



THURGOOD MARSHALL LAW REVIEW

VOLUME 43

ONLINE

ISSUE 2

JUVENILE SEXTING: A HARSH REALITY

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A Publication of
Thurgood Marshall School of Law

THURGOOD MARSHALL LAW REVIEW

VOLUME 43

SPRING 2019

ISSUE 2

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Juvenile Sexting: A Harsh Reality
Airelle Mills

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TABLE OF CONTENTS

	Page
I. Introduction	5
II. Background	7
III. Analysis	11
IV. Conclusion	23
Endnotes	25
Table of Authorities	28

I. Introduction

Teenage love. We have all been there before. Getting butterflies thinking about seeing your significant other in the hallway at school; staying up late at night to sneak and talk to them on the phone; and even skipping school to hang out with them. Most people remember their first love and how that person made them feel, and most of the time the first person you fall in love with is during your teenage years. Whether you are twenty-four or sixty-four, you can remember how being in love the first time felt. We all felt a natural high when we were with our first love, and eventually, we all likely experienced some heart break.

While we all can recall our first love and all the good and bad memories we may have experienced, the way that teenagers communicate in relationships changed significantly over the last fifty years because today's world is digitalized. Teenagers communicate via text and social media just as much as, or even more, than face-to-face communication. "In the past, partners wrote love letters, sent suggestive Polaroids, and had phone sex." ¹ Today's teenagers' communication of choice is texting. Because of the increase of technology and teenagers' access to technology, there has also been a rise in "sexting". Sexting is the act of taking nude, semi-nude, or other sexually explicit photographs with a cell phone and sending those pictures to a person or other people through text message or other forms of communication.²

To protect children from being the victims of child pornography, all fifty states have passed legislation against possessing child pornography. However, the majority of states have not passed laws specific to teenage sexting. The result of the lack of juvenile sexting laws is that teenagers accused of sexting suffer the same harsh punishment as adults who are in possession of child pornography. The types of punishment teenagers could face for sexting in states with no juvenile sexting laws include, but are not limited to: registering as sex offenders, spending time

in jail, and receiving felony and/or misdemeanor charges. In today's digital age, juveniles often send, post, and share nude photographs of themselves and their peers, but the laws in effect should not punish them for life by forcing them register as sex offenders and leaving harsh infractions on their records. Many agree that there is a moral issue with teenagers' sexting. Morality, however, should not influence the legality of teenage sexting, especially in light of the fact that laws are often worded in ways that a teenager can be both a victim and a "perpetrator".

For instance, in 2015, a sixteen-year-old North Carolina teenager was arrested for possession of child pornography when police officers found nude pictures of himself in his cell phone. The police also found nude pictures of his sixteen-year-old girlfriend.³ The state charged the teen as an adult with sexual exploitation of a minor (himself), a felony.⁴ The teenager was charged as an adult but also viewed as a minor victim because the state charges teenagers as adults at sixteen years old when they commit crimes. However, the state considers teenagers minors when they are victims of crimes until they are eighteen.⁵ The teenager opted for a plea deal causing him to spend one year on probation.⁶ After the teenager's probation was completed, all of the criminal charges were dropped, and the teenager and his parents are now seeking to change the North Carolina pornography law under which he was charged.⁷

This article aims to distinguish what punishment, if any, teenagers should receive for sexting. In part II, this paper will discuss the rise of sexting throughout the digital age and compare the way the different states choose to punish teenage sexting. In part III, this paper will discuss the high prevalence of teenage sexting and alternative solutions to prosecuting teenagers for sexting. Part III will also discuss whether different types of teenage sexting should be punished differently (i.e. possession of nude photos versus disseminating nude photos) and how severe should teenagers be punished. This paper will show that because of the increasing

prevalence of teenage sexting and the severity of punishment that teenagers face due to the lack of teenage sexting legislation, it is time for every state to move forward and establish teenage sexting laws that focus on rehabilitation and awareness rather than punishment.

