2011

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AN INTEGRATED RESPONSE TO SEXTING:
UTILIZATION OF PARENTS AND SCHOOLS IN DETERRENCE

Sarah Theodore*

Internet pornography is one of the fastest growing businesses, generating enormous revenues in the process.\(^1\) Unfortunately, with the expanding market for Internet pornography, there has been a rise in the demand for child pornography.\(^2\) Between 1996 and 2007, over 9,000 arrests were made relating to online child pornography.\(^3\) Congress and all fifty states have outlawed the production and possession of child pornography.\(^4\) However a

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2. See generally National Pornography Statistics, BYU WOMEN’S SERVS., BRIGHAM YOUNG UNIV., https://wsr.byu.edu/content/national-pornography-statistics (last visited Feb. 9, 2011) (citing statistics that child pornography generates three billion dollars each year, and there are over a hundred thousand websites offering illegal child pornography images).


The Journal of Contemporary Health Law and Policy  Vol. XXVII:2

new question has arisen: What happens when the child voluntarily creates the pornography and disseminates it himself? In the United States, sixty-six percent of teenagers between the ages of eight and eighteen own their own cell phones, which is an explosion from thirty-nine percent five years ago. That same demographic is sending, on average, 118 text messages per day. While owning a cell phone and sending text messages are harmless activities unto themselves, juveniles that choose to explore their sexuality through the use of cell phones create an interesting problem. Among children between the ages of twelve and seventeen, four percent have sent sexually suggestive, nude or nearly nude images to someone else by text message, and fifteen percent of teens with a cell phone have received sexually suggestive, nude or nearly nude images.8

Juveniles' involvement in sexting is becoming an increasing problem that will likely worsen as usage of new technology amplifies. Despite statutory provisions allowing for the prosecution of parties involved in the voluntary creation of child pornography, states continue to experience difficulty in

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6. Id.


8. Id.

9. Rideout et al., supra note 5, at 2, 21 (comparing a 2004 report, showing that teenagers spend, on average, six and a half hours a day with media and a 2009 report showing that teenagers spend seven and a half hours a day with media. With multi-tasking, teenagers are packing ten hours of use into those seven and a half hours, and this occurs seven days a week. Currently, eighty-four percent of teenagers have Internet access at home, which is up from seventy-four percent in 1999.).
curbing this unfortunate trend. Legislatures are looking for new ways to prevent the creation of child pornography by juveniles without throwing the full weight of child pornography laws onto them. New and creative methods of enforcement and deterrence are necessary to stop the growing trend and properly address a delicate class of citizens.

This Note proposes a coordinated response between prosecutors, school officials, and parents in order to have a greater effect than prosecution alone on deterrence and punishment of juveniles involved in sexting. Part I discusses how sexting is defined and distinguishes sexting from traditional child pornography definitions. Part II explores the harms caused by child pornography and the consequences of juvenile participation in its production. Part III examines the gap in the current legislative responses and prosecution efforts. Part IV proposes a coordinated response involving prosecutors, parents, and schools to facilitate prevention and punishment of juvenile sexting.

I. WHAT IS SEXTING? IS SEXTING CHILD PORNOGRAPHY? WHO IS SEXTING?

A. The Definition of Sexting

“Sexting” is a term often used to describe a minor’s sending sexually explicit messages or taking sexually explicit pictures and transmitting them to their peers, but not a minor’s sending these messages or pictures to adults. Juveniles can play various roles in the creation and sending of a “sext.” there is the person in the picture, the person taking the picture, the person or people possessing the picture, and the person or people distributing the picture. Each role can be played by the same person or by a number of people. While sexting is not a legal term, courts have recognized sexting as the sending or posting of sexually suggestive text messages and


images, including semi-nude photographs, via cellular phones or over the
Internet. The courts' definition does not address the involvement of adults,
mostly likely because the facts in the cases heard have only involved
juveniles sending nude and semi-nude pictures of themselves to other
juveniles.\textsuperscript{13}

B. The Protection of Children

Congress enacted The Protection of Children Against Sexual Exploitation
Act (the Act) in 2008 to prohibit the visual depiction of a minor engaging in
"sexually explicit conduct," which is defined as "graphic sexual intercourse,
including genital-genital, oral-genital, anal-genital, between persons of the
same or opposite sex or lascivious simulated sexual intercourse where the
genitals, breast or pubic area of any person is exhibited."\textsuperscript{15} The statute also
includes "graphic or simulated bestiality, masturbation, or masochistic or
sadistic abuse, and the lascivious exhibition of the genitals or pubic area of
any person" in the definition of sexually explicit conduct.\textsuperscript{16} The statute
defines a visual depiction as including "undeveloped film and videotape,
data stored on computer disk or by electronic means which is capable of
conversion into a visual image and data which is capable of conversion into
a visual image that has been transmitted by any means, whether or not stored
in a permanent format."\textsuperscript{17}

\begin{itemize}
\item \textsuperscript{13} See Miller v. Mitchell, 598 F.3d 139, 143 (3d Cir. 2010); U.S. v. Vann, 620 F.3d
431, 451 (4th Cir. 2010); U.S. v. Broxmeyer, 616 F.3d 120, 123 (2d Cir. 2010).

\item \textsuperscript{14} Miller, 598 F.3d at 146. The district attorney gave the students the option of
participating in an educational class that would teach them about gender roles in society
rather than face criminal prosecution charges. The students and their families sued the
district attorney for violation of their constitutional rights when he threatened them with
prosecution for refusal to attend the class. The appeal concerned an injunction that was
granted by the trial court against the district attorney from prosecuting the teenagers for
the photos under the state's child pornography laws. The court did not address the
question of whether or not sexting would be considered pornography or protected first
amendment speech. The injunction was made permanent by the Third Circuit and likely
will have no further appeals. Id.


\item \textsuperscript{17} 18 U.S.C. § 2256 (5) (2008).
\end{itemize}
As written, the Act covers sexting between juveniles, regardless of whether the pictures were created or disseminated voluntarily. The Act prohibits producing and disseminating sexually explicit pictures of any minor, regardless of the intent behind the production or dissemination. The problem arises when juveniles engage in sexting, because the pictures meet the definition of sexually explicit under federal and state statutes. When a juvenile takes a sexually explicit picture and passes her photo to another juvenile, the juvenile has now created and disseminated child pornography under the federal statute; the juvenile receiving the picture is now also in possession of child pornography. However, the Act was not written with juvenile sexting in mind. Child pornography laws, including the Protection of Children Against Sexual Exploitation Act, were developed to deter adults from participating with or grooming children to create sexually explicit material. This Note will define “sexting” as juveniles’ creating sexually explicit material, including pictures and video, for dissemination to other juveniles, without the participation of adults.

C. Juveniles Technology Use and Sexting

The Kaiser Family Foundation conducted a survey of over 2,000 students in grades three through twelve and found that children are spending almost every moment possible using technology. They spend over seven and a half hours a day using a smart phone, computer, television or other device,

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Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished.

