

# A Common Sense Approach to Teen Sexting

## Washington Should Use Common Sense Approaches That Don't Treat Teens Who Sext Like Predators

Teenage “sexting” (or the consensual exchange of explicit messages through electronic messaging) is increasingly common. Numerous studies have found that 20% or more of adolescents have engaged in sexting,<sup>1</sup> in part enabled by the increasing popularity of smartphones and other technologies.<sup>2</sup> Most teenagers who engage in sexting exchange images with someone they are dating.<sup>3</sup> Under Washington law, teenagers who send or receive sexually explicit messages and images can be charged with distribution or possession of child pornography—class B felony offenses that carry the penalty of sex offender registration.<sup>4</sup> Child pornography laws were intended to protect youth from predators, not to enable harsh penalties for common adolescent behaviors.

## Other Laws Can Be Used to Address Harmful Behaviors by Teens

Washington law already provides ways to prosecute teenagers who engage in harmful behaviors like harassment, voyeurism, indecent exposure, and maliciously distributing intimate images of others. Harsh penalties for sexting may discourage teenagers from seeking adult help in cases where there is exploitation or harassment. Teenagers who play a role in creating or sharing explicit images may be reluctant to report harmful behaviors (like further dissemination) out of fear they will be prosecuted.<sup>5</sup>

## Minimizing Harm

A common sense approach to teen sexting would focus on minimizing harm. It would ensure that minors who possess, create or view sexually explicit images of minors over the age of 12 are not prosecuted for child pornography crimes. Minors who share (but don't sell) images of themselves would similarly be exempted from distribution of child pornography laws.

Minors who distribute or share images of other minors would continue to be held accountable, but for a misdemeanor that is not a sex offense. In addition, a common sense approach would require diversion for a minor's first offense involving distribution of sexually explicit images or disclosing intimate images (revenge porn).

## Promoting Prevention and Intervention

A common sense approach would be to invest in developing evidence-based prevention and intervention strategies to reduce the harms that may be associated with teen sexting. The Washington Coalition of Sexual Assault Programs, in conjunction with law enforcement, educators and the Department of Children, Youth and Families, could make recommendations to the legislature to address the potential harms associated with exchange of intimate images of minors.

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<sup>1</sup> National Campaign to Prevent Teen and Unplanned Pregnancy, Sex and Tech: Results from a Survey of Teens and Young Adults (2008); Stohmaier, H., et. al Youth Sexting: Prevalence Rates, Driving Motivations, and the Deterrent Effect of Legal Consequences, 11 Sex. Res. Soc. Policy 245-255 (2015) (more than half of 18-24 year olds surveyed in June 2014 admit to having sexted as minors); Houck, C., et. al, Sexting and Sexual Behavior in At-Risk Adolescents,American Academy of Pediatrics (2014),

<sup>2</sup> Madden, M., et al. Teens and Technology 2013, Pew Research Center on Internet and Technology, <http://www.pewinternet.org/2013/03/13/teens-and-technology-2013/> (nearly 40% of teenagers have smartphones).

<sup>3</sup>Cox Communications, Cyberbullying and Sexting Growing Dangers, at <http://www.cox.com/wcm/en/aboutus/datasheet/sandiego/internetsafety.pdf>

<sup>4</sup> RCW 9.68A.070. See also State v. Gray, 189 Wn.2d 334 (2017) (holding that a minor who sent a sexually explicit picture of himself could be charged with dealing in depictions of a minor).

<sup>5</sup> Laws of 1984, Ch. 262, s. 1 (stating the legislative intent to prevent “sexual exploitation and abuse of children . . . by those who seek commercial gain or personal gratification based on the exploitation of children.”); vi Patchin, J. What to do About Teen Sexting, Cyberbullying Research Center (April 25, 2017),

at <https://cyberbullying.org/what-to-do-about-teen-sexting>