II. Background

A. The Rise of Teenage Sexting

While the previous example might seem like a rare occurrence, the truth is most states have sexting laws similar to North Carolina because most states do not have laws specific to teenage sexting, which means teenagers are convicted as adults under child pornography laws.⁸ How is it possible that teenagers are from the class that child pornography laws are intended to protect, but can also be punished under these same laws? This is an even bigger question when the number of teenagers who sext is put into perspective. Why should state laws punish teenagers for doing something that many of them do – especially if there is no harm to themselves or others? (i.e. the nude photographs are sent to the person the teenager meant to send them to and the photos are not further disseminated).

A 2014 Drexel University study surveyed college students and asked them if they had ever sent or received sexually explicit text messages when they were under age eighteen. Fifty-four percent of those surveyed said yes.⁹ The Drexel study numbers were higher than most other studies of teenage sexting, but this is probably because the students remained anonymous, and at the time of the survey, they were adults revealing past actions.¹⁰ However, sixty-one percent of the college students who participated in the Drexel University did not realize that sending nude photos via text could be considered child pornography.¹¹ Those teenagers did not realize their actions could be punishable. Unless they are actually prosecuted, they do not connect sexting to possession of child pornography or sexual exploitation of children.¹² Therefore, teenagers need

to be made aware that sexting is illegal under current child pornography laws, but new laws specific to juvenile sexting should be passed so that those punished are not the same people who are intended to be protected.¹³

One way to make teenagers more aware of the legality of texting is to implement educational programs in schools and rehabilitation programs for teenagers who are reprimanded for sexting, instead of punishment, to prevent these teenagers from gaining a criminal record for something that they did not even know was illegal.

An older study by the Pew Research Center's Internet & American Life Project found that fifteen percent of teenagers, aged twelve through seventeen, who owned cell phones have received or sent sexually suggestive nude or nearly nude images of someone via text.¹⁴ It is clear that the number of teenagers who sext is linked to the increasing number of teenagers who own cell phones.

In 2004, forty-five percent of teenagers owned a cell phone.¹⁵ By 2006, sixty-three of teens aged twelve through seventeen owned cell phones.¹⁶ In 2008, that number further increased to seventy-one percent.¹⁷ Today, not only do most teens own cell phones, most of them prefer texting than any other social interaction, including face-to-face interaction.¹⁸ In 2006, fifty-one percent of teenage cell phone owners used texting.¹⁹ By 2010, that number was eight-eighthty percent.²⁰ Lenhart states that the combination of increased teenage cell phone ownership and an increase in teenage texting is a reason why sexting has become so prominent.²¹ Being that most teens are comfortable with this form of communication, even more than face-to-face communication, they feel secure sending or receiving nude pictures of themselves and their peers over the phone, which may explain why juvenile sexting is so common²²

B. Various Forms of Sexting

Sexting can take place in various ways and through different texting applications and social media. The simplest form of texting is a possession form, which is when a teenager takes a picture of him or herself posing nude or semi-nude and shows it to another teenager without sending it.²³

The other, more serious, form is disseminating nude images. This form of sexting happens when a teenager takes a nude or semi-nude picture of him or herself and sends it to one or more persons.²⁴ Those people who received the message may also further disseminate the photographs.²⁵

Further dissemination of nude photos is also known as mass texting and can cause bigger legal ramifications because the people involved might be adults (i.e. eighteen years old), and consequently will be charged as adults for possessing child pornography no matter if their state has a teenage sexting law or not.²⁶ Teenagers who disseminate nude or semi-nude photos without the permission of the subject of the photo should be punished more severely than those who simply possess nude photographs of themselves or ones that were consensually sent to them because the teenager in the picture could be psychologically and socially affected. However, a teenager who possesses or disseminates these photos should not face punishments reserved for sex offenders, i.e. misdemeanor or felony charges or sex offender registration.

Also, teenagers do not just sext through text messages. Many teenagers use text messaging applications that they can download on their phone to sext. KIK is an instant messaging app where teenagers can text and send photos like a regular text message.²⁷ However, because it is an app, it is hard for parents to monitor where the cell phone provider can give the parents access to what their teenagers are texting and other parental safeguards.