19. Id.


which does not include the hour and a half per day they spend text messaging, or the half-hour they spend talking on their cell phones. If one accounts for times when juveniles are using more than one device at a time, the number of hours increases to eleven and a half hours per day. Seventy-five percent of twelve- to seventeen-year-olds own a cell phone and the number of teens that own cell phones is steadily rising every year. Almost all teens who own cell phones send text messages, and fifty-four percent are considered daily texters. Of these daily texters, one-third send more than 100 texts per day, which totals 3,000 texts per month. Boys send fewer text messages than girls; on average, girls send eighty texts per day, while boys send only thirty texts per day. The frequency of text messaging between teenagers has surpassed all other forms of previous communication, including instant messaging, telephone calling, and social networking sites.

The problem is not that juveniles own cell phones or send texts. The problem is that juveniles are increasingly using their cell phones to send text messages with sexually explicit material to other juveniles. The following statistics shine light on the growing problem. Studies show that between four and twenty percent of juveniles have sent nude or semi-nude pictures of him or herself to another juvenile or posted the pictures online. Older

22. Id.

23. Id.


25. Id. at 2.

26. Id.

27. Id. at 3.

28. Id. at 9.

29. Id. at 4.

30. In a 2008 online survey of 653 teens, defined as age thirteen to nineteen, twenty percent of teens reported having sent a nude or semi-nude picture. Sex and Tech: Results from a Survey of Teens and Young Adults, THE NAT’L CAMPAIGN TO PREVENT TEEN & UNPLANNED PREGNANCY 1, 5 (2008), http://www.thenationalcampaign.org/SEXTECH/
teens are more likely to send and receive sexually explicit messages; eight percent of seventeen-year-olds with cell phones have sent sexually explicit pictures, and thirty percent have received nude or nearly nude images on their phones. Seventy-one percent of girls and sixty-seven percent of boys have sent sexually explicit content to their boyfriends or girlfriends, and twenty-one percent of girls and thirty-nine percent of boys have sent a sexually-explicit message to someone they hoped to date. Twenty percent of teens have received a sexually explicit message that was meant to be private and viewed only by the receiver, but instead forwarded it to other juveniles.

Juveniles, even those who have admitted to engaging in sexting, know that sexting can have serious legal consequences. Even though seventy-five percent of teens know that sending sexually explicit messages “can have serious negative consequences,” thirty-nine percent of teens have sent these messages anyway. Serious negative consequences include having the picture forwarded to other juveniles, causing humiliation, and possible legal implications, such as prosecution under child pornography laws.
Prosecution of juvenile sexters can result when a juvenile takes a sexual image of a minor and sends the image to another, as prohibited by current child pornography laws. Depending on the state or federal law, juvenile charges range from felony obscenity charges to creating and distributing child pornography. Still, juveniles who send sexually explicit messages feel that sexting is a safer alternative to actual sexual activity. They fail to understand the long-term consequences and serious health risks implicated when juveniles engage in sexting. One reason for juveniles’ naïve attitudes about sexting could be the fact that only a small percentage of juveniles that engage in sexting get caught. Through education and punishment involving parents and schools, deterrence can begin before juveniles become involved in the legal system. Juveniles will be able to understand the gravity of their decisions and the risk associated with participation in sexting.

II. IS SextING REALLY THAT HARMFUL?

Juveniles that engage in sexting face health and psychological consequences. While there is little research detailing the exact harms caused by juvenile sexting, research on pornography and sexualization shines light on what is in store for juveniles creating and participating in sexually explicit pictures and videos. This section explores the health and psychological consequences associated with juvenile participation in sexting.

A. Early Sexualization and Pornography

Technology is changing the way adolescents develop sexually. Technology offers adolescents an opportunity to partake in the “important task of exploring their sexual identity while avoiding the embarrassment of

37. Id.

38. Id.

39. One boy expressed in the poll that it’s not a big deal because “we are not having sex, we are sexting. It’s not against my religion or anything.” TEENS AND SextING, supra note 7, at 8.

40. Teen Online, supra note 30, at 39.

doing so face-to-face." Text messaging provides a platform for exploration of sexual feelings for teens, because texting is a skill teens utilize to socialize and communicate with their friends. However, juvenile exploration of technology has been coupled with an increased exposure of juveniles to pornography. Ninety percent of eight- to sixteen-year-olds has viewed pornography on the Internet. Eighty percent of fifteen- to seventeen-year-olds have had multiple experiences with hard-core pornography. The juvenile mantra "that-would-never-happen-to-me" leads youths to believe that sexual exploration through technology carries few consequences because they lack the life experience to realize the long-term effects. In recent years, the use of technology by teens has brought about the phenomenon of sexting.

Shy, lonely or nervous teens can use sexting as a comfortable way to explore these feelings. However, sexting can lead to early sexualization of juveniles, resulting in lower self-esteem and other mental health problems, especially in young girls. The American Psychological Association


43. Katzman, supra note 41.

44. The average age of first time exposure to pornography is eleven years old, and one in seven teenagers have been solicited online for sex. Ropeleto, supra note 1, at 7-8.

45. Ropeleto, supra note 1, at 7. In a study of six hundred American males and females of junior high school age and above, it was found that ninety-one percent of the males and eighty-two percent of the females admitted having been exposed to X-rated, hard-core pornography. Sixty-six percent of the males and forty percent of the females reported wanting to try out some of the sexual behaviors they had witnessed. Among high school aged juveniles, thirty-one percent of the males and eighteen percent of the females admitted actually doing some of the things they had seen in the pornography within a few days after exposure. Victor B. Cline, Pornography's Effects on Adults and Children (2002), http://stop.org.za/Victor%20Cline's%20Study.pdf.


47. Katzman, supra note 41.

reviewed more than three hundred studies to conclude that when girls are exposed to sexualized images, lyrics, fashion, and role models, they consider and treat their own bodies as sexual objects. The APA study found that sexualization and objectification of girls can undermine their confidence and comfort with their own body, and may lead to emotional and self-image problems. Early sexualization is also linked to mental health problems, including eating disorders, low self-esteem and depression.

Pornography alters the viewer's mental, emotional, and social attributes. A person exposed to pornography risks "developing sexually deviant tendencies, committing sexual offenses, experiencing difficulties in one's relationships, and accepting the rape myth." When children and adolescents participate in the production of pornography, the effects of the participation can be adverse and enduring. Exposure to pornography causes the user to believe uncommon sexual practices are actually common, and exposure to violent pornography increases punitive behavior towards sexual partners. Teenager's brains are like an adult brain with fewer miles, as the brain develops, synapses are growing rapidly, but many remain unconnected. Juveniles can easily be influenced by their environments due

49. Id.

50. Id.

51. Id.

52. Paul C. Perrin et al., Health education's role in framing pornography as a public health issue: local and national strategies with international implications, 15 PROMOTION & EDUC. 11, 12 (2008), http://ped.sagepub.com/content/15/1/11.full.pdf+ html.


