Youthful Offenders

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Overview

• Define concept of juvenile self-sexual exploitation.

• Discuss efforts taken by the states to address this issue, including prosecution, sentencing, and legislation.

Juvenile self-sexual exploitation:

• minors taking sexually explicit pictures of themselves or others then transmitting images to others via cell phone or by posting on Internet.

• Dubbed “Sexting” by media
Juvenile self-sexual exploitation:

- A minor taking sexually explicit pictures of him/herself or another then transmitting the image via cell phone or by posting on the Internet.

Often forwarded by initial recipient without sender's consent.

- Photos go “viral,” reaching large audiences as forwarded from group to group.
On one hand . . .

Of the 2,100 children NCMEC has identified as victims of online porn, one-fourth initially sent the images themselves, some for fun – some tricked by adults they met online.¹

Sexting is the modern way for teens to express budding sexuality – like spin the bottle. Safer than traditional exploration of sexuality - no physical contact.²

Harms:

• sexual exploitation
• embarrassment
• commercial exploitation
• death
• prosecution for making, sending, disseminating, &/or possessing child pornography . . .

Harms to society as a whole:

• Sexualization / eroticization of minors encourages societal perceptions of children as sexual objects, which
• leads to further abuse and exploitation.

. . . but
Is there a harm if the boyfriend or girlfriend who receives the image does not share it with others?

Prevalence:
2008 study - of 653 13-19 year olds:
- 20% had sent or posted nude or seminude pictures or videos of themselves
  - 71% girls & 67% boys had sent content to BF/GF
  - 21% girls & 39% boys had sent content to someone they wanted to date or hookup with.

Why Sexting / Why now?
Perfect storm...
- Exposure to increasingly younger sexualized “role models;”
- Accessibility of technology;
- Characteristics of tweens / teens
1. Role Models / Media

- Miley Cyrus’s performance at Kids’ Choice Awards
- Britney Spears schoolgirl video (& others!)
- Gossip Girls, Paris Hilton, et al...

NCJRL.org
2. Accessibility to technology:  

- About 4 out of 5 teens have cell phones.
- Nearly ½ kids age 8 – 12 in U.S. own cell phones.
- On ave. kids get 1st cell phone between 10 – 11.

• Teens text as much as or more than they talk on the phone.
• 42 % of teens surveyed say they could text blindfolded.
• Nearly half of U.S. teens say their social life would end or be worsened without their cell phone.
3. Characteristics of Tweens / Teens:

- Instant gratification generation
- Teens receive & send 2878 texts a month  
- Brain still "under construction" until 20-something
- Teens spend 31 hrs /wk connected to technology  
  - 3.5 hrs per wk IMing friends
  - 2 hrs/wk on YouTube

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**Child Pornography Laws:**

All states prohibit acts of creating, possessing, & distributing images of children engaged in explicit sex acts.

No exceptions from criminal culpability when person creating, possessing, or distributing image is a minor.

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**CP laws:**

- In the past, adults exploited / victimized children to generating CP
- CP laws developed to prevent the exploitation of children used to create these displays
- Did drafters of CP laws anticipate juveniles would be creating & distributing CP by taking pictures of themselves & disseminating via text msg?
Range of responses among states:

- Prosecution under existing CP laws
- Legislative responses – i.e., amend CP laws to address “Sexting.”
- Juvenile Diversion programs

CP prosecution - considerations:

- Are images CP under statute or case law?
- If "lascivious exhibition," does it meet Dost criteria? If state doesn’t follow Dost, is image CP by their criteria?
- Was photo taken “consensually”?
- Is “victim” person who sent photo?
- Is victim willing to testify?
- What are societal goals?

New Jersey:

- March 2009 - 14 y/o girl charged with possession & distribution of CP for posting (for her BF) approx. 30 nude photos of herself on MySpace.
- State police CP task-force found / turned over to Passaic County Sheriff’s office
- SO registration for 15 years if convicted
Colorado:

- Local prosecutors haven’t charged teens under CO. CP laws for “sexting,” although acts constitute a felony under state law.
  - Couple, 17 & 15 exchanged cell phone images they recorded while engaging in consensual sex
  - Mother found nude pics of daughter’s bf on daughter’s phone
  - Both couples remanded into counseling

- CO. investigators consider each offense on case-by-case basis.
  - Whether or not to press charges depends on factors such as:
    - Age of people involved
    - Nature of the images
    - Images were distributed?
    - “Malicious actions” involved?

Cincinnati teen Jessica Logan committed suicide after BF distributed nude pictures of her she sent him via cell phone.

No one charged.
Ohio (Cuyahoga Co. Juvenile Court)

- 8 teens (14 - 17) caught trading nude cell phone pics of themselves required to do community service & ask peers if they knew “sexting” was a crime.
  31 of 225 said they did
- Judge felt CP conviction / 20 yr registration as SO too harsh for sending nude pic to bf.

  “These kids have no record, not even a parking ticket.”

Pennsylvania:

Miller v. Skumanick

3rd Circuit to hear appeal re: constitutionality of bringing CP charges in context of “Sexting.”

Three girls filed civil rights suit against DA alleging he violated their 1st Amendment rights with threat of CP prosecution if they refused to take 6 month class designed to educate youths about dangers of “sexting.”

Sexting Laws:

Ohio

Senate Bill 103, if approved, changes underage sexting from a felony to 1st degree misdemeanor – no SO registration.
**Vermont**

Created sexting statute: “Minor Electronically Disseminating Indecent Material to Another person”
- tried as juvenile
- no SO registration
- record expunged

**New Jersey:**

3 pieces of proposed legislation:
1. Teens caught sexting sent to educational program instead of facing criminal charges;
2. Schools required to educate parents and students about dangers of sexting;
3. Cell phone retailers required to create brochures detailing legal consequences of sexting.

**Illinois:**

(Measure pending in House)

Criminal offense to sell / distribute a videotape or nude image of another person
- without written consent, and
- with the intent to damage a person’s reputation. (Includes uploading images to Internet.)
- Punishable by up to a year in jail and $2,500 fine.
Nebraska:
New CP provisions allow an affirmative defense for minors who possess sexually explicit images of children 15 and older, as long as:
• the images are of only one child,
• were taken without coercion, and
• were not forwarded to anyone else.

In conclusion:
No uniformity among states as to how to address “sexting” issue -
• Prosecution under state’s existing CP laws
• New legislation aimed specifically at “sexting”
• Juvenile diversion programs, but see Skumanick

3. 2008 poll by CTIA and Harris Interactive
Thank You!

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