Teenagers also use Snapchat and other social media sources to sext. Snapchat is a social media app that allows people to send each other videos and pictures that are instantly deleted once they are viewed by the intended receiver.²⁸ Snapchat presents the same danger as KIK because parents have less control and monitoring over the app, but it also presents other dangers. Many people use Snapchat because they like the idea of disappearing pictures and videos, but users can screenshot the pictures or videos and then share it with others.²⁹ It is also never a good idea to send nude or semi-nude photos into apps like these because once they make it into virtual reality, it is never really gone and can be discovered by tech-savvy hackers. Also, Snapchat does not allow nude pictures, meaning the company can report users for any illegal activity such as possession of child pornography.³⁰

C. Why States Should Focus on Decriminalizing Sexting

Because sexting is becoming more prevalent, more states should focus on passing legislation specifically for teenage sexting so that teenagers are not punished the same as adult predators. As of 2017, only thirteen states have sexting laws specifically for teenagers or some modification of the state's child pornography law that reduces the punishment for teenagers.³¹

Texas is one of the few states that has a teenage sexting law. In Texas, a person under the age of eighteen commits an offense if he or she intentionally or knowingly possesses or promotes to another minor visual material that depicts a minor engaged in sexual conduct by electronic means if he or she produced the material or knows that another minor produced it.³² The teenager will be charged with a class C misdemeanor, but may also be charged with a class B or class A misdemeanor depending on the circumstances of the sexting.³³

This law was passed in 2011 and provides that teenagers have an affirmative defense to prosecution if the minor in the material is not more than two years older or younger than the

minor who possessed the material and had a dating relationship with the minor who possessed the material at the time of the offense.³⁴ Although the teenagers would only be receiving a misdemeanor on their record, there are other states that offer even less punishment to teenagers accused of sexting.

In Louisiana, the sexting law offers less punishment that is less harsh than the Texas sexting law.³⁵ A teenager who knowingly transmits an indecent visual depiction of themselves will be punished under the Louisiana Children's Code.³⁶ A teenager who knowingly possesses or transmits an indecent visual depiction of another teen, however, may be subject to a fine, community service, and not more than 10 days in jail.³⁷ Some states do not treat juvenile sexting as a crime at all. In Florida, a juvenile who is caught sexting for the first time commits a noncriminal violation.³⁸ The teen must sign and accept a citation that indicates he or she will appear in juvenile court or he/she may complete eight hours of community service, pay a \$60 civil penalty fee, or participate in cyber-safety classes.³⁹

All states should focus on decriminalizing juvenile sexting because teens should not be punished under the same laws that were enacted to protect them. Instead states should focus on raising awareness of the dangers of sexting for teenagers and their parents.

III. Analysis

A. Convicting Teenagers Under Possession of Child Pornography Laws is Contrary to Legislative Intent

Legislators passed child pornography laws to severely punish adults who produce and distribute child pornography captured on film and other forms.⁴⁰ When these laws were passed,

legislators did not anticipate minors creating sexually explicit materials of themselves because the intent of the laws was to protect children.⁴¹

In Virginia, the Attorney General's Commission on Pornography, which was very influential in eradicating child pornography in the state, extensively reviewed the child pornography problem in America but never mentioned minors producing sexually explicit images of themselves.⁴² The federal sentencing guidelines are harsh for the purpose of deterring pornographers from even starting to exploit children sexually.⁴³ Teenagers consensually sexting are not pornographers. With the exception of those teenagers who disseminate nude photographs of other teenagers without the permission of the teenager in the photo, teens sexting are not looking to exploit each other like adults who victimize children by creating and possessing child pornography. "The age differential between the individual capturing the image and the minor pictured in most child pornography cases is absent in teen sexting cases, thus the element of sexual predation is missing."⁴⁴

On the contrary, some people in the legal community do not consider the legislative intent when teenagers are convicted under the child pornography laws for sexting because they contend that the statutes do not distinguish who is prohibited from disseminating sexually explicit pictures of a minor.⁴⁵ Many states that convict teenagers caught sexting under the state's child pornography law argue that the statute is clear and does not distinguish age or who can be prosecuted under the statute. It is true that most state child pornography laws read "a person" is prohibited from disseminating or possessing sexually explicit pictures of a minor.