54. Perrin et al., supra note 52, at 12.

55. Id. at 12-13.

to the rapid growth and development of their young brains.\footnote{Id.} The psychological effects of viewing pornography should not be disregarded simply because juveniles voluntarily create the sexually explicit material.

\section*{B. Dating Violence and Suicide}

Sexting a romantic partner may appear to be a safe way to explore sexuality, but there has been an increase in juveniles' using cell phones to threaten their romantic partners. One in ten teenagers have received a threat from a romantic partner on their cell phone.\footnote{Id.} Threats may be in the form of an ultimatum, requesting a partner to send a nude or semi-nude picture or the significant other will end the relationship.\footnote{Id.} The threats and the pressure from significant others lead juveniles to send sexually explicit material that, normally, they would not send.\footnote{Id.} If a juvenile does send sexually explicit material to a partner, the partner can easily release the photo to friends, post it online, or threaten to do either.\footnote{Id.}

Females are more likely than males to feel the pressure to sext their partners.\footnote{Chen, supra note 58.} This discrepancy is disturbing in light of the recent rise in violence within dating relationships.\footnote{See Love is Not Abuse, LIZ CLAIBORNE, INC. (2011), http://www.lizclaiborneinc.com/web/guest/our_program_lina; see also Chen, supra note 58.} The National Center for Victims of Crime reports that one in five high school girls have been abused by a boyfriend, and one in three teen dating relationships experiences "physical

\footnote{57. Id.}

\footnote{59. Id.}
\footnote{60. Fifty-one percent of teen girls say that the reason they sent a sexually explicit message or image was because of pressure from a teen boy. Twenty-four percent of teen boys report pressure from friends as the reason they sent a sexually explicit message or picture. Sex and Tech, supra note 30.

\footnote{61. Chen, supra note 58.

\footnote{62. Chen, supra note 58. Fifty-one percent of juvenile girls felt pressured by a juvenile boy to send a sexually explicit message or image, while only eighteen percent of juvenile boys felt pressured by a girl. Id.

\footnote{63. See Love is Not Abuse, LIZ CLAIBORNE, INC. (2011), http://www.lizclaiborneinc.com/web/guest/our_program_lina; see also Chen, supra note 58.}
aggression." The Love is Not Abuse Program notes that, with the increased use of technology, sexting has become an increasingly popular method of abuse for teens in dating relationships. The use of cell phones and sexting between juveniles can have grave effects on teenagers.

While increases in dating violence amongst teenagers is only one problem, other problems have arisen, such as teenagers taking their own lives. In Ohio, a high school girl sent a nude picture of herself in a text message to her boyfriend, who in turn forwarded it to hundreds of students in seven different local high schools. She faced a great deal of bullying and taunting, and eventually hanged herself. Unfortunately, this is not the only story of sexting that has led to suicide. Other juveniles have committed suicide after they sent a sext to someone they trusted, but who later shared it with other juveniles the original creator never intended. The Centers for Disease Control (CDC) reports that suicide is the third leading cause of death for youth between the ages of ten and twenty-four, resulting


65. Love is Not Abuse is an initiative by Liz Claiborne, Inc. that addresses partner abuse and seeks to reduce teen dating abuse and violence. Love is Not Abuse, supra note 63.


67. Id.


69. Jessica Logan had sent her boyfriend a nude picture and after they broke up he passed it along to other classmates. The taunting and bullying became so unbearable that Jessica hanged herself. Mike Celizic, Her Teen Committed Suicide Over ‘Sexting’, TODAY.COM (Mar. 6, 2009), http://today.msnbc.msn.com/id/29546030/ns/today-parenting/.
in 4500 deaths every year. While little research exists on the direct consequences of sexting on a juvenile’s health, the alarming effects of children’s viewing and producing pornography may help to understand the recent suicides and dating violence occurring as a product of sexting. Sexting that results in suicide is usually the product of a sext being forwarded beyond the intended receiver to others who then harass and bully the sexter, leading the creator of the sext to feel humiliated. However, once the picture has been sent, the sender can do little to stop the picture from being circulated. The alarming result of sexting’s possibility of leading to suicide highlights the need for more research on the health effects of sexting on juveniles.

C. New Technology and New Dangers

Juvenile sexting typically happens within the context of a teen relationship or in hopes of beginning a relationship. The typical sexting scenarios involve messages between romantic partners, messages intended for romantic partners but shared with others outside the relationship, or messages between a juvenile and a peer with whom he or she hopes to start a relationship. However, some juveniles are engaging in sexting with people they meet online. The National Campaign to Prevent Teen and Unplanned Pregnancy survey reported that fifteen percent of teens engaged in sexting with people they only knew online and have never met in person. Similarly, the MTV-Associated Press survey on digital abuse reported that twenty-nine percent of those who have sent sexts sent them to people they

70. Youth Suicide, CTRS. FOR DISEASE CONTROL, http://www.cdc.gov/ncipc/dvp/Suicide/youthsuicide.htm (last viewed Feb. 7, 2011). Of students in grades nine through twelve, fifteen percent reported “seriously considering suicide.” Id.

71. Juveniles often engage in sexting, expecting the image to remain private; however, when the relationship between the sender and receiver deteriorates the private message may be forwarded throughout the juvenile’s school. Lisa E. Soronen, et al., Sexting at School: Lessons Learned the Hard Way, NAT’L SCH. BD ASS’N’S COUNCIL OF SCH. ATTORNEYS (Feb. 2010), http://www.oakland.k12.mi.us/LinkClick.aspx?link=SafeSchools%2FSexting+at+School+Lessons+Learned+the+Hard+Way.pdf&tabid=656&mid=3640.

72. TEENS AND SEXTING, supra note 7, at 6-8.

73. Id.

74. Sex and Tech, supra note 30, at 2.
only knew online.\textsuperscript{75} Once an image is sent, it is in the possession of individuals with whom the juveniles are not familiar, and unfortunately, the juveniles have no control over the dissemination of the photo.\textsuperscript{76} Juveniles engaging in sexting with people that they meet online can result in dissemination beyond their high school and friends. With the use of the internet and social networking sites, the sexually explicit picture has the potential to be placed on the internet and circulated repeatedly without the juvenile ever knowing.

Juveniles rely on technology to fuel their social lives and relationships. Because technology perpetually evolves, mechanisms need to be in place to respond to and to reduce the harms that technology can cause to minors. The problem of juvenile misuse of cell phones is here to stay.\textsuperscript{77} Prosecution of juveniles engaging in sexting is only a piece of the puzzle in order to stop the growing trend. Current approaches to handling the production and dissemination of juvenile-created sexually explicit material lack the coordination and cooperation of the many different influences in children’s lives, and therefore, fail to combat the problem effectively. The involvement of parents and schools, as well as the government, is necessary to deter juveniles from engaging in the creation and dissemination of sexually explicit material.

