



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

10 RM 001

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Re: State Laws Related to Prosecution of Sexting

QUESTIONS

1. What is sexting?
2. What laws have states enacted related to sexting?
3. What other legislation has been introduced in other states related to sexting?

ANSWERS

1. "Sexting" is frequently defined as sending nude or semi-nude photos to one another by cell phone. According to a survey done by the National Campaign to Prevent Teen and Unplanned Pregnancies and CosmoGirl.com, about one in five teenagers had sent or posted nude or semi-nude pictures of themselves.
2. State legislation related to sexting has generally addressed two issues. The first is determining appropriate punishment for children who send these messages. According to the National Conference of State Legislatures (NCSL), prosecutors in at least six states have considered whether children should be charged under child pornography laws, which could result in the child being convicted as a sex offender. The second issue addressed in state legislation is prohibiting sexual predators from using sexting to contact children. Table 1, on the following page, summarizes sexting-related legislation passed by six states in 2009. Attachment A includes excerpts of legislation from three states: North Dakota, Utah, and Vermont.

Table 1. Summary of Legislation Passed in 2009 Relating to Sexting.

State	Bill Number	Summary of Provisions Related to Sexting	Does Bill Establish Penalties Specifically for Children?
Colorado	H.B. 1132	Adds telephone networks, data networks, text messages, and instant messages as means to commit computer dissemination of indecent material to a child, internet luring of a child, internet sexual exploitation of a child, and harassment	No
Nebraska	L.B. 97	Allows an affirmative defense for minors who possess sexually explicit images of children age 15 and under, as long as the images are of only one child, were taken without coercion, and were not forwarded to anyone else.	Yes
North Dakota	H.B. 1186	Relates to a sexually expressive image; provides for a misdemeanor offense for a person who knowingly acquires, possesses or distributes any photograph or visual representation that exhibits a nude or partially denuded figure without the person's consent; relates to publishing such image of a minor after notification that a parent or guardian does not consent.	No
Oregon	H.B. 2641	Modifies definition of online communication for purposes of online sexual corruption of child.	No
Utah	H.B. 14	Provides penalties for minors that distribute pornographic material or deal in material harmful to a minor; provides that a non-minor who solicits a person younger than 18 to distribute pornographic material or deal in material harmful to a minor is guilty of a third degree felony and is subject to specified penalties; provides enhanced penalties for subsequent violations.	Yes
Vermont	S.B. 125	Prohibits minors from using a computer or electronic communication device to transmit an indecent visual image of themselves to others; prohibits everyone from possessing such an image. Minors violating this law would be dealt with in juvenile court instead of being subject to sexual exploitation laws and sex offender registration requirements. Adults who violate this law can be fined not more than \$300 or imprisoned for not more than six months or both; adults may also be prosecuted under other sections of the law.	Yes

Source: LSO Research summary of state legislation and information compiled by the National Conference of State Legislatures.

3. Legislators in other states have also *introduced* a variety of legislation on the topic of sexting in 2009 and 2010. Table 2 summarizes the content of some of these bills related to prosecution of minors convicted of sexting.

Table 2. Summary of Legislation Introduced in 2009 or 2010 Relating to Prosecution of Minors for Sexting.

State	Bill Number	Summary of Provisions Related to Sexting
Kentucky	H.B. 57 (2010)	Prohibits a minor from transmitting a nude image of himself or herself or another minor by computer or electronic means as a violation for the first offense and a Class B misdemeanor for each subsequent offense; provides for juvenile court jurisdiction; prohibits requiring registration as sex offender; prohibits possession of a nude image of a minor as a violation for the first offense and a Class B misdemeanor for each subsequent offense; provides for juvenile court jurisdiction for person under 18 at time of commission of offense and District Court jurisdiction for persons over 18; prohibits requiring registration as sex offender.
New Jersey	A.B. 1561 (2010-11)	Creates diversionary program for juveniles who are criminally charged for sexting or posting sexual images.
Ohio	H.B. 132/ S.B. 103 (2009-10)	Prohibits a minor, by use of a telecommunications device, from recklessly creating, receiving, exchanging, sending, or possessing a photograph or other material showing a minor in a state of nudity.
Pennsylvania	S.B. 1121 (2009-10)	Provides for the offense of dissemination of prohibited materials by minors; provides for expungement and for juvenile records. In relation to summary offenses, further provides for the scope of the Juvenile Act, for inspection of court files and records, and for conduct of hearings.
	H.B. 2189 (2009-10)	Establishes that a minor who transmits an electronic communication of a photograph of himself or herself or another minor age 13 years or older in a state of nudity commits a misdemeanor of the second degree.

Source: LSO Research summary of state legislation and information compiled by the National Conference of State Legislatures.

If you need anything further, please contact LSO Research at 777-7881.

ATTACHMENT A

EXCERPTS FROM 2009 LEGISLATION IN NORTH DAKOTA, UTAH, AND VERMONT

NORTH DAKOTA HOUSE BILL NO. 1186

SECTION 1. A new subsection to section 12.1-27.1-01 of the North Dakota Century Code is created and enacted as follows:

As used in this chapter, "sexually expressive image" means a photograph or visual representation that exhibits a nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, or sexual conduct.

