

Minors and Sexting: Legal Implications

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Sexting is the sending or forwarding of sexually explicit photographs or videos of the sender or someone known to the sender via cell phone. It has become common practice among young people, as cell phones are being given to adolescents at ever younger ages. Youths often send messages without giving appropriate thought to the content of the images. In studies on the subject, rates of minors who have sent sexual images range from 4 to 25 percent, depending on the age of the youths surveyed, the content of the messages and other factors. Because transferring and viewing sexually explicit material when the subject is a minor can be considered child pornography, there can be serious legal consequences. Several states have enacted legislation to help differentiate between child pornography and sexting by minors. The trend reflected in statutes has been that minors involved in sexting without other exacerbating circumstances should be charged with a less serious offense. There is no clear national consensus on how sexting by minors is adjudicated, and therefore we compared several statutes. Case examples are used to illustrate the range of legal outcomes, from felony charges to no charges. Two sexting episodes that were followed by suicide are described. We also address the role of the forensic mental health professional.

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Sexting is defined for the purposes of this article as sending or forwarding via cell phone sexually explicit photographs or videos of the sender or someone known to the sender. It has become common among young people since the advent of the cell phone with built-in camera. Cell phones are being given to adolescents at ever younger ages, and they often send photographs without giving thought to the content. More than 50 percent of adolescents use cell phones, and studies indicate that text messaging is the preferred means of communication.¹ Because transferring and viewing sexually explicit material of a minor subject is considered to be child pornography in many jurisdictions, there can be serious legal consequences. Several states have enacted legislation to help differentiate child pornography from sexting. The trend reflected in statutes has been that minors involved in sexting without other exacerbating circumstances should be charged with a less serious offense, but there is no consensus on exactly how they should be adjudicated. In this article, we address the legal implications of sexting among minors (aged <18) and the role of the forensic mental health professional.

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Rates of Sexting Among Minors

As the following discussion demonstrates, estimated rates of sexting among minors vary between 4 and 25 percent. The rate is affected by the age of the children surveyed, the definition of sexting, socioeconomic factors, sample size, and period studied (sexting within the past year versus at any time in the past).

A 2009 telephone survey from the Pew Research Center's Internet and American Life Project found that 4 percent of cell phone–owning youths aged 12 to 17 endorsed having sent sexually suggestive nude or nearly nude images or videos of themselves to someone via text message.² Of the 800 young people surveyed in 3 cities, 15 percent indicated they have received such images of someone they know via text message. A 2012 national telephone survey of 1,560 youths between the ages of 10 and 17 found that 2.5 percent of youths had appeared in or created nude or nearly nude self-images or videos within the prior year.³ Of the youths who participated in the survey, 7.1 percent said they had received nude or nearly nude images of others.

A 2013 study of 606 high school students, representing 98 percent of the student body from a single private high school in the southwestern United States, found that nearly 20 percent of participants reported that they had sent a sexually explicit image of themselves via cell phone.⁴ Almost twice as many reported that they had received sexually explicit im-

ages via cell phone and, of these, more than 25 percent indicated that they had forwarded images to others.

A 2012 study of 1,839 youths age 14 to 17 indicated that 15 percent had engaged in sexting.⁵ Participants with the highest rates included older adolescents, African Americans, and lesbian, bisexual, gay or transgender (LBGT) adolescents. Forty-one percent of the sample had been sexually active (engaging in oral, anal, or vaginal sex). The participants in the study who sent sexually explicit messages and photographs were significantly more likely to have had sexual intercourse and were more likely to have had unprotected sex.

A January 2014 study evaluated the correlation between sexting and sexual behavior in seventh graders.⁶ This study found that 22 percent of the 420 students had engaged in sexting. However, the study included sexually explicit written messages, as well as transmitted images. When images alone were examined, 5 percent of the sample endorsed sending sexual photographs via text message. The majority, 71 percent, were female. These 12- to 14-year-olds who had sent either type of message were at increased risk of engaging in sexual behavior. Students who had sent sexual images were more than twice as likely to have engaged in oral and vaginal sex than were those who had not sent such images.

