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Teenage Sexting Is Not Child Porn

By AMY ADELE HASINOFF APRIL 4, 2016

TEENAGERS who sext are in a precarious legal position. Though in most states teenagers who are close in age can legally have consensual sex, if they create and share sexually explicit images of themselves, they are technically producing, distributing or possessing child pornography. The laws that cover this situation, passed decades ago, were meant to apply to adults who exploited children and require those convicted under them to register as sex offenders.

Though most prosecutors do not use these laws against consensual teenage sexters, some do. The University of New Hampshire's Crimes Against Children Research Center estimates that 7 percent of people arrested on suspicion of child pornography production in 2009 were teenagers who shared images with peers consensually.

Almost two dozen states, including New York, Illinois and Florida, have tried to solve the legal problems that surround sexting with new legislation, and others, like Colorado, are considering new sexting laws. These reforms typically give prosecutors the discretion to choose between child-pornography felony charges or lesser penalties like misdemeanor charges or a mandatory

educational program.

These new laws may seem like a measured solution to the problem of charging teenage sexters with child pornography felonies. However, once they have the option of lesser penalties, prosecutors are more likely to press charges — not only against teenagers who distribute private images without permission, but also against those who sext consensually.

Given the extensive research that shows that young people who are nonwhite, low income, gay or transgender are disproportionately prosecuted for many crimes, there is good reason to suspect that laws that criminalize teenage sexting are being unfairly applied as well. As legislators have tried to cope with the legal fallout, they have also opened up more types of images to scrutiny: While child pornography laws apply only to sexually explicit images, many new sexting laws criminalize all nude images of teenagers, including photos of topless teenage girls.

A better solution would be to bring child pornography laws in line with statutory rape laws by exempting teenagers who are close in age and who consensually create, share or receive sexual images. Vermont tried to enact major reform to its child pornography laws in 2009, but abandoned the effort after a national backlash and settled instead on a new misdemeanor law.

In February, New Mexico passed a limited version of child pornography reform, which shields teenagers who receive a sexual image from a peer from facing child-pornography possession charges. Teenagers who create or share sexual images can still be convicted of child pornography production or distribution.

Both existing child pornography laws and new sexting-specific laws criminalize a common behavior among teenagers. Studies have shown that roughly one-third of 16- and 17-year-olds share suggestive images on their cellphones. Among young adults, rates are above 50 percent. In the past, partners wrote love letters, sent suggestive Polaroids and had phone sex.

Today, for better or worse, this kind of interpersonal sexual communication also occurs in a digital format. And it's not just young people: An article in an AARP magazine describes sexting as "fun, easy and usually harmless."

Like any sexual act, consensual sexting is somewhat risky and requires trust, but it is not inherently harmful as long as partners respect each other's privacy and are attentive to consent. Studies have found that around 3 percent of Americans report that someone has distributed private sexual images without their permission, and around 10 percent of sexters report negative consequences. The risk of distribution is significantly higher among those who were coerced into sexting.

The victim of a sexual privacy violation can be traumatized and humiliated, and is often blamed for his or her victimization. Unfortunately, the criminalization of sexting worsens this problem because teenagers know that if they report the incident they may be punished at school and possibly charged with the same offense as the perpetrator. In most jurisdictions, distributing a sexual image of a teenager is illegal, regardless of whether one is consensually sending a nude selfie to a partner or maliciously distributing a private photo of another person without permission.

Though some people believe that prohibiting sexting discourages the practice and protects teenagers from harm, research on abstinence-only sex education demonstrates that those policies actually increase unwanted pregnancies and sexually transmitted infections. Abstinence-only messages about sexting are likely to be counterproductive as well.

What parents and educators need to do instead is help young people learn how to navigate sexual risk and trust. Whether or not it is criminalized, we cannot prevent sexting, just as we cannot prevent teenagers from having sex. What we need to focus on is preventing acts of sexual violation, like the distribution of a private image without permission, pressuring a partner to sext or sending a sexual image to an unwilling recipient. Though not all

teenagers are sexting, those who are (and those who will when they are older) need to learn how to practice safer sexting, which means that it always has to be consensual.

As State Senator George Muñoz, a prominent supporter of the amendment that established New Mexico's new sexting regime, told *The Guardian*, "Our laws have to change with technology." To keep up with those changes, the first step is to decriminalize consensual sexting by creating exceptions in child pornography laws for teenagers who are close in age.

Once we do this, we can concentrate on developing better ways to deal with the new digital forms of harm.

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