropriate pictures on school equipment might face legal difficulty for unauthorized use or damages. The cleanup and removal of these images can be costly for schools.

Obviously, these categories can overlap. However, this can shed light on alternative charges that may not be as apparent if someone views the misconduct solely as a sex offense. For example, a 15-year-old male posts an inappropriate image of himself on the school computer as a prank.11 Charging the youth as a sex offender may be a gross overstatement, possibly resulting in a sex offender registration issue. Perhaps, charging him as a delinquent for damaging school property due to the cost of removing the offensive image may be a more appropriate response.

**Offenders**

While an adult’s active involvement in juvenile sexting always should result in the strong consideration of charges, cases involving only youths may call for a different, more fluid approach. To this end, investigators should analyze the subject of the images, the victim. How old is the victim? Did she know about the photograph? Did the victim take it herself without the encouragement or direct participation of any other person? Did she forward the picture to anyone? What is the age difference between the victim and the recipient of the image? Does she now face harassment because of her inappropriate behavior? Who is harassing her, and are charges warranted against them? The answers to these questions can help indicate if the subject of the image is a true victim in every sense of the word.

Although, perhaps, not in the image, the youth offender somehow took part in the juvenile sexting. His actions could include soliciting the picture or actively participating in creating, possessing, receiving, or distributing the image. Did he request the picture, or did someone just send it to him? Did he keep it or forward it on? Why? To embarrass or harass the victim? What is or was the relationship between the youth offender and victim? How old are they, and what is the age difference between them? It may be a mitigating factor where there is little or no disparity in age. However, if the offender is significantly older (e.g., a 15-year-old with pictures of an 8-year-old), authorities have serious misconduct issues to address. Has the perpetrator participated in similar misconduct in the past? Consideration of these factors can help investigators and prosecutors decide the proper course of action, such as no charges, diversion, or formal charges (sex or nonsex offense).

**Prevention**

As the first line of defense against this problem, law enforcement personnel and educators should provide regular presentations—and numerous excellent information sources exist to draw from—to young people on Internet safety and the repercussions of inappropriate online behavior. Digital images do not deteriorate over time and easily can spread worldwide. Youths need to understand that what they do online may have a very long existence. Such presentations can help minimize or prevent future occurrences of juvenile sexting. They also can be used as a component in developing diversion programs.

**Additional Investigative Areas**

In cases where the images clearly involve child pornography, law enforcement needs to contact the National Center for Missing and Exploited Children (NCMEC), which operates the Child Victim Identification Program, the national clearinghouse for child pornography cases and the main point of contact for international agencies concerning child pornography victims. By forwarding information regarding known victims, prosecutors can obtain convictions of other perpetrators who may possess these images long after the juvenile sexting case has been initially investigated.

**Legislative Remedies**

In 2009, state law makers, most notably in Ohio, Utah, and Vermont, began considering legislative solutions. One early proposal was a blanket decriminalization of juvenile sexting. Such a questionable approach has the real potential of putting youths at risk by inadvertently excluding sexting offenses committed by older juveniles against younger ones. Recently, Vermont stepped back from this extreme, opting to reclassify juvenile sexting cases from felony to misdemeanor offenses as long as the acts were consensual. The debate, no doubt, will continue, but legislatures must be careful to not enact laws that put youths at risk.12

Juvenile sexting poses a challenge for numerous groups to act responsibly with common sense and sound discretion.

**Conclusion**

Law enforcement officers and prosecutors must keep in mind that juvenile sex and child pornography laws exist to protect young people. While the activity associated with juvenile sexting technically may violate criminal statutes, prosecutors must use discretion, vested with their position, to confront the activity appropriately. Every act violating a statute should not necessarily bring charges. Legislators must avoid the urge to legislate away instances of an abuse of prosecutorial discretion. A well-intentioned law designed to undo a perceived overreaction by one prosecutor may unintentionally prevent the prosecution of a youth exploiting a much younger child.

Parents must remain involved in their children’s lives and not surrender their parental oversight to a fear of technology. And, young people need to learn to use technology responsibly. Everyone has a role in protecting youths, and they need to fulfill that responsibility with common sense and sound discretion.