

Colorado Sex Offender Management Board
Educational Paper on “Sexting” by Youth:
Balancing the Law, Teens, Technology, and Bad Choices
February 19, 2010

Background:

“Sexting” is the sending of nude or sexually suggestive pictures by electronic means (i.e. cell phone or other electronic devices) to another person. Sexcasting is the sending of live nude video via a webcam. The intent of the Sexual Exploitation of a Child law, which fits the facts of most of these “sexting” cases, was written to charge adult sexual offenders with the exploitation of a child victim. The law as written did not contemplate or anticipate young people engaging in “sexting” behavior with each other based upon the evolution of cell phone technology. With changing technology of camera cell phones and other technology, teenagers have started “sexting” and even though most teens know that “sexting” can have serious negative consequences, they do not think of it as a potential criminal offense.

Sending sexual images of minors, even of yourself, is against the law. Teens who exchange sexually explicit photos of themselves via cell phone or other electronic device can be and have been charged and adjudicated for Sexual Exploitation of a Child, which requires registration as a juvenile who has committed a sexual offense in Colorado. Law enforcement, prosecutors, judges, schools, and parents are trying to figure out what to do, given the enormous legal consequences of what may be described as normal, albeit thoughtless, adolescent behavior. Responses vary tremendously and provide a patch work of consequences that are inconsistent at best.

What are the facts?

A self-report survey compiled by the National Campaign to Prevent Teen and Unplanned Pregnancy and CosmoGirl.com (Magid, 2009) found some alarming statistics on the rate of “sexting” behavior:

- How many teens or young adults say they have sent/posted nude or semi-nude pictures or video of themselves?
 - 20% of all teens including
 - 22% of teen girls
 - 18% of teen boys
 - 11% of young teen girls (ages 13-16)
 - 33% of all young adults
- Of those who sent sexually explicit pictures,
 - 51% of teen girls cited “pressure from a guy”
 - 18% of teen boys cited “pressure from a girl”
- How many teens or young adults have sent/posted sexually suggestive emails or text messages?
 - 39% of all teens
 - 59% of young adults
- How do teens and young adults feel about sending/posting sexually suggestive content and possible “serious negative consequences”?
 - 75% of teens acknowledge the possibility
 - 71% of young adults acknowledge the possibility

Real Stories:

Teens across the country have been criminally charged for sending/posting nude or semi-nude pictures of themselves to another young person.

- October 2008 – Texas – an 8th grade student spent a night in jail after a coach found a nude picture on his cell phone that was sent by another student (CBS, 2009).
- January 2009 – Pennsylvania – 3 teenage girls were charged with creation of child pornography for “sexting” and 3 teenage boys were charged with possession of child pornography for receiving the images (Fox News, 2009).
- March 2009 - Florida- an 18-year-old boy was charged and convicted of sending child pornography after sending a naked photo of his 16-year-old girlfriend to friends and family members after an argument. He was sentenced to five years probation and was required to register as a sex offender (Feyerick, and Steffen, 2009).
- September 2009 – Florida –a 13-year old girl hanged herself after pictures she sent to her boyfriend were sent out to other peers, the second such reported case (an 18-year old girl from Ohio killed herself in July 2009 based on a similar incident) (Meacham, 2009; Bazelon, 2009).
- February 2010 - Colorado- several middle school students in Colorado Springs were suspended after distributing a text message photo of a nude 12-year-old girl. Charges could be filed, leading to students being adjudicated as juveniles who have committed sexual offenses (Landrock, 2010).

What some teens might think is a humorous or innocent act could land them in a juvenile detention facility and may even require them to register as a juvenile who has committed a sexual offense, with all of the associated negative impacts of being labeled, including impacts upon where they can live, go to school, work, and more.

What to do?

When handling these cases, law enforcement, prosecutors, judges, and supervising officials should attempt to distinguish between what could truly be characterized as a thoughtless and impulsive adolescent decision from more malicious and inappropriate behaviors. The Colorado Sex Offender Management Board (SOMB) encourages professionals addressing this behavior to consider alternatives to adjudication for the more normative “sexting” behavior. Provided there is no malicious intent, no use of intimidation to obtain the images, or sending the images to others in an attempt to embarrass or humiliate the person pictured in the “sexted” image, the use of non-judicial (deferred filing) education-based plan may be the most appropriate intervention to consider for law enforcement, prosecutors, and judges. Some thought should be given to whether the sexting behavior was for purposes of sexual gratification or for harassment and what measured response might be.