A national telephone survey provided qualitative information that helps in understanding the phenomenon of sexting.² In this study, the teens who completed the survey described the pressure they feel to share sexually suggestive images because such images have become a form of "relationship currency," meaning that the images are shared as a form of sexual activity or as a way of starting or maintaining a relationship. The study reported that teens who are more frequent users of cell phones are more likely to receive sexually suggestive images. Finally, the study reported that sexting occurs most often in one of three scenarios: exchanges of images between two romantic partners, exchanges between partners that are then shared outside the relationship, and exchanges between people who are not yet in a relationship, but where one person hopes to be.²

Legal Implications

A study published in January 2013 based on interviews of 378 state prosecutors who had worked on

technology-facilitated crimes against children found that 62 percent had handled a sexting case involving juveniles.⁷ Thirty-six percent of prosecutors in the sample reported that they had filed charges in these cases, and 21 percent had filed felony charges. Most had charged felony child pornography production, and 16 percent had sexting cases that resulted in sentencing to mandatory sex offender registration. In those cases in which charges were filed, 62 percent had juveniles charged with felonies related to sexting, of which 84 percent had been charged with felony child pornography production. Seventeen percent of the prosecutors reported that charges were brought even in cases where images did not show sexually explicit conduct or exhibition of genitals. Most prosecutors had sexting cases resolved by plea agreements or juvenile court. Half of them had cases sent to diversion, 26 percent had cases ending in dismissal of charges, and 4 percent had gone to criminal trial. To file charges, most prosecutors mentioned that they would need some type of additional offense, such as harassment, unruly behavior, or stalking, to file charges and that the relationship would have had to move beyond boyfriend-girlfriend.

When charges were filed in the juvenile sexting cases, they usually involved exacerbating circumstances.⁷ Some common factors that led to charges being filed included malicious intent, bullying, coercion, or harassment or photographs taken by a boyfriend or girlfriend who then distributed them widely with the motive of harming the other person's reputation. Another situation where charges were brought involved a youth who sent images of herself to many people after there had already been an intervention. When the images were forwarded to someone without the victim's consent, it may also have led to charges. If there was a large age difference between the people involved, charges were brought. If the sexually explicit image was of a child under 12, felony charges were generally brought. Charges were pressed when the images were especially explicit, graphic, violent, or included gang rape.

Between 2009 and 2013, 42 states considered bills to address youth sexting. Not all bills were passed into law. As of July 2015, 20 states have passed laws related to sexting.⁸ Four states (Hawaii, New York, Pennsylvania, and South Dakota) enacted legislation in 2012. In 2013, nine states introduced bills or resolutions, and at least three (Arkansas, Georgia, and West Virginia) enacted legislation.^{9-11,13,14,16-18} In

Table 1 Examples Illustrating Content of Statutes Addressing Sexting and Minors

State	Year Enacted	Content of Statutes
Arkansas ⁹	2013	Establishes an affirmative defense if the visual depiction was not solicited, was not distributed, and was deleted. Also establishes an affirmative defense if a minor creates a self-image and does not distribute it. Establishes possession of the material by a minor as a Class A misdemeanor punishable by 8 hours of community service if it is the first offense.
Georgia ¹⁰	2013	Establishes sexting as a misdemeanor for both minors if they are at least 14 but less than 18 years old, and if the sexually explicit photograph was willingly created and sent or received. This statute applies only if the purpose of distributing the image was not to harass, intimidate, or embarrass the minor depicted or for any commercial purpose.
West Virginia ¹¹	2013	Establishes sexting as a delinquent offense and establishes a diversion program that can be used as an informal resolution in lieu of charges being filed or as a requirement before adjudication. Allows the court discretion as to whether to require sex offender registration.
Hawaii ¹²	2012	Continues to prohibit creation, transmission, or possession of a sexual image of a minor. Establishes an affirmative defense if efforts were made to destroy a sexual image after it was received.
New York ¹³	2012	Allows consideration of dismissal of charges if an educational reform program is completed.
New Jersey ¹⁴	2011	Creates diversion program for juveniles who are criminally charged with sexting.
Rhode Island ¹⁵	2011	Prohibits sexting by minors and provides that any violation of this act is deemed to be a status offense and shall be referred to the family court.
Texas ¹⁶	2011	Creates educational programs concerning the prevention and awareness of sexting.
Arizona ¹⁷	2010	Establishes sexting as a Class 2 misdemeanor.
Illinois ¹⁸	2010	Orders minors involved in sexting to obtain counseling or other supportive services and to perform community service.