\section*{III. CURRENT RESPONSE TO SEXTING CASES}

Juvenile creation of pornography and distribution to other minors is a relatively new phenomenon. Because it is so new, courts and legislatures have created diverse methods for responding to such cases. This section

\textsuperscript{75} \textit{Id.; Knowledge Networks, The MTV-AssOCIATED PRESS Poll: Digital Abuse Survey} 14 (Sept. 23, 2009), http://www.athinline.org/MTV-AP_Digital_Abuse_Study_Full.pdf.

\textsuperscript{76} Once a teen has sent a sext message it can be disseminated beyond the way the teenage creator intended. Lois M. Collins, \textit{Sexting Often Leadings to Heartbreak, Humiliation}, \textit{Deseret News} (Aug. 21, 2010), http://www.deseretnews.com/article/700059135/Sexting-often-leads-to-heartbreak-humiliation.html. Twenty-five percent of teen girls and thirty-three percent of teen boys have received a nude or semi nude picture shared with them that was intended for someone else. \textit{Sex and Tech, supra} note 30, at 3.

\textsuperscript{77} Sexting is not "some passing teenage fad[;]" society, including parents, schools, and the legal system, needs to learn to deal with it and not ignore the growing trend. Clay Calvert, \textit{Sex, Cell Phones, Privacy, and the First Amendment: When Children Become Child Pornographers and the Lolita Effect Undermines the Law}, 18 \textit{Commlaw Conspectus} 1, 60 (2009).
explores the current punishments available to prosecutors and how states are drafting new legislation to deter juveniles from participating in sexting.

A. Prosecution of Juvenile Sexters

Creation and dissemination of child pornography is a serious crime with severe repercussions for offenders.\(^{78}\) In order to be charged for child pornography, the federal statute requires that the creator "employs, uses, persuades, induces, entices, or coerces any minor to engage in, or . . . has a minor assist any other person to engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct."\(^{79}\) However, juveniles are typically less culpable and less aware of the consequences of their actions.\(^{80}\) The Supreme Court has recognized that juveniles do not belong in the adult criminal justice system, and that rehabilitation and prevention efforts may enable them to become productive citizens.\(^{81}\) Federal, state and local governments have worked to pass legislation and prosecution plans in order to deter juveniles from participating in sexting, however, differences in approaches remain.\(^{82}\)

Under the current child pornography statute, sexting would carry a significant penalty if a juvenile were caught producing, distributing,

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80. In \textit{Thompson v. Oklahoma}, the Supreme Court acknowledged that:

Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.


82. \textit{See infra} text accompanying notes 98-116.
receiving, or possessing a sexually explicit image of a peer because the image contains a minor "engaging in sexually explicit conduct for the purpose of producing [a] visual depiction." Federal law does not provide an exception if a minor is the creator, possessor, or distributor, or if the minor is voluntarily or willingly engaging in the creation, possession, or dissemination of the visual depiction. Federal law requires a mandatory five to fifteen-year minimum sentence for producing, transporting or receiving child pornography images. Sentences for possession can also be lengthy, and offenders are usually required to register as sex offenders and pay restitution to victims.

The struggle by prosecutors and legislatures over how to handle children's voluntary creation of pornography is widespread. State laws in some states leave prosecutors with no alternatives to punishment but to charge such juveniles under existing child pornography statutes that carry not only strict criminal sentences, but also negative stigma. State child pornography statutes generally follow the federal statute in prohibiting the knowing production, receipt, distribution, and possession of sexually explicit images or videos of minors. Under current federal and state statutes, juveniles caught sexting will usually meet the definition for child pornography

83. § 2251(a).


85. Id.


90. See e.g., id.
charges. However, prosecution for sexting is only appropriate in cases involving coercion or lack of consent. Prosecution of sexting is thus a valuable resource for prosecutors in limited circumstances. However, prosecutors must exercise discretion in charging juveniles and utilize parents and schools to help in deterrence.

Prosecutors are allowed to exercise their discretion when choosing cases in which to pursue charges. Prosecutorial discretion allows prosecutors to consider relevant factors and to choose whether to prosecute, in this case, juvenile offenders, or to send them to alternative programs. Prosecutors can look at factors such as "the cause behind the production (coercion); lack of amenability to rehabilitation; likelihood of rehabilitative success (and


92. Material created without the juvenile’s consent should have mandatory prosecution and harsh consequences. The lack of consent in creation of the materials places these situations perfectly in line with existing child pornography laws. Congress passed the Protection of Children Against Sexual Exploitation Act of 1988 (codified as amended in 18 U.S.C. § 2251) stating that:

[A]ny person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in....with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing and visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished.

93. Prosecutorial discretion allows prosecutors to choose from different available options when prosecuting a criminal case. BLACKS LAW DICTIONARY 534 (9th ed. 2009). The NCMEC does not believe there is one way of handling all sexting cases. Policy Statement, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN (Sept. 21, 2009), http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en_US&PageId=4130. Instead, it urges consideration of different factors, including whether the photos violate state or federal law, were the photos self-produced, and whether there was pressure or duress to produce the photo. Id.

perhaps the frequency of exploitation), in deciding if a case should be prosecuted. For example, juveniles that have repeatedly been caught engaging in sexting may not be strong candidates for a lesser sentence and rehabilitation may not be the strongest option. Prosecution is a valuable resource for deterring the most serious offenders; however, it is only part of the effort to deter and punish juveniles for sexting. While prosecution may be appropriate in cases involving coercion, widespread dissemination, or abuse, prosecution alone fails to fully address the consequences that arise for juveniles caught sexting. States are currently coming up with a wide array of options to handle juveniles and sexting within their states; however, most states fail to recognize the importance of parents and schools in deterring juveniles from sexting.

B. New State Sexting Legislation

Since sexting is a relatively new phenomenon, states are just starting to implement effective legislation designed to punish and deter juveniles caught sexting. By passing such legislation, states recognize that sexting is a new problem and demonstrate willingness to find ways to protect juveniles from the harsh consequences of both participating in sexting and being charged under current child pornography laws. A continuum of laws and legislation varying in degrees of strictness and completeness exists among the several states. For instance, in Virginia it is a felony, regardless of age, to produce, possess or share lewd or explicit pictures of minors. Thus, Virginia holds a child, regardless of his age or his role as creator, possessor or distributor of the explicit material, liable for a felony if he is a party to sexting. Indeed, as recently as May 2010, five high-school students in Rocky Mount, Virginia were each charged with felony counts of felony

95. Id. at 550.

96. Other factors that support prosecution may include the circumstances around the exploitation, whether other juveniles were involved, what role the specific juvenile played in the exploitation, and the level of severity of the content. Id.

97. Id.

98. The National Conference of State Legislatures compiles and updates a list of legislation involving sexting for each of the states. 2010 Legislation, supra note 11.


100. The Virginia Code contains no provision for differentiating between juveniles and adults for the purposes of their child pornography laws. § 18.2-374.1 (2007).
child pornography for sexting. Virginia allows prosecutorial discretion for charging juveniles who engage in sexting, but with this discretion comes the power to charge to the full force of the law.