In Colorado, a teenager was convicted on two counts of sexual exploitation of a child when he received nude photos that he solicited from two teenage girls. The court contended that

he was a teenager; therefore, the sexual exploitation statute was inapplicable.⁴⁶ The Court in that case held that under the statute's plain meaning, the perpetrator's age was irrelevant.⁴⁷

As of January 1, 2018, Colorado will have a new law regarding juvenile sexting.⁴⁸ Rather than punishing teenagers caught sexting under the previous child exploitation law, the state will issue the teen a civil infraction if the sexting is consensual and is between teenagers who are at least fourteen years old.⁴⁹ The teenagers will be required to participate in an educational program or pay a \$50 fine. However, teenagers could still face misdemeanor charges if the sexting is non-consensual.⁵⁰

In Ohio, a teenager was charged with multiple counts of disseminating harmful material to a juvenile when he asked a female classmate to text him a nude photo that he showed to other classmates.⁵¹ The juvenile said that the statute was vague because both he and the girl in the photos could be classified as victims or offenders under the statute.⁵² The court said that the statute did not say anything about victims but did classify those who disseminated the harmful material as offenders to protect minors.⁵³ The court also stated that the accused had the mens rea that the statute required (recklessness) because he forwarded the photo to his classmates, while the female did not demonstrate any recklessness by sending the photo to just him.⁵⁴

Also, in Ohio, a thirteen-year-old girl was convicted under the same statute in the previous case when she sexted photos to a juvenile boy.⁵⁵ The Court held that there was no distinction between adult offenders and juvenile offenders and the only relevancy of age was the age of the victim.⁵⁶

A teenager in Washington sent a nude photo of himself and was convicted under the state's dissemination of child pornography law.⁵⁷ The teen argued that an ordinary person would not expect sending a photo of themselves to be child pornography.⁵⁸ However, the Court disagreed

and said the language of the statute was plain and prohibited any person from disseminating sexually explicit pictures of any minor.⁵⁹ The teen also said that many teenagers sext and are unaware that it can be criminal; however, the court dismissed the argument because an ordinary person would understand the statute.⁶⁰

Still, it is likely that state legislators did not intend for teenagers to be the victims and the perpetrators when enacting child pornography laws because cell phones and sexting were not relevant when these laws were passed.⁶¹ Many states passed their child pornography laws in response to the federal law, which was amended many times since the original Protection of Children Against Sexual Exploitation Act of 1977.⁶²

The purpose of the federal law and the state counterparts was to protect children from being sexually exploited by adult predators. The states that argue that the child pornography laws are not vague, might be correct in applying the literal meaning of the statutes; but they are overreaching by applying the laws to teenagers because the purpose of child pornography laws is to protect children from adult predators. The states that convict teenagers accused of sexting under child pornography laws are outdated. Technology has surpassed their legislation and each state should pass specific juvenile sexting laws for multiple reasons.

B. The Start of State Child Pornography Laws—Federal Child Pornography

Legislation

The Protection of Children Against Sexual Exploitation Act of 1977 was the first federal statute enacted that specifically addressed child pornography.⁶³ The Act punished people who persuaded or induced a minor to participate in acts with the intention to sexually exploit the minor.⁶⁴ The first Act only punished those who knew the visual or print medium created of the

child would be transported in foreign commerce, interstate commerce, or mailed interstate.⁶⁵ The materials also had to be considered obscene.⁶⁶

The original Act was later amended several times to remove the obscenity requirement and add other impermissible conduct.⁶⁷ The Child Protection Act of 1984 removed the obscenity requirement, but also changed the federal age of minority from sixteen to eighteen years of age.⁶⁸ Raising the age of minority would later affect juvenile sexters.⁶⁹

In 1990, Congress passed the Child Protection Restoration and Penalties Enhancement Act of 1990 which made the mere possession and viewing of child pornography punishable by imprisonment for five years.⁷⁰ This act could harshly punish juveniles who consensually sext.⁷¹ The PROTECT Act of 2003 then added the word “digital” to the types of restricted forms of media.⁷² This Act, of course, directly affected sexting as the images that teenagers send to each other are digital.⁷³

In response to these acts passed by Congress, states started to pass their own legislation for punishing child pornography possession and sexual exploitation of minors. However, similar to the federal acts, the state’s laws did not specify who could or should be convicted under these laws although their intention was to protect children from adult predators. The federal legislation has continued to keep up with the changing technologies of today, and so have some state’s statutes regarding child pornography. However, neither the federal or state laws have been updated to reflect the original intentions of the child pornography laws: to protect children, and not convict them.

