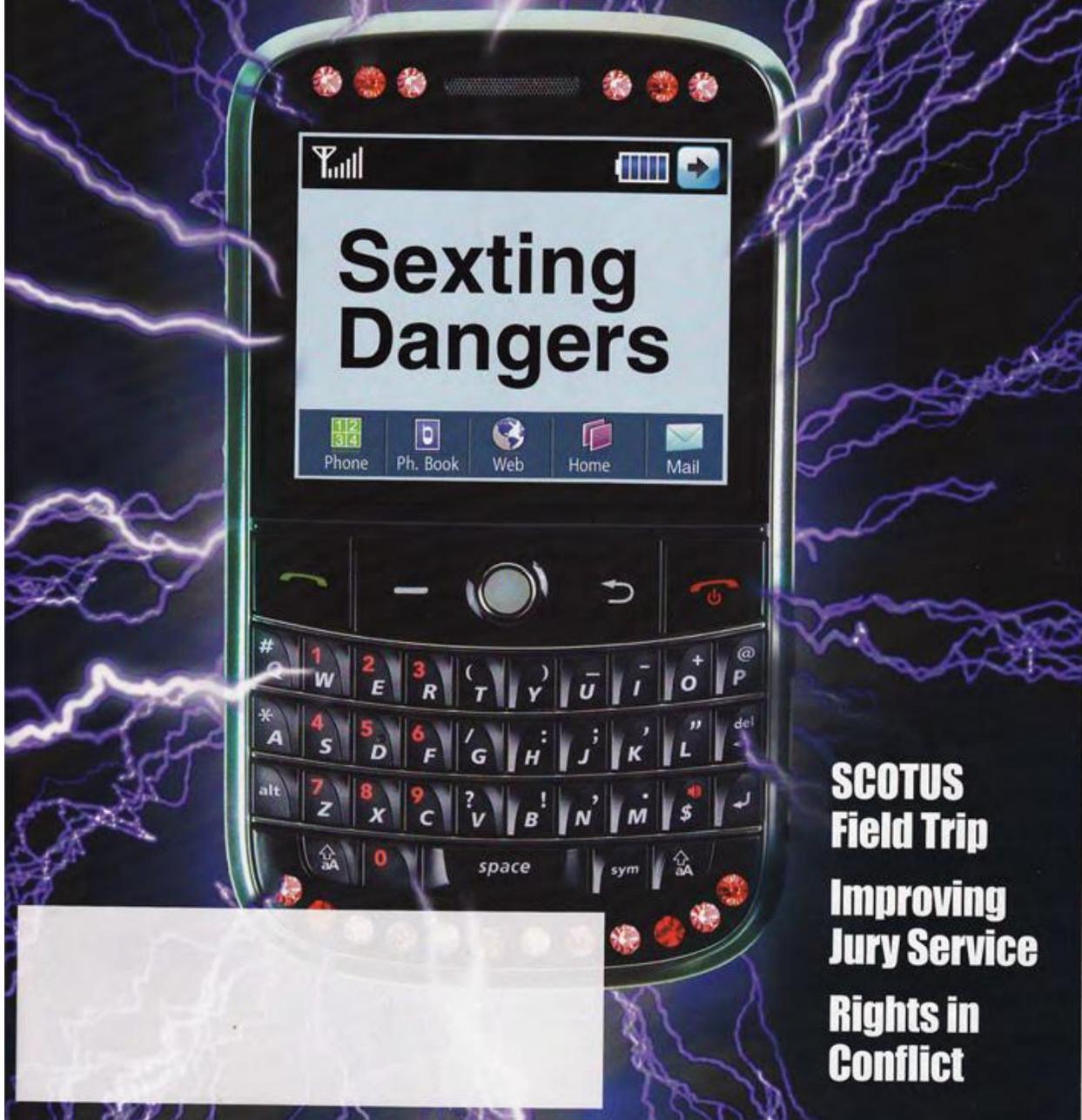


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Sexting Dangers: 26Y4U (Too Sexy For You)

Sexting - verb. the act of sending or posting sexually explicit messages or photographs between mobile phones.

The Merriam-Webster Dictionary does not define the term; however, it is a term that exists and an act that has devastated lives by criminalizing immature teenagers' conduct when placed under purview of child pornography.

First loves that have soured. A silly prank. Kids being kids. When the send button is pushed, lives shatter. minors across the country are facing possession and distribution of child pornography charges; felonies that mandate these minors register as sex offenders for the rest of their lives. A seemingly funny joke turned a modern day Scarlet Letter.

In Florida, 18-year-old Phillip Albert was sentenced to five years probation and was obligated to register as a sex offender after he distributed nude photos of his ex-girlfriend to more than 70 people. Including the ex-girlfriend's grandparents. On the other hand, the girl was never charged. Was she a willing participant or a victim?

Philip's plight is not a lonely one. In Pennsylvania, a 15-year-old girl was charged with child pornography after e-mailing nude photographs of herself to a 27-year-old man on the popular social networking site, Myspace. The recipient of the e-mail was only charged with "unlawful sexual activity."