The Ohio legislature is currently considering a bill that would prohibit a minor from recklessly creating, receiving, exchanging, sending or possessing a photograph or other material depicting a minor in a state of nudity by use of a telecommunications device. This legislation would create a new crime, separate from the child pornography statutes. The bill does not differentiate because the juvenile’s sending, possessing, creating, or exchanging photographs or videos of themselves in a state of nudity. Under the bill, offenders caught with sexually explicit material would be guilty of “illegal use of a telecommunications device involving a minor in a state of nudity,” which is a delinquent act charged as a “misdemeanor of the first degree if it could be committed as an adult.” The creation of a new crime would protect juveniles by limiting jurisdiction to juvenile courts and limiting the consequences of formal charges by charging the offense as a misdemeanor. Legislation that focuses on keeping juveniles in juvenile


102. In Henry County, a commonwealth attorney stated that he often charges these cases as misdemeanor obscenity. Id.

103. Five Virginia teens were charged with felonies stemming from a juvenile female using a juvenile male’s phone to take sexually explicit pictures. The male then sent the photo to other students. Five Va. Teens Charged With Felonies in Sexting Case, ROANOKE TIMES (May 20, 2010), http://hamptonroads.com/2010/05/five-va-teens-charged-felonies-sexting-case.

104. H.B 132, 128th Gen. Assem., 2009-10 Reg. Sess. § 2907.324(A) (Ohio 2010). Another Ohio House Bill makes it a crime to knowingly exchange, send, post or possess a photograph, video, or other material. Id. at § 2907.324(A)(1)(b).

105. Id. at § 2907.324(E). Any minor caught in violation of § 2907.324(A)(1) is guilty of sexting. Id. The delinquent act is a misdemeanor in the third degree for the first violation and a misdemeanor in the first degree for any subsequent offense. Id.

106. Id. at § 2907.324(C).

107. Id.

court protects juveniles from the harsh penalties of current child pornography laws while still holding juveniles accountable for their actions. Legislation like Ohio’s bill will be much more effective if prosecutors and lawmakers utilize parents and schools in the prevention efforts.

Nebraska’s law makes it unlawful to “knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.” Nebraska provides an affirmative defense for juveniles caught engaging in sexting if the creator is under eighteen at the time of the creation of the sexually explicit image and the image contains no other person except the creator. Nebraska also makes it illegal for a person to “knowingly make, purchase, rent, sell, deliver, distribute, display for sale, advertise, trade or provide to any person” any sexually explicit visual depiction of a child. Nebraska allows the affirmative defense if the defendant was less than eighteen years old, the visual depiction only contains the defendant, the defendant had a reasonable belief at the time the sexually explicit image was sent that it was being sent to a willing recipient, and the recipient was at least fifteen years of age at the time. Juveniles caught violating the Nebraska statute will be charged with a class III felony if they are under the age of nineteen years old.

The Nebraska statute makes important steps towards effective deterrence by holding juveniles accountable for sexting, while providing juveniles with affirmative defenses to avoid the harsh punishment. The Nebraska law also prohibits a parent, stepparent, legal guardian, or any person with custody of the child to consent to the participation of visual depictions of sexually explicit conduct, if the parent knew the content that was being displayed. By holding parents accountable, Nebraska recognizes the role parents play in effective punishment and deterrence of juvenile sexting.

States need to find permanent and effective ways to deter juveniles from creating and distributing sexually explicit images and videos to prevent the


110. § 28-1463.03(5).

111. § 28-1463.03(2).

112. § 28-1463.03(6).

113. § 28-1463.04(1).

114. § 28-1463.03(4). It is a class D felony for the parent if he or she is found in violation of Section 28-1463.03(4). Neb. Rev. Stat. Ann. § 28-1463.04 (2) (2009).
possible long-term health and social harms that sexting may cause. It is not reasonable to believe that legal measures alone will stop juveniles from creating sexually explicit material. While the law can be a powerful tool against serious offenders that coerce juveniles into participating in sexting, the law fails to address the fact that most juveniles who participate in sexting do so voluntarily.\textsuperscript{115} States have the constitutional authority to regulate the health and safety of their citizens and, accordingly, have the discretion to pass regulations and laws to protect the welfare of their citizens.\textsuperscript{116} States should use their power to protect health and safety to create new and comprehensive legislation that addresses sexting and employs prosecutors, parents and schools in their deterrence efforts. States have begun to use their constitutional “police powers” to address juvenile sexting, but more coordination with other resources would better address the problem. Creating new crimes and providing affirmative defenses is a step in the right direction; however, effective legislation should include the utilization of all available resources, particularly parents and schools.

IV. Creating a Coordinated Response – Utilizing Parents and Schools for Effective Deterrence and Punishment

Efforts of prosecutors and legislatures alone are not enough to thoroughly deter juveniles from engaging in sexting. While prosecution is appropriate in cases of coercion or abuse, prosecution will not effectively reverse the increase in juvenile sexting. New legislation efforts are important in addressing the gap in current child pornography statutes in order to ensure that juveniles are punished appropriately. However, prosecution efforts and legislation reform need to partner with the efforts of parents and schools. By combining education of parents and students with utilization of school and prosecution resources, deterrence and punishment of sexting can be more effective.

A. Effective Utilization of Parents

Parents share many of the concerns of state legislatures and prosecutors in regards to the creation and dissemination of child pornography by juveniles. Parents are just as concerned with online solicitation of their children by

\textsuperscript{115} Teens and Sexting, supra note 7, at 8.

\textsuperscript{116} In Mayor of the City of New York v. Miln., the Court ruled that regulations regarding the health and safety of state citizens were a valid police power. 36 U.S. 102, 128 (1837).
sexual predators as they are about drunk driving or drug experimentation.\footnote{McAfee, Inc. Research Reveals Mothers Rate Cyber Dangers as High as Drunk Driving or Experimenting With Drugs, McAfee, Inc. (Oct. 22, 2008), http://investor.mcafee.com/releasedetail.cfm?releaseid=348684.} However, forty-eight percent of mothers admitted they do not always know what their children do online.\footnote{Id.} Parents may be concerned for their children’s online safety, but lack of understanding of the risks and consequences may prevent parents from becoming involved and thereby effectively addressing the problem.