Each jurisdiction is encouraged to establish a protocol for addressing “sexting” behavior by young people. Participants in such a plan should include local law enforcement, the school district, the District Attorney’s Office, treatment providers, and supervising officials such as probation and diversion.

It is recommended that each jurisdiction establish criteria for classifying “sexting” behavior based on the belief that most of this behavior is normative for teens, is more of an appropriate boundary issue, and is not indicative of deviancy or sexual offending. As a result, a different type of intervention is necessary including a different classification from the sex crime classification system and a different model of education/treatment than that utilized for sexual offenders. The following factors may be considered in distinguishing between what is being characterized as “sexting” behavior as compared to a more malicious and potentially offending behavior:

- History of prior sexual offenses, whether charged or uncharged
- Use of force, threats, coercion, or illicit substances to obtain the photos
- History of prior non-sexual offense history
- Age, and power differences between the parties involved

For teens engaged in “sexting” behavior that does not involve concerns as noted above, the use of a deferred filing can allow for a period of education on appropriate boundaries with the goal of promoting healthy social interactions and self-image, laws related to such behavior, and the appropriate use of technology. Such educational classes can occur over a number of sessions in a structured curriculum. Community service can also be utilized to provide an accountability component. Upon successful completion of the terms of the deferred filing, the prosecution of the young person can be formally declined by the District Attorney’s Office.

For cases where the “sexting” behavior involves a more serious concern, as identified by the above-noted factors, a continuum of judicial alternatives may be considered including an informal adjustment (19-2-703 C.R.S.), a deferred adjudication (19-2-709 C.R.S.), or an adjudication or conviction (if filing on the juvenile as an adult).

Finally, it is recommended that communities, schools, law enforcement, and other interested groups sponsor educational forums for youth and their parents to teach about the concerns for engaging in “sexting” behavior and the potential legal consequences.

References:

- Bazon, E. (2009). Hope Witsell’s Sexting Suicide: Why Kids Self-Destruct with Cell Phones and Online. <http://www.slate.com>. December 8, 2009.
- CBS News. (2009). ‘Sexting’ Leading to Criminal Charges For Teens. January 15, 2009.
- Feyerick, D. and Steffen, S. (2009). ‘Sexting’ Lands Teen On Sex Offender List. <http://www.cnn.com/2009/CRIME/04/07/sexting.busts>.
- Fox News. (2009). 6 Pennsylvania Teens Charged With Cell Phone ‘Sexting’. January 13, 2009.
- Landrock, T. (2010). Middle School Students Suspended for ‘Sexting’. <http://www.krdo.com>. February 3, 2010.
- Magid, L. (2009). Study: 30 Percent of Youths Report Sexting. December 3, 2009.

Meacham, A. (2009). A Shattered Self-Image. <http://www.WiredSafety.org>. November 2, 2009.

Additional Resources:

Colorado Sex Offender Management Board

The combined efforts of the Sex Offender Management Board members are focused toward developing a basis for systematic management and treatment of adult sex offenders and juveniles who have committed sexual offenses. Additional information can be obtained at http://dcj.state.co.us/odvsom/sex_offender/index.html.

“I Love U Guys” Foundation is also engaged in an awareness campaign regarding “sexting” for youth and parents, and information can be accessed at www.iloveguys.com

www.internetsafety101.org

The Jefferson and Gilpin County District Attorney’s Office Child Sex Offender Internet Investigation (CSOII) Program combines strict enforcement with prevention through education. Through the CSOII, Internet safety training has been given to over 5,000 children. The program is valuable for parent groups as well, and has been modified for children and adults of all ages. www.districtattorney1.com

Safe2Tell provides young people with a way to report any threatening behaviors or activities endangering themselves or someone they know, in a way that keeps them safe and anonymous. 1-877-542-7233 or www.safe2tell.com

School Safety Resource Center’s mission is to collaboratively assist local schools and communities to create safe, positive and successful school environments for Colorado students in all pre-K-12 and higher education schools. <http://safeschools.state.co.us/>