most states, the legislation seeks to differentiate between sexting among minors and child pornography. The content of the current statutes demonstrates that there is no legal consensus. Some states focus on the age of the person in the image or the age of the person possessing the image, others focus on details surrounding the dissemination of the sexting messages, and still others focus on educational programs or other ways to avoid adjudication. Table 1 contains examples illustrating the variability in the contents of legislation related to sexting and minors that different states have enacted in recent years.

Many statutes specify sexting as a misdemeanor, create educational or diversion programs, or institute civil fines as punishment.⁸ Some statutes involve eliminating mandatory minimum sentencing for persons less than 18 years of age and authorize orders relieving a person of the obligation to report as a sex offender. Legislation proposed in Indiana sought to treat those under age 22 more leniently if the images are maintained only on a cellular telephone or social media website as opposed to postings on other locations on the internet.¹⁹ This legislation died in committee.

Georgia made it a misdemeanor for someone at least 14 years old to send a sexually explicit photograph to someone 18 years old or younger, if the purpose of distributing it was not for harassing, intimidating, or embarrassing the minor depicted, or for any commercial purpose.²⁰ With this statute,

Georgia reduced the charges and punishment for minors involved in sexting. Before this change, minors could be convicted of felony sexual exploitation of children. This conviction would come with a sentence of 5 to 20 years' imprisonment and fines up to \$100,000.

South Dakota enacted legislation in 2012, establishing the definition of sexting and declaring it a misdemeanor:

No minor may intentionally create, produce, distribute, present, transmit, post, exchange, disseminate, or possess, through any computer or digital media, any photograph or digitized image or any visual depiction of a minor in any condition of nudity, or involved in any prohibited sexual act. Any violation of this section constitutes the offense of juvenile sexting, which is a Class 1 misdemeanor [Ref. 21].

South Dakota also specified that it would be an affirmative defense if the minor had not solicited the visual depiction and does not "subsequently distribute, present, transmit, post, print, disseminate, or exchange the visual depiction, and that the minor deletes or destroys the visual depiction upon receipt." Creating an image of oneself without ever distributing the image was also established as an affirmative defense.

There has been such variability in the handling and prosecuting of minors involved in sexting that it led one scholar writing for the *Harvard Review of Psychiatry* to suggest referring to the transfer of sexually explicit photographs via electronic device as "youth-produced sexual images" instead of sexting.²²

The author noted that because advancements in technology are outpacing the law, a multidisciplinary approach including social and educational as opposed to legal responses might be more appropriate. She also emphasized the role of child psychologists and psychiatrists in educating teenagers and their families. Another author, writing for *The Journal of Contemporary Health Law and Policy*, proposed using parents and schools in addition to the legal system in attempts to deter and punish juveniles engaged in sexting.²³ This author advocated for schools to provide education on the risks of sexting to all students and to enforce zero-tolerance policies for students engaged in sexting. The suggested approach would also allow for schools to conduct investigations, with punishments ranging from behavioral interventions to expulsion.

Case Identification and Examples

A search on February 15, 2014, using the Lexis-Nexis legal research engine Lexis Advance, with the search term “sexting” returned 63 results. A search on June 15, 2014 returned 75 results. This search engine provides content from primary law, legal news sources, treatises, jury verdicts, briefs, pleadings, motions, and expert witness transcripts and depositions. The number of results most likely demonstrates the relatively low number of cases involving sexting that have reached the appeals level. It is also possible that there are cases involving this subject matter that did not use the word sexting and would not have been included in the search results. The number of cases to reach appeal has been growing rapidly, likely reflective of the increasing number of cases being prosecuted in this area. The first 2 cases were from 2009. Eight cases were from 2010, 10 from 2011, 22 from 2012, and 20 from 2013. Between December 1, 2013, and February 15, 2014, 5 cases were added to Lexis Advance, and between February 15 and June 15, 2014, another 12 cases were added.