The American Association of School Administrators released an article stating that the first thing parents and educators can do to address juvenile participation in sexting is “undertake serious, comprehensive Internet safety education for youth.”\footnote{Id.} Parents often struggle to stay current on cyber and cell phone fads, while teenagers look for new ways to maintain their privacy. The first step in effective prevention is to educate parents on the current technological trends and activities in which their children are involved.\footnote{Tips for Parents on Sexting & Teens, The Best Tech Safety Policy is Education and Trust, Teen Lures Prevention.com, http://www.childluresprevention.com/pdf/Sexting-Parents.pdf (last visited Jan. 30, 2011).} The National Center for Missing and Exploited Children (NCMEC) provides parents with online tools, such as educational materials and answers to questions about internet safety, to help parents monitor and understand their children’s internet usage.\footnote{NetSmartz411 is an online resource designed for parents to learn about internet safety. NetSmartz411, THE NAT’L CTR FOR MISSING & EXPLOITED CHILDREN, http://www.netsmartz411.org (last visited Feb. 9, 2011).} Other resources, designed to help parents, can be a helpful tool in efforts to keep their children from engaging in sexually explicit behavior or text messaging.\footnote{Safety Web provides various online resources for parents, and the “Sexting 101” section discusses the scope of the problem and how to recognize if it has become a problem for your teen. Sexting 101 – Guide for Parents, SAFETY WEB (Feb. 14, 2010), http://www.safetyweb.com/prevent-teens-sexting. There is also advice on what to do if a parent catches a teen sexting. Id. Thatsnocool.com provides information directly to teens about the use of the Internet and what is appropriate within dating relationships. FAMILY VIOLENCE PREVENTION FUND, U.S. DEP’T OF JUSTICE OFFICE ON VIOLENCE AGAINST WOMEN, & THE ADVER. COUNCIL, http://www.thatsnocool.com/About.aspx.}
Parents should also become informed on the implications sexting has for their children. By understanding the consequences of sexting, parents can have a more informed conversation with their children about sexting behavior. Parents can use the available online guides\footnote{There are many online guides to help parents understand and address sexting. The Cyberbullying Research Center compiled a fact sheet to give parents a basic understanding of sexting and the varied responses. Sameer Hinduja & Justin W. Patchin, Sexting: A Brief Guide for Parents and Educators, CYBERBULLYING RESEARCH CTR., http://www.cyberbullying.us/Sexting_Fact_Sheet.pdf (last viewed Fed. 9, 2011). Safety Web provides parents with more information including statistics, harmful effects of sexting and guides on what to do if children are found sexting. Sexting 101- Guide for Parents, supra note 122. Other helpful resources include an online guide for parents to decode slang words used on the internet and in text messages. See Internet Slang Dictionary & Translator, NoSLANG.COM, http://www.noslang.com/articles.php. (last viewed Feb. 2011).} to learn about the technology that is becoming increasingly central to their children’s lives. With enough information and facts about sexting and its consequences, parents can become strong deterrents for juveniles engaging in sexting. Discussing the responsibilities involved with owning and using a cell phone can help establish reasonable boundaries for the juvenile cell phone owner. After setting the standards, parents must adhere to them and follow infractions with punishments.\footnote{Parents should monitor their children’s use and set rules. If children are found not following or violating the rules, consequences could include removing the picture or video capabilities on cell phones. Ernie Allen, “Sexting”: A New Challenge for Educators and Families, AM. ASS’N FOR SCHOOL ADMINS. (Oct. 2009), http://www.aasa.org/content.aspx?id=7672& terms=sexting.}

Parenting can be considered a difficult task. Juveniles’ seeking privacy and independence creates a struggle for a parent who wishes to stay involved in his child’s daily activities.\footnote{As a teen develops, “the reach for independence frequently leads to a teen resisting rules rather than complying with them.” Independence and Rebellion, MASS. GENERAL HOSP. FOR CHILDREN, http://www.massgeneral.org/children/adolescenthealth/articles/aa_independence_and_rebellion.aspx. (last visited Mar. 26, 2010). This resistance is a normal part of a teen’s evolution toward independence. Id.} However, parents spend the most time with their children and should know their children the best. Unfortunately, parents have been left out of the punishment and deterrence of juveniles...
Parents need to become a part of effective state efforts to deter juvenile sexting. By addressing parents' concerns and educating parents on the harms of sexting and what they can do to address the issue, parents can serve as the front lines of deterring juveniles from engaging in sexting.\(^{127}\)

If parents become educated on the technology and risks associated with juveniles participating in sexting, they may feel more comfortable monitoring their children's cell phone use and talking with their child about sexting. Parents that monitor or limit their children's text messaging have children that report sending fewer sexually explicit messages or nude images.\(^{128}\) Parents can ensure that their juveniles do not find themselves in situations where sending sexually explicit messages can end in jail time. The Apple Company recently won a patent that will give parents the ability to block their children's racy text messages.\(^{129}\) The blocker enabled on Apple's iPhone\(^{TM}\) will allow parents to control the types of messages their children are sending and receiving by detailing certain "forbidden content."\(^{130}\) The "forbidden content," such as sexually explicit language or images, would be removed before the message is sent from or received on the blocked phone.\(^{131}\) Parents could use this Apple feature to protect their

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127. NCMEC believes that parents must become more involved and aware in their child's lives so they can set limits on juvenile behavior. Ernie Allen, *supra* note 124. Ernie Allen is the President and CEO of the NCMEC. *Id.*

128. Sixty-four percent of parents look at the contents of their child's cell phone, and sixty-two percent have taken away their child's cell phone as punishment. *Teens and Mobile Phones*, *supra* note 24, at 3. Forty-six percent of parents limit the number of minutes their children may talk on the phone and fifty-two percent limited the times of day they may use their phone. *Id.* Forty-eight percent of parents use their child's cell phone to monitor their child's location. *Id.* at 4. Parents are more likely to report monitoring twelve to thirteen-year-old girls. *Id.*


131. *Id.*
An Integrated Response to Sexting

children from sending or receiving explicit messages; however, the best way to deter a child from sexting is to educate the child on the harms and consequences associated with the behavior. If parents are able to stress to their children the dangers of engaging in sexting, schools and prosecutors will have a much easier job deterring behavior and enforcing effective punishments.

B. Schools: Using Education and Regulation to End Juvenile Sexting

Students spend the majority of their childhood and adolescence in school. Between the actual school day and extracurricular activities, students regularly interact with school officials and spend significant time in school buildings. From the ages of five to eighteen years old, school plays one of the most influential roles in a child’s life. Therefore, schools have a critical role in the protection of students, specifically in regards to preventing the production and dissemination of self-created pornography. Schools first should educate students about the consequences and dangers of creating this material, and then provide punishments that facilitate deterrence.

1. Teaching the Students About the Harms and Consequences of Sexting

Education at school goes beyond the curriculum taught in the classroom. Schools provide a student’s first lessons on what it means to be a citizen. Educating our youth “is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order.” Schools and teachers demonstrate the appropriate way for students to express themselves through their actions. As such, schools should educate their students about the legal implications and psychological

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132. American juveniles spend 32.5 hours a week in school and the number has risen 7.5 hours in the last 20 years. Diane Swanbrow, U.S. Children and Teens Spend More Time on Academics, UNIV. RECORD ONLINE, UNIV. OF MICH. (Dec. 6, 2004), http://www.ur.umich.edu/0405/Dec06_04/20.shtml.

133. Bethel School Dist. v. Fraser, 478 U.S. 675, 683 (1986). School officials and older students at school are charged with setting examples and demonstrating the “appropriate form of civil discourse and political expression by their conduct and deportment in and out of class.” Id.