C. Convicting Teenagers Under Possession of Child Pornography Laws Exposes Teenagers to Excessive Punishment

“The argument that we must prosecute kids as the producers and purveyors of kiddie pornography because they are too dumb to understand that their seemingly innocent acts can harm them beyond paternalism. Child-pornography laws intended to protect children should not be used to prosecute and then label children as sex offenders.”⁷⁴ Juveniles who make or distribute images of themselves should either be looked at as victims who need help or wrongdoers who maybe deserve some punishment, but not to the degree they would receive the same punishment as those who abuse and sexually exploit children.

This paper will later discuss in part F, other ways to deal with juvenile sexting than criminal prosecution. Child pornography laws were enacted to punish and further deter child predators from sexually exploiting children.

Consequentially, the punishment under these laws is harsh. Someone convicted under a possession of child pornography law can face years in prison, register as a sex offender; pay fines and court fees; and face felony charges. The punishment is appropriate in order to stop child predators. However, these punishments are overly harsh to teenagers who are consensually sexting and do no harm to themselves or others by sexting.

There have been countless reports of teenagers who have been convicted under their state’s child pornography laws. They are forced to register as sex offenders, take plea deals to avoid jail time; go to jail; or receive felony or misdemeanor charges. For example, sixteen-year-old Cormega Copening and his girlfriend were convicted under North Carolina’s child pornography law after police found nude photos of the two on each other’s phone.⁷⁵

In order to avoid jail time, Copening had to take a plea deal.⁷⁶ Child pornography laws in each state are harsh to protect children against the harmful effects of the production of child pornography at the hands of adult predators.⁷⁷ Although states realize that the consequences teenagers face if they are convicted under the state's child pornography law for sexting are harsh, many states still choose to prosecute the teens under child pornography laws, instead of passing legislation specifically for juvenile sexting.

Not only do states harshly punish juveniles by convicting them under child pornography possession laws, some states seek to punish the parents of the juvenile sexters too. In Oklahoma, it is a felony for a parent or guardian to knowingly permit or consent to the participation of a minor in any child pornography.⁷⁸ So, if a parent is aware that his or her child was sexting and did not do anything to stop the sexting, he or she could face jail time or a fine. It also puts parents in a bad position—either to reveal his or her child's actions or to face severe punishment themselves. This is unfair because like most teenagers, many parents are unaware that sexting can be a crime depending on their state's legislation. It is true that most parents would do something to prevent their child from sexting if they found out; however, it is not certain that all parents would stop the sexting because some parents are more lenient when it comes to parenting teenage children.

D. The Mental Effects of Juvenile Sexting

Teenagers' brains are not developed enough for them to always make rational decisions. Teenagers go through puberty which comes with an increase in dopamine which in turn can lead to increase in risky behavior.⁷⁹ Also, teens do not understand and make reasoned decisions compared to their adult counterparts.⁸⁰ We can all look back to our teenage years and say to ourselves “man that was a dumb decision.” Because of puberty and all the brain development

teenagers go through they “are more susceptible to peer pressure, more oriented to peers generally, more prone to risky behavior and less able to self-regulate than their adult counterparts.”⁸¹ The lack of development in teenagers is also why many of them sext. The “everyone does it approach” does not necessarily mean that juvenile sexting should be illegal or legal, but it does indicate that they do it because they do not know the legal ramifications that they could face and/or even if they did they are not mature enough to even appreciate the long-term consequences of the legal ramifications.⁸² Which is all the more reason that teenagers should not suffer the same severe punishment under child pornography laws that adults perpetrators face.