The results on Lexis Advance include some cases that have various opinions or appeals related to the same case. There were several cases where the focus was not on sexting, but the term sexting was used in the opinion. Approximately 20 cases involved sexting between an adult and a minor. Most of the cases did not fit the criteria of being exclusively between minors. This analysis focuses on the cases involving only juveniles. A comparison is made with 2 cases involving 18-year-old defendants.

In some cases, juvenile defendants and their attorneys attempted to have charges dismissed because state statutes are unconstitutionally vague when applied to sexting or when applied to juveniles. A case in Pennsylvania decided on October 19, 2012, illustrates this approach.²⁴ The minor was charged with sexual abuse of children (two counts), criminal use of a communication facility, and dissemination of explicit sexual material via electronic communication. The minor (and an unknown number of other people) received a text message with recordings of the consensual sexual acts of two other minors, aged 16 and 17, and further disseminated the recording. The trial court dismissed the charges related to sexual abuse of children because the child pornography statutes when applied to teenage sexting failed to “provide a teenager of ordinary intelligence fair notice of what is prohibited.” The appeals court dismissed the charges because of the vagueness of the penal codes as applied to the defendant.

The court reasoned that a teenager of ordinary intelligence would understand that the possession of child pornography is illegal. Teenagers would understand that laws were enacted to protect children, prevent abuse and exploitation, and stop the production and supply of child pornography. Writing for the court, Judge Steinberg noted:

Those same teenagers, unless prosecuted, would be clueless that their conduct falls within the parameters of the Sexual Abuse of Children statute. Not only is sexting prevalent in their world, but it is doubtful they would connect sexting with the sexual exploitation of children [Ref. 24].

The court further reasoned:

Pursuing child pornography charges against teenagers encourages arbitrary and erratic arrests and convictions, which is one of the concerns addressed by the void for vagueness doctrine. . . . The sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people. However, placing sexting on the same crime scale as child pornography is an overreaction by law enforcement. . . . Teenagers who engage in sexting should not face the same legal and moral condemnation [Ref. 24].

By contrast, an appeals court in Ohio in 2012 denied the claim that statutes are vague and charges should be dropped.²⁵ A 13-year-old female juvenile defendant sent nude self-images to a juvenile male. The court of appeals held that the court did not err in overruling defendant’s motion to dismiss. They stated that, as applied to juveniles, the statute was not unconstitutionally vague. The court believed that the statute provided clear guidelines on the type of activity that is against the law. The statute did not make a

distinction between adult offenders and juvenile offenders. The statute held offenders strictly liable for their actions, regardless of age. It did not distinguish between consensual and nonconsensual sexting. The defendant filed a motion to dismiss, which was denied. The defendant then entered a no-contest plea. She was sentenced to 30 days in detention, but the sentence was suspended. She was ordered to complete 16 hours of community service, to attend an educational program on sexting, and to write an essay. She was also banned from using a cellular telephone for six months.

Other related cases have made the news in recent years, and those that receive the most press are often the most tragic. One such case involved Jessica Logan, a high school senior in Ohio, who sent a nude self-image to her boyfriend.²⁶ After they broke up, he sent the photograph to other teens from Miss Logan's school, and the photograph was then sent to students from her school and another local high school. Miss Logan was then harassed at school, by being called names by a group of younger female students. In May 2008, she went to school counselors and her school resource officer, a City of Montgomery Police Officer, to ask for help. The officer asked the girls who were distributing her photograph to delete it from their phones. No legal charges were brought. Miss Logan recounted her story on the local NBC television affiliate in Cincinnati to help educate other teens about the risks of sexting. Despite the fact she appeared in shadow with her voice disguised, the bullying and name-calling at her school worsened. In July 2008, Miss Logan killed herself.