SECTION 2. Section 12.1-27.1-03.3 of the North Dakota Century Code is created and enacted as follows:

Creation, possession, or dissemination of sexually expressive images prohibited - Exception.

1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person:

a. Without written consent from each individual in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or

b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image or after being given notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to the distribution or publication of the sexually expressive image.

2. A person is guilty of a class B misdemeanor if, knowing of its character and content, that person acquires and knowingly distributes any sexually expressive image that was created without the consent of the subject of the image.

3. This section does not authorize any act prohibited by any other law. If the sexually expressive image is of a minor and possession does not violate section 12.1-27.2-04.1, a parent or guardian of the minor may give permission for a person to possess or distribute the sexually expressive image.

4. This section does not apply to any book, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by an attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that individual's scope of employment.

SECTION 3. REPEAL. Section 12.1-31-08 of the North Dakota Century Code is repealed.

UTAH HOUSE BILL 14

Section 1. Section **76-10-1204** is amended to read:

76-10-1204. Distributing pornographic material -- Penalties -- Exemptions for Internet service providers and hosting companies.

- (1) A person is guilty of distributing pornographic material when ~~[he]~~ the person knowingly:
 - (a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others;
 - (b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others;
 - (c) distributes or offers to distribute, or exhibits or offers to exhibit, any pornographic material to others;
 - (d) writes, creates, or solicits the publication or advertising of pornographic material;
 - (e) promotes the distribution or exhibition of material ~~[he]~~ the person represents to be pornographic; or
 - (f) presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic.
- (2) Each distributing of pornographic material as defined in Subsection (1) is a separate offense.
- (3) It is a separate offense under this section for:
 - (a) each day's exhibition of any pornographic motion picture film; and
 - (b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.
- (4) (a) An offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:
 - (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and
 - (ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) An offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.

(c) An offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.

~~[(b) This]~~ (d) Subsection (4)(a) supersedes Section 77-18-1 .

(5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct prohibited under Subsection (1), (2), or (3) is guilty of a third degree felony and is subject to the penalties under Subsection (4)(a).
- ~~[(5)]~~ (6) (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230 , if:
 - (i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:
 - (A) transmitting or routing data from one person to another person; or
 - (B) providing a connection between one person and another person;
 - (ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and

(iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230 , if:

(i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

Section 2. Section **76-10-1206** is amended to read:

76-10-1206. Dealing in material harmful to a minor -- Penalties – Exemptions for Internet service providers and hosting companies.

(1) A person is guilty of dealing in material harmful to minors when, knowing or believing that a person is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:

(a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or a person the actor believes to be a minor, any material harmful to minors;

(b) produces, performs, or directs any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors; or

(c) participates in any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors.

(2) (a) Each separate offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

(b) Each separate offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.

(c) Each separate offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.

~~(b)~~ (d) [This section] Subsection (2)(a) supersedes Section 77-18-1 .

(3) (a) If a defendant 18 years of age or older has ~~[already]~~ been previously convicted ~~[once]~~ or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate ~~[further]~~ subsequent offense is a second degree felony punishable by:

(i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than one year.

(b) If a defendant younger than 18 years of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a third degree felony.

~~[(b)]~~ (c) ~~[This section]~~ Subsection (3)(a) supersedes Section 77-18-1 .

~~[(e)]~~ (d) (i) This section does not apply to an Internet service provider, as defined in Section 76-10-1230 , a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(A) the distribution of pornographic material by the Internet service provider occurs only incidentally through the provider's function of:

(I) transmitting or routing data from one person to another person; or

(II) providing a connection between one person and another person;

(B) the provider does not intentionally aid or abet in the distribution of the pornographic material; and

(C) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.

(ii) This section does not apply to a hosting company, as defined in Section 76-10-1230 , if:

(A) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(B) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(C) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the pornographic material.

(4) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.

(5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the penalties under Subsection (2)(a).

VERMONT SENATE BILL 125 (EXCERPT)

Sec. 4. 13 V.S.A. § 2802b is added to read:

§ 2802b. MINOR ELECTRONICALLY DISSEMINATING INDECENT MATERIAL TO ANOTHER PERSON

(a)(1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of himself or herself to another person.

(2) No person shall possess a visual depiction transmitted to the person in violation of subdivision (1) of this subsection. It shall not be a violation of this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction.

(b) Penalties; minors.

(1) Except as provided in subdivision (3) of this subsection, a minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to chapter 52 of Title 33, and may be referred to the juvenile diversion program of the district in which the action is filed.

(2) A minor who violates subsection (a) of this section and who has not previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children), and shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (b)(1) of this section or prosecuted in district court under chapter 64 of this title (sexual exploitation of children), but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(4) Notwithstanding any other provision of law, the records of a minor who is adjudicated delinquent under this section shall be expunged when the minor reaches 18 years of age.

(c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than \$300.00 or imprisoned for not more than six months or both.

(d) This section shall not be construed to prohibit a prosecution under section 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or 2632 (prohibited acts) of this title, or any other applicable provision of law.