134. Id. School officials and older students at school are charged with setting examples and demonstrating the “appropriate form of civil discourse and political expression by their conduct and deportment in and out of class.” Id.

135. Id.
dangers of producing sexually explicit images and videos and disseminating them to a volatile pool of peers.

A relatively easy place for schools to start the discussion of sexting with their students is during health education classes. The Youth Online Safety Working Group released a report on information gathered from high school students discussing the prevention and punishment of juvenile sexting. According to the report, juveniles want schools to discuss sexting and provide them with education on this issue. The youths expressed that education about sexting should begin as early as middle school. They also reported that discussions with peers or during health classes would be appropriate forums to discuss sexting. As early as middle school, health classes should address the effects and consequences of sexting. Health education already explores adolescent sexual development, and sexting should become a part of that discussion. Discussions about juveniles and sexting should include the harms and consequences and can incorporate other issues facing juveniles and their technology use. These classes should include proactive methods to prevent students from becoming victims of sexting and introduce students to available resources for help. Health educators should be trained to answer questions and talk with students about sexting. There should be an emphasis on providing students with enough

136. Information was compiled from a group of high school students in Virginia. The group may not be representative of all juveniles; however, their discussion provides anecdotal evidence useful to the discussion of educating juveniles on the dangers of sexting. Interdisciplinary Response to Youths Sexting, Recommendations from the Youth Online Safety Working Group, NAT'L CTR FOR MISSING & EXPLOITED CHILDREN 2, http://ncmec.vo.llnwd.net/o15/downloads/special/InterRespYouthSexting.pdf (last visited Feb. 9, 2011).

137. Id.

138. Id.

139. Id.

140. Members of the group conducted for the survey expressed that they would like to be taught about sexting as early as middle school and suggested discussions occur in peer-to-peer programs, health classes, or discussions with their parents. Id.

141. Wherever possible, schools should utilize a variety of methods to educate their students about sexting. Schools should consider partnering with other organizations and providing training and awareness outreach for students on sexting, as well as bullying, cyberbullying, and computer/internet safety. Sexting, AM. ASS'N FOR SCHOOL ADMINS. http://www.aasa.org/content.aspx?id=3390 (last visited Feb. 9, 2011).
information to allow them to understand the full legal and psychological consequences of their actions.\textsuperscript{142} Students need to have a mandatory class, such as a health education class, in which they can discuss the issues that currently face them as teenagers. These classes would bring important and sensitive topics, like sexting, to the forefront and would provide students with necessary information for the prevention of sexting. Additionally, the classes would enable educators to learn about other areas where schools can be helpful in educating students on safe usage of technology.

There are many other ways in which educators can play a role in prevention. Schools can host roundtable discussions, where students could voice their opinions and concerns. These discussions would allow educators to learn what students think about sexting, as well as allow students to have meaningful discussions with peers about sexting. Educators could also host similar programs and roundtables for parents, which would give parents an outlet to express their concerns and would allow schools to teach parents about technology they may not understand. Teaching parents about sexting and its health and legal consequences would empower parents to have more meaningful discussions with their children about sexting, thereby helping to deter their children from engaging in sexting behavior. Creative lesson plans could be used in required courses, such as history or computer education, to discuss new and upcoming “hot topics” for students. For example, a democracy class could use a discussion of legislation to discuss current child pornography and sexting laws. Similarly, a technology class can discuss the permanency of placing information on the Internet. Integrating information on sexting into seemingly unrelated courses allows students to relate better to the subject matter taught in class and introduces the topics in such a way that students would consider them without directly addressing them. Avoiding the discomfort that could arise from focusing directly on sexting and similar topics will help to keep the dialogue about sexting going between juveniles and educators.

2. Creating Strong Cell Phone Use Policies and Punishing Students Engaging in Sexting

Twelve percent of students say they are allowed to have their phone at school anytime.\textsuperscript{143} Twenty-four percent of students attend schools that ban cell phones; however, sixty-five percent of those students still bring their


\textsuperscript{143} Teens and Mobile Phones, supra note 24, at 4.
cell phones to school everyday.\footnote{Id.} Fifty-eight percent of students at schools that ban cell phones have sent a text message during class.\footnote{Id.} Schools have policies in place that regulate cell phone use at school, but these policies do not seem to be deterring or punishing student cell phone use in school.\footnote{See Cell Phones and Text Messaging in Schools, NAT’L SCH. SAFETY & SEC., http://www.schoolsecurity.org/trends/cell Phones.html (last visited Feb. 9, 2011).} While education of students on the consequences of sexting is an important step in deterrence, a strictly-enforced policy against cell phones at school, especially sending or receiving sexually explicit messages, needs to be developed and implemented in all schools.

The Supreme Court has emphasized the need for states and school officials to have the power to proscribe rules and control conduct in schools.\footnote{See Epperson v. Arkansas, 393 U.S. 97, 104 (1968); Meyer v. Nebraska, 262 U.S. 390, 402 (1923).} The power to ensure safe and effective learning environments requires schools to limit the constitutional rights of students.\footnote{The Court recognized that “maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.” New Jersey v. T.L.O., 469 U.S. 325, 340 (1985).} For example, the Court has held that students’ First Amendment rights differ from adults’ when under the supervision of a public school.\footnote{Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 682 (1986) (citing T.L.O., 469 U.S. at 340-342).} Schools do not have to tolerate speech that they deem inconsistent with their educational mission; it does not matter if the First Amendment would protect the speech outside of school.\footnote{Id. at 685.} Schools can also prohibit “sexually explicit speech,” even where speech would not be found legally obscene.\footnote{Id. at 685-86.} The Court has recognized that the school, not the court, is the best body to determine what speech is inappropriate in the classroom.\footnote{Id. at 683.} Schools have the power to

144. Id.

145. Id.


148. The Court recognized that “maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.” New Jersey v. T.L.O., 469 U.S. 325, 340 (1985).


150. Id. at 685.

151. Id. at 685-86.

152. Id. at 683.
prohibit language, including sexually explicit language that violates their educational mission. Therefore, schools have the power to prohibit students from sending and receiving sexually explicit messages or images while at school. With this power, schools should create and implement strong zero-tolerance policies for sexting during school hours and on school property.

Schools have also been afforded flexibility in maintaining security of students and in regulating school discipline. In order to prevent and punish sexting, schools will need to use investigations and search techniques to find and confiscate sexually explicit material. Courts have explored ways to accommodate individual Fourth Amendment interests with the school’s interest in maintaining a safe environment for students. In New Jersey v. T.L.O, the Court ruled that students have a reduced expectation of privacy while at school, and that a search of a student’s purse was not a constitutional violation. The lowered expectation of privacy is based on the need for schools to “maintain order.” Searches and seizures performed by a teacher or school official will be “justified at [their] inception when there are reasonable grounds for suspecting that the search[es] will turn up evidence that the student has violated either the law or the rules of the school.” Given the discretion that school administrations enjoy to protect students’ security and discipline, schools can and must institute strong policies and procedures to handle possible cases of student creation or dissemination of sexually explicit material while at school.