Although no criminal charges were brought in this case, Miss Logan's parents brought civil suits against the school, the resource officer, the ex-boyfriend, and the students involved in disseminating the nude photo. The teenagers involved in the case have settled with Miss Logan's parents out of court. The school resource officer was granted summary judgment, and the case was dismissed because of qualified immunity.²⁷ The school also requested a motion for summary judgment. The Court for the Southern District of Ohio, Western Division, ruled that the school was entitled to immunity on the claim of negligent infliction of emotional distress but allowed the case to proceed against the school based on violations of Title IX of the Education Amendments of 1972 and § 1983.²⁸

Another example in which the media reported a case of sexting followed by suicide involved Hope Witsell, a 13-year-old from Florida.²⁹ During the spring of 2009 when she was in seventh grade, Miss Witsell text messaged a photograph of her breasts to her boyfriend. Another young girl obtained the image and sent it to students in six other schools. Miss Witsell became the target of bullying in her middle school, and other students created a website called the "Hope Hater Page." Even after the summer break, the bullying continued. On September 12, 2009, Miss Witsell hanged herself in her bedroom. After her death, her family learned that she had seen the school social worker, who was concerned Miss Witsell might try to harm herself, and had Miss Witsell sign a "no harm contract." No one from the school contacted her family to express concern about Miss Witsell's safety. Even after Miss Witsell's death, the bullying and insults continued on her Facebook and MySpace pages. No legal charges were brought against the students involved in disseminating the photograph or in the bullying that preceded Miss Witsell's suicide. Her parents tried unsuccessfully to file a wrongful death lawsuit against the school board; the charges were dismissed.

Some sexting cases have led to the bringing of felony charges against middle school students. In 2010, two 14-year-old eighth graders in Olympia, Washington, were flirting by text message when the girl took a naked self-image and texted it to the boy.³⁰ A few weeks later, a former friend of the girl convinced the boy to send her the photo. The girl forwarded it to everyone in her contact list. Another student, a 13-year-old girl, forwarded the image to all of her contacts as well. The photograph was sent to students in four surrounding school districts.

Angry and concerned parents alerted school officials, the police became involved, and after a thorough investigation, the girl was considered the victim of the scandal. The boy and the two girls who had initially forwarded the image were formally charged with dissemination of child pornography, a Class C felony.³⁰ If the three students had been convicted of dissemination of child pornography, they could have been sentenced to 36 weeks in a juvenile detention center and would be registered as sex offenders. Lawyers for the three teenagers reached an agreement in which the charges were reduced from a child pornography felony to a misdemeanor of telephone harassment.

A review of available cases on Lexis Advance and stories published by news agencies concerning cases of minors sexting other minors identified no cases where a person under the age of 18 was required to register as a sex offender, unless that person was also convicted of other charges such as rape or sexual assault. Results of the survey of state prosecutors who handled juvenile sexting cases reported that 16 percent had handled a case that ended in juvenile sex offender registration.⁷ This outcome suggests there are examples of juvenile sex offender registration in sexting cases that were not publicized and never reached the appeals level or that the cases also involved rape or sexual assault, which was not clarified in the survey of prosecutors. There are several cases where felony charges were initially filed and could have led to sex offender registration but the charges were dismissed or reduced during the course of legal proceedings.^{24,30}

There were numerous cases where teenagers over the age of 18 were required to register as sex offenders for sexting photographs of or to a minor. These young adults were often sentenced to sex offender registration for 20 or 30 years, in addition to other penalties. In Iowa, an 18-year-old was convicted of knowingly disseminating obscene material to a minor.³¹ This young adult texted a photograph of his face and another of his genitals to a 14-year-old female friend. He received a \$250 fine and a sentence of one year's probation and was required to register as a sex offender. In another case, an 18-year-old forwarded nude images of his 16-year-old girlfriend to more than 70 people in the context of a fight with her. He pleaded no contest and was ordered to register as a sex offender in Florida until age 43 and to attend sex offender treatment classes. The media reported that, as a result, he was expelled from college, could not find employment, and could not live with his father because the house is too close to a high school.³²