Another facet of the juvenile sexting that concerns the teenagers’ brain is that some teenagers only do it to fit in or as a result of peer pressure. Teenagers are susceptible to peer pressure because of the changes of puberty.⁸³ Studies also show that teenagers tend to take risk in groups which may indicate why some of them feel pressured to sext.⁸⁴ Teenagers do things that they think will win them approval of their peers, and teenagers encourage other teenagers to do things that they think are “cool”.⁸⁵ Therefore, many things that teenagers do are based upon their lack of development and their susceptibility to peer pressure. States should consider these as mitigating factors and realize that teenagers should not be punished for sexting because it’s often the result of peer pressure and/or teenagers making teenage-like decisions. Instead, states should focus on rehabilitation for teenagers accused of sexting because juveniles have a greater potential for reform in comparison to adults.⁸⁶

Some people have suggested that juveniles should be punished for sexting because of the mental damage it can cause other juveniles whose nude photos might be leaked or disseminated to other teenagers without the permission of the teen in the photos. There have been reported

cases of teenagers committing suicide because of their nude photos being leaked and the subsequent harassment. However, all states have adopted revenge pornography laws and anti-bullying laws in which teenagers who disseminate nude photos of other teenagers with the intent to harass or bully can be punished under. Also, some states have adopted laws that punish teenagers who disseminate nude photos of other teenagers harsher than teenagers who are consensually sexting. In Pennsylvania, those who use a sexted image to harass or cyber bully is a second-degree misdemeanor, and those who pass on the sexted image without intent to harass or bully commit a third-degree misdemeanor.⁸⁷ Other states could follow Pennsylvania's suit in order to limit juvenile sexting that is meant to harass and embarrass other teenagers.

E. Should Sexting Be Illegal at all?

Specific juvenile sexting laws would focus on less harsh punishment for juveniles who are accused of sexting, but should teenagers who are consensually sexting be criminalized at all? Although some people would not like to accept it, juvenile sexting is so prevalent that can be seen as normal teenage behavior. Teenagers who consensual sext and keep the exchange private should not be criminalized as they are not harming anyone, but criminalizing teenagers for sexting would harm their futures.

“Criminal acts should be behaviors that our society has deemed universally egregious and dangerous.”⁸⁸ Sexting is not universally egregious or dangerous because it does not always harm anyone if the sexting is consensual and private.⁸⁹ Criminalizing sexting also criminalizes behavior that has been occurring with juveniles for decades. Although, sexting is a fairly new phenomenon because of technology, young people have been exchanging nude photos for years; whether it be Polaroids or digital cameras (both of which are considered antiquated technology now).⁹⁰ Teenage sexting might be seen as risky behavior, but it does not warrant criminalizing

sexting for all juveniles.⁹¹ Teenagers participate in activities that are much riskier than sexting and are not criminalized for it.⁹² Sex between two consenting teenagers isn't illegal despite facing risks that are higher than sexting.⁹³ Teenagers also frequently text and drive, which is very dangerous and risky. However, texting and driving just recently became illegal in Texas and is still be legal in other states.

Sexting has proven to be typical youth behavior, and it is unlikely that it will stop happening any time soon whether, it is illegal or not. In fact, sexting has moved to other platforms such as Snapchat and Twitter which means that policing sexting is more difficult.⁹⁴ “As time passes sexting will seem increasingly typical and become even less likely to be legally enforced.”⁹⁵ As this generation of juveniles becomes adults it is less likely that sexting will seem important to them as most of them, even the ones that go on to be law enforcement and other law enforcement officials, will have participated in sexting.⁹⁶ Besides, sexting is seen by many people as a moral issue. However, just because it may be immoral to some people does not mean it should be illegal (see Prohibition in the United States).