Last year, a 14-year-old girl in New Jersey was arrested and charged with possession and distribution of child pornography after posting sexually explicit photos of herself on MySpace. In many cases, the photographer and victim are on and the same.

The disparity of these cases is troubling. Who is the victim and who is being victimized? In some cases those taking the photographs face criminal charges; however in other cases those who receive and/or store them on their telephone or e-mail account are those facing the charges. What if a parent discovers a nude photo on his or her child's phone? Should the parent be punished for viewing the photo? The responsible party shifts from state to state.

The laws of yesterday are not in sync with the technology of today. What about when all the parties consent to the taking of the photographs as well as the dissemination of the images? Is there a victim? Child pornography laws were enacted to protect children; however, it is now being applied to prosecute those it initially meant to defend. These laws were not written or intended for minors, yet this phenomenon has children across the country unknowingly violating the law.

Currently, laws dictate that the distribution in and of itself is illegal. Many teenagers simply do not understand the consequence of their actions. They have no idea that by sending that photograph they may be violating child pornography laws.

On the other hand, why is the act criminal at all? Shouldn't government refrain from interfering with the parents' role? When a teenager "sexts" her boyfriend" shouldn't the only people concerned in distributing a punishment be the parents? Arguably, criminalizing sexting is a violation of the parents' Fourteenth Amendment substantive due process right to direct their children's upbringing without undue state interference.

To counter the devastating criminal effects of sexting, states across the country are attempting to reduce the criminal consequences of sexting. Lawmakers in Ohio were one of the first in the nation to propose changes to state law that would reduce penalties for sexting teenagers to a first degree misdemeanor. Last year Nebraska, Utah, and Vermont changed their laws to reduce penalties for minors caught engaging in sexting. According to the National Conference of State Legislatures, lawmakers in at least 14 more states are considering legislation that first attempts to deter sexting and then applies appropriate lesser penalties for those who do engage in the act.

In Florida, legislation creates an offense of sexting that would give first time offenders who are minors eight hours of community service and a \$25 fine. A second offense would be a misdemeanor with possible incarceration. These efforts come too late for Philip Albert, who is now a registered sex offender due to poor decisions he made as an immature teen.

Under current state law in Iowa, a teenager engaged in sexting may face an aggravated misdemeanor or a felony charge typically meant for a child pornography offender. Attorney General Tom Miller is proposing that prosecutors have the option to charge teenagers with a simple misdemeanor if they disseminated sexually explicit material to another teen. This proposal will give prosecutors and the courts the flexibility to review each incident on a case by case basis. The proposal would create a new defense for child pornography charges for teens between 14 and 18 years of age who voluntarily send explicit images. Under that defense certain criteria would need to be considered-(1) the image would have to be of one of the teens involved, (2) the viewer of the image would have to not be offended by it, and (3) the image could not be further distributed.

Similarly, in Nebraska, there is a distinction between the teenager who shares a nude photo with another romantic partner and the teenager who distributes the image to other classmates. For the former, the teenager would get a pass. For the latter, the teenager who distributed the image to friends could face a felony child pornography charge and five years in prison.

Connecticut Public Act 10-191

The Act creates a new class A misdemeanor offense for certain acts of sexting or other electronic transmission or possession of child pornography by persons 13 to 15 years old (for transmission) or 13 to 17 years old (for possession). The Act provides that in a prosecution for felony possession of child pornography, it is an affirmative defense that the defendant's acts, if proven, would constitute a new class A misdemeanor crime. By law, a defendant must prove an affirmative defense by a preponderance of the evidence.

By law, persons convicted of felony possession of child pornography may have to register as sex offenders. Such persons also face potentially longer periods of probation than those convicted for most other felonies. These conditions would not apply to persons convicted of the misdemeanor offense created by the Act.

The Act applies to the new misdemeanor crime the same definitions of "child pornography" and "visual depiction" as apply for the existing law on felony child pornography and related offenses. "Child pornography" means any visual depiction (photograph, film, videotape, picture, computer generated image, or picture) produced by electronic, mechanical, or other means, of sexually explicit conduct, where the production included the seduction of a person under age 16 engaging in sexually explicit conduct.

"Visual depiction" includes undeveloped film and videotape and information of any kind in any form, including computer software, capable of conversion into visual images, and includes encrypted data.

It is an affirmative defense if the defendant: (1) passed fewer than three visual depictions of child pornography; (2) did not knowingly (a) purchase, procure, solicit, or request the depictions or (b) take any other action to cause them to come into his or her possession; and (3) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any depiction or copy, (a) took reasonable steps to destroy each depiction or (b) reported the matter to a law enforcement agency and gave that agency access to each depiction. It is also an affirmative defense if the defendant posed a visual depiction of a nude person under age 16 for a bona fide artistic, medical, scientific, educational, religious, governmental, or judicial purpose.