Some teens may believe that they have circumvented the possible legal consequences of sexting by using applications on their phones designed to delete the photographs within seconds after being sent. Snapchat is probably the best known and most widely used application for this purpose. An image or text message can be created and sent quickly, with the user being able to choose how quickly the image is deleted, between 3 and 10 seconds after being viewed. The problem is that the images are not com-

pletely gone from the cell phone. Tech-savvy users can retrieve the images by using software programs, and there are now other cell phone applications designed to save the images and messages sent using Snapchat.³³ Some teens have been caught using a cellphone to photograph another cellphone screen or to take a screenshot of the image as it was being viewed. The image is captured and saved without being deleted and then can be forwarded to others, without the knowledge of the creator of the image. Ten boys in Quebec, aged 13 to 15 years, are facing child pornography charges for trading explicit images of young girls whom they convinced to send them photographs via Snapchat.³⁴

Role of the Forensic Mental Health Professional

Many states agree that there is or should be a difference between statutes enacted to prosecute individuals for the creation and dissemination of child pornography and statutes used to punish or deter minors from sending sexually explicit photographs to other minors. The consensus has been that minors involved in sexting without other exacerbating circumstances should be charged with a less serious offense. There is no national consensus on exactly how the laws should be different or how sexting among minors should be prosecuted. Given that statutes vary by state and some states have not passed legislation to differentiate between sexting and child pornography, it is imperative that forensic psychiatrists become familiar with applicable statutes in their state or anywhere they may be involved in such cases. Training in child and adolescent psychiatry or psychology can be very helpful when evaluating these cases, because a complete evaluation and testimony would be related to child development. A forensic examiner may become involved in a criminal or a civil case of sexting between or among minors.

Criminal Cases

In a criminal case, the primary role of the forensic psychiatrist would be to evaluate the minors who are prosecuted. Such an assessment could include a juvenile who created a sexually explicit message, who sent a message, or who further distributed the image contained in a message. The prosecution or the defense may hire the forensic evaluator to perform a complete evaluation or to consult on the case when given the facts. The goal of the evaluator is to estab-

lish the mindset of the accused at the time the message was created, sent, or forwarded. Did the minor understand that the act was a crime? What is the minor's level of developmental maturity? Are there mitigating circumstances that may warrant reducing the charges or the sentence? Was the minor pressured to create the image; if so, by whom? Was the message forwarded with malice aforethought? What is the risk of reoffending? These are some of the questions that may be asked by the retaining party.

Establishing a clear understanding of the individuals involved and their relationship to one another is paramount. The forensic evaluator should understand who created the image and to whom it was initially sent. If a minor created the image and sent it, was it sent to one person or to many? Has the minor engaged in sexting before? What is the relationship among the people sending and receiving the image, and, when it was forwarded, was the same type of relationship in place? When the image was further disseminated, was there intent to harm or bully the person in the image? Did someone else take the phone against the minor's will and send the image? How many people was the image forwarded to and did those receiving it forward it further, delete it, or inform a person of authority? The forensic evaluator must be aware of which statute applies in the case and which of these aspects of a case should be considered when forming an opinion for the court and providing recommendations to the retaining attorney.

When conducting a forensic evaluation of a juvenile who has been charged with a crime relating to sexting, a psychosexual evaluation is a necessary element of the interview process. The juvenile must be informed about the limits of confidentiality in a nonadversarial, non-judgmental tone, to facilitate disclosure and engagement. As in any forensic evaluation, to enhance the reliability and comprehensiveness of psychosexual evaluations, multiple sources of data must be taken into account.³⁵ Police reports, victim statements, prior treatment records, school records, interviews with parents and current and prior romantic partners, when available, can help ensure the accuracy of the information. A thorough sexual history includes sexual development, behaviors, attitudes, fantasies, and adjustment. When appropriate, the evaluator may consider using empirically validated actuarial tools that may be used to estimate risk of recidivism (e.g., Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR)³⁶; Juvenile Sexual Offense Recidivism Risk Assessment

Tool-II (J-SORRAT-II)³⁷; or Juvenile Sex Offender Assessment Protocol-II (J-SOAP-II)³⁸). These tools would be especially important if sex offender registration were being considered.