F. Solutions and Less Severe Punishment

It is a stretch to get states to totally de-criminalize juvenile sexting, but at least all states could pass juveniles sexting laws that focus on less harsh punishment than child pornography laws. Even though some states do have juvenile sexting laws, the punishment is still heightened although it may not be as harsh as if the teenagers were punished under child pornography laws. For example, in Texas, teenagers accused of sexting can receive misdemeanors under the state's juvenile sexting law versus receiving a felony if the state had no juvenile sexting law.⁹⁷ As for the states that do not have specific juvenile sexting laws, the punishment that juveniles receive for sexting is of course too harsh under child pornography laws as discussed in section B. There

have been many suggestions made on how to punish teenagers who are caught sexting that do not include jail time, felonies, or having them register as sex offenders. Some states, like Florida, make the teenagers and their parents participate in cyber-safety classes instead of being punished criminally.⁹⁸ Cyber-safety classes would be good for all teenagers and their parents, even ones who have not been accused of sexting, because it would make them aware of the consequences and affects that sexting could have on themselves and others.

Other states also give the juveniles the option to participate in community service. While community service is technically a form of punishment for teenagers accused of sexting in some states, it is less severe than other infractions like having the juvenile register as a sex offender. Unlike other punishment, which could negatively affect teenagers for the rest of their lives, community service has a positive impact on teenagers by exposing them to situations in which they have to help other people who are less fortunate than them or help better their community. Community service is vastly different than other punishment because it positively impacts the juvenile's character and doesn't affect their future employment, college admission, and social life like having to register as a sex offender and/or receiving a felony or misdemeanor would.

States could also automatically expunge the teenagers' records after they turn 18 for misdemeanor charges whether the state has a juvenile sexting law or whether the state charges teenage sexting under a child pornography law. Many of the states that do have juvenile sexting laws still have punishment that includes misdemeanor charges.⁹⁹ These states and the ones who have no juvenile sexting laws could at least automatically expunge the teenagers' records when they reach the age of majority so that sexting won't affect their future employment, college applications, and social lives. "...the sexting charge itself remains on a minor's record for life unless expunged, which most people do not know is not automatic."¹⁰⁰ For example, In

Louisiana a teenager who is caught sexting for the first time will have to pay a fine or go to jail for not more than 10 days.¹⁰¹ The juvenile's record will be confidential, as is the law in all states with juvenile justice systems, but the record is still accessible through criminal background checks.¹⁰² Also, there are many conditions that have to be met before a juvenile is eligible for record expungement in Louisiana. "First, a minor must be at least 17 years old in order to even apply. Second, 'a misdemeanor adjudication may be expunged only if two or more years have elapsed since the person satisfied the most recent judgment against him.'"¹⁰³ Therefore, if a juvenile was charged with sexting when he or she was 17 in Louisiana and applied to have his or her record expunged, the two year wait would still force their record to be accessible, which could hinder him or her from gaining employment or getting into college. This is why the expungement should be automatic once the juvenile reaches the age of majority.

The biggest solution to prevent juvenile sexting would for parents to be more active in controlling their children's cell phone usage and social media usage. This is not that hard to accomplish, although many people have said that teenagers are too technological-savvy for their parents to know what they are doing on their cell phones and social media. This argument is untrue though, as there are many options for parents to control their teenagers' cell phone use.

First, it would be smart for all parents of teenagers to attend cyber-safety classes with their teenagers to be aware of all the dangers and legal consequences of sexting and other activities that teens post on the internet and on their cell phones. Cyber-safety is something that many states make mandatory for teenagers accused of sexting.¹⁰⁴

Secondly, many cell phone service providers many measures that can curve teen sexting like limiting the number of text messages on a child's phone, or not even allowing texting during

certain time periods of the day like late nights or weekends, and parents can have the service provider to block the transmission of images from their child's cell phone all together.¹⁰⁵

Lastly, parents could confiscate their children's phones at night and during school to prevent sexting at times that most teenagers probably sext or disseminate nude photos of other teenagers. States' juvenile sexting laws should focus more on rehabilitation and awareness of the consequences of sexting rather than punishment. Punishment is not necessarily effective, and it only leads to teenagers facing consequences for something when they could instead just learn why they should avoid sexting in the first place. Rehab can include learning about effective communication, cyber-safety, social media etiquette, and the dangers and effects that juvenile sexting could have. Rehab is a solution that doesn't punish teenagers for sexting, but it could at least deter them from sexting again because sexting can have some negative effects even if they are unintended.