The existence of a strong, enforceable cell phone policy at school would not only provide a punishment procedure, but would also afford administrators the confidence to discipline in accordance with the policy.

153. Id.
155. D.R.C. v. State, 646 P.2d 252, 256 (Alaska Ct. App. 1982) (holding that school officials were not “law enforcement officers” for purposes of the Fourth Amendment and therefore their search was excluded from the Fourth Amendment constitutional protections).
157. Id. at 341.
158. Id. at 341-42. The court affirmed that constitutional rights of students in public school are not in line with the rights of adults in other settings. Id. at 338-42.
Often, educators are unsure of how to handle cases of sext-dissemination in school because they know that adults also should not possess sexually explicit photos of juveniles, and they fear repercussions of confiscating a cell phone containing child pornography. With a clear investigation protocol in place, educators would know what steps to take and who to contact in the event they catch a child sexting at school. In addition, educators would know when to call police and when to notify parents.

Schools are already taking measures to stop sexting in schools. For example, in Indiana, a local school has developed a new policy under which any student found sending sexually explicit images or messages by cell phone could face serious consequences, including expulsion. In Florida, a school will be able to hold students accountable at school for photos that are sent, possessed, or viewed at school, regardless of when they were created. Punishment can range from a behavioral intervention to recommendation for expulsion. By maintaining a strict “no sending or possessing” policy, the school would give teachers and staff members a clear method to punish and deter sexting. These policies are a necessary step in the right direction for an overall policy against juveniles creating sexually explicit material.

V. CONCLUSION

Juvenile sexting is a problem that needs to be addressed aggressively. The rise in juvenile sexting is startling due to the potential health risks. By viewing and creating pornography, juveniles are at risk for early

159. Teachers and school administrators need to be proactive in reviewing and revising current policies and procedures to avoid becoming involved in the sexting allegations by viewing the photos and to protect themselves from possible personal criminal liability. Procedures must be in place to ensure that the images are handled properly and that school employees are not in danger of violating local or state law. Sara G. Boucek, Dealing with the Nightmare of Sexting, 66 THE SCHOOL ADM’R. 36 (Aug. 2009), available at http://www.aasa.org/SchoolAdministratorArticle.aspx?id=4386.

160. The policy also condemns sharing, possessing or even viewing the material and applies to staff members as well. Sexting Condemned with New Policy, NEWS CHANNEL 15 (May 29, 2009), http://www.wane.com/dpp/video/crime/local_wane_kendallville_school_sexting_condemned_with_new_policy_200905291551_rev1.


162. Id.
sexualization and the alteration of their mental, emotional, and social
development. Juveniles engaging in sexting are suffering from higher
instances of dating violence and in extreme cases have turned to suicide to
escape the bullying occurring after a sext has gone public. Juveniles are
also using sexting as a new way to explore their sexuality; however, they are
not realizing the permanency of the sexually explicit pictures. In some
cases, juveniles are sharing sexually explicit images with strangers that they
meet online. Juveniles cannot realize the gravity of their choices because
they do not comprehend the inherent dangers.

Juveniles engaging in sexting may also face criminal liability. Even
when a juvenile voluntarily creates and disseminates a sexually explicit
picture, he or she is violating state and federal child pornography statutes.
Violations of child pornography laws result in harsh consequences such as
jail time and registration as a sex offender. States are racing to address
this problem through legislation, making sexting a lesser crime or providing
affirmative defenses. While prosecution and legislative reform are
important steps in the effort of prevention, there remains a gap that only
parents and schools can fill.

Prosecutors, parents, and schools need to combine their efforts toward the
ultimate goal of deterring sexting and saving juveniles from its harmful
consequences. Parents can educate themselves on their juveniles’ cell phone
use, and use prevention methods, such as limiting text messages, to deter
their juveniles from engaging in sexting. Parents are also able to decide if
their individual child should have a cell phone with picture capability at all.
Because parents know their children best, they can prevent a problem from
developing for their children at school. Parents can also play an important
role in alerting schools to problems their children may be facing due to

163. See Section II (A), supra.
164. See Section II (B), supra.
165. See Section II (A), supra.
166. See Section II (C), supra.
167. See Section III (A), supra.
168. See infra text accompanying notes 83-6.
169. Id.
170. See Section III (B), supra.
sexting. If a parent is able to recognize when their children are sending or receiving sexually explicit pictures, the parent can notify the school in order to stop the problem early, before the picture is disseminated or before prosecutors need to become involved.

Parents can also recognize if their children are exhibiting symptoms of depression or other health or psychological issues because of sexting or if they are experiencing dating violence. Parents can then notify the school of the problem, hopefully to find the source and stop the problem. By educating their children about the consequences, personal and criminal, of sexting at school, parents are showing their children that they are aware of the problem and are not going to ignore it. Such strong parental support can itself be a powerful deterrent to delinquent behavior.\textsuperscript{171} If parents are able to work directly with schools, there is a better chance of deterring juvenile sexting.

In turn, schools should work directly with prosecutors and law enforcement in reporting cases of sexting.\textsuperscript{172} Schools have the ability to identify situations in the classroom that are precipitating the creation and dissemination of self-produced child pornography. There may be identifiable behaviors, relationships, and situations within the school that are fueling the fire. Educators and school officials are in a unique position to identify student behaviors and address the related issues. The behaviors displayed at school will help schools and prosecutors punish and deter these behaviors. Schools can send cases to prosecutors and help provide insight into the situations and circumstances in which the sexually explicit material was created. Prosecutors can utilize schools to learn about activities and instances where juveniles are likely to engage in sexting and use this knowledge to make informed decisions about when and whom to charge.

\textsuperscript{171} Researchers found that parental support and control reduces juvenile delinquency. John Paul Wright & Francis T. Cullen, Parental Efficacy and Delinquent Behavior: Do Control and Support Matter?, 39 CRIMINOLOGY 677, 678-80 (2001).

\textsuperscript{172} Once a teacher or school official suspects or discovers sexting they should consider the following things:

1. telling the parents of all the students involved; (2) reporting the sexting to the police; (3) reporting the sexting as suspected abuse or neglect; (4) minimizing exposure to child pornography charges; (5) whether, who, and how to discipline the students involved; and (6) preventing the harassment and bullying of students involved in sexting.

Schools can provide important information about juveniles and their personal situations to help prosecutors understand each juvenile’s situation. Prosecutors can then investigate and decide which juveniles are appropriate for being charged and which juveniles should be handled through the school’s disciplinary policy. With the help of legislative reform, prosecutors will have more options to decide if a juvenile should be charged with child pornography or with a lesser charge. Legislatures can also create funding opportunities for schools to provide education to their students and parents.

By increasing education and awareness of both parents and schools, prosecutors can focus their efforts on the more serious cases of sexting that involve abuse and coercion. The combination of these efforts will result in a more coordinated and effective response to the sexting phenomenon. If parents, schools, prosecutors and legislatures can work together, sexting can be effectively punished and prevented.