IV. Conclusion

Since the beginning of human civilization, juveniles have always participated in behavior that was considered sneaky or risky. As time passed, technology advanced. Now, teenagers do many of their risky or sneaky deeds on their cell phones; sexting happens to be one of them. With texting and social media being teenagers' communication of choice, it is not likely that juvenile sexting will go away any time soon.

Because sexting is likely to be around, all states should either pass legislation specifically for juvenile sexting so that juveniles won't be punished so harsh, or states should not punish juveniles for sexting at all. The latter is probably less likely to happen as many people, including legislators, think that juvenile sexting should be a punished act, so it would be ideal if all fifty states passed juvenile sexting laws. All states passing juvenile laws won't be easy. It's going to

take more awareness for teenagers and parents to know the consequences teenagers could face if they are accused of sexting, especially in states that don't have juvenile sexting laws.

If more people were aware of how some teenagers are being punished under statutes that were meant to punish and deter adults from exploiting children maybe more states would attempt to pass legislation for juvenile sexting. However, the problem, although it has been around since cell phones were capable of sending multimedia messages in the late 2000s, is still not widely-known possibly because of the relatively small number of teenagers who have been prosecuted under child pornography laws.

Still, the issue of juveniles prosecuted under child pornography laws is a major problem because they are exposed to harsh punishment for doing something that may not be a good decision. But teenagers are teenagers. They are still children and they should not be punished as adults for something consensual and non-violent like sexting.

Instead of punishment, juvenile sexting laws should focus more on rehabilitation and educating teenagers and their parents on the dangers of sexting and cyber-safety. Besides, punishment doesn't solve anything regarding juvenile sexting. Teenagers will still sext rather it is criminalized or not, but if states pass legislation that focus on less harsh punishment and rehabilitation maybe teenagers would understand why sexting is potentially dangerous and they would be deterred from sexting.

Many times, real-life examples or situations make people realize that they have to be careful about their actions. Many middle schools and high schools put on programs to prevent teenagers from texting and driving, drinking and driving, and other risky behaviors that juveniles participate in. More schools, as well as parents, should also focus on teaching juveniles the dangers and possible legal ramifications of sexting. It is a shame for a teenager to mess up his or

her life based on a decision they made as an adolescent, but it is a shame for states not to prevent teenagers from messing up their lives by prosecuting juveniles for sexting under laws that were intended to protect them.

Endnotes

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¹⁹ *Id.*

²⁰ *Id.*

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²⁴ *Id.* at 182.

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³¹ *Supra* note 6.

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- ³⁴ Tex. Penal Code § 43.261(c)(1)(A)(B)-(2)(A)(B).
- ³⁵ La. Rev. Stat § 14:81.1.1.
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- ³⁸ Florida Penal Code § 847.0141(3)(a)
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- ⁴⁵ *State v. E.G.*, 377 P.3d 272 (2016).
- ⁴⁶ *People In Interest of T.B.*, 14CA1142, * 2 2016 WL 6123557 (Oct. 20, 2016).
- ⁴⁷ *Id.*
- ⁴⁸ COLO. REV. STAT. § 18-7-109.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*
- ⁵¹ *In re L.Z.*, 61 N.E. 3d 776 (2016).
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- ⁵⁶ *Id.* at *4
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- ⁶⁴ *Id.*
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- ⁶⁷ *Id.*
- ⁶⁸ *Id.* at 321.
- ⁶⁹ *Id.*
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- ⁷¹ John M. Krattiger, *Sex Cells: Evaluating Punishments For Teen "Sexting" in Oklahoma and Beyond*, OKLA. L. REV. 317, 322.
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- ⁷³ *Id.*
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- ⁷⁵ *Supra*, note 7.
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- ⁷⁷ *Id.*

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- ⁸⁸ Alexandra Kushner, *The Need For Sexting Law Reform: Appropriate Punishments For Teenage Behaviors*, 16 U. PA. J.L. & SOC. CHANGE 281, 288.
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