During the evaluation, questions specific to the charged offense should include chronicity, the targets of the offenses, the individual's and victim's account of the offense, potential motivators, and any previously undetected sexually abusive behaviors.³⁵ History of mental illness or symptoms of mental illness at the time of the offense must be taken into consideration. A manic episode, hypomania, or intoxication could be reasons for disinhibition. Any history of sexual victimization of the accused would have to be explored and, if present, may represent a mitigating factor or influence the forensic evaluator to suggest treatment and diversion as opposed to punishment exclusively. An intellectual disability or autism spectrum diagnosis may limit the accused's ability to understand appropriate sexual interaction and should be considered. Previously identified risk factors including deviant sexual interests, antisocial values, and behaviors, pro-offending attitudes, and impulsivity are also important to elucidate. An assessment of the juvenile's parents or caregivers should be part of the evaluation, including any parental risk factors (substance abuse, domestic violence, unaddressed mental health needs, and criminal justice involvement). The level of structure and supervision within the home and the parents' willingness and ability to support intervention efforts must be assessed to establish the most effective recommendations.

Civil Cases

Civil litigation also may be initiated in cases of sexting among minors. The evaluation in a civil case would most likely be of a minor who is the victim/subject of sexually explicit material distributed by others. Cases of sexual images and videos being disseminated have been reported to lead to pain and suffering and even suicide, as suggested by media reports covering the deaths of Hope Witsell²⁷ and Jessica Logan.²⁴ The focus of an evaluation would be to establish the level of emotional distress caused to the subject of the image by the distribution of the sexually explicit message. An in-depth review of the plaintiff's developmental, family, social, and educational histories is necessary. The evaluator also must consider other possible causes of emotional distress,

preexisting stressors, and symptoms or the possibility that distribution of the image did not cause harm. The plaintiff may have engaged in sharing a sexual image voluntarily, as opposed to involuntarily or unknowingly, and the level of volition can influence severity of distress or introduce some culpability of the plaintiffs in their own distress. The appropriate type and length of treatment indicated to address the emotional damage is important to determine. The family structure of the plaintiff may influence whether family therapy, individual therapy, medications, other interventions are recommended.

The forensic evaluator may be retained by the plaintiff's attorney or by the defense attorney. If the case involves another adolescent, it may be important to determine the developmental maturity of the defendant as well as the plaintiff. If there is a significant age, maturity level, or power differential between the plaintiff and the defendant, it may be advisable to use a forensic interview structure intended for children who are the victims of sexual abuse. Evaluation of nonverbal cues, allowing the plaintiff to set the pace, encouraging the plaintiff to make a drawing of the photograph, or using alternate forms of communication may be important.

Some cases may involve a school district or school officials in contrast to the minor who disseminated the message. In these cases, the evaluator may be asked to address questions of liability and determine whether the emotional distress could have been prevented or minimized. Understanding a school's policies and procedures for handling these types of questions and determining whether the school followed its own policies is relevant for such an evaluation. Did the school contact the police or parents when it became aware of the sexting? Had the school implemented effective educational programs targeted at preventing sexting and informing students of the legal implications of sexting, including mention of laws addressing creation and distribution of child pornography? Did the school have available mental health providers who are trained at screening for risk of self-harm and dangerousness to others? Children who are bullied at school can be at increased risk of harming themselves and of harming the students by whom they have been bullied. Did the school attempt to intervene to reduce risk? Were the school mental health providers aware of the legal and ethics-related requirements for informing the child's caregivers and appropriate actions to protect against

harm to self or others? A forensic evaluator with a background in standards for mental health services within secondary schools would be most appropriate to provide an opinion to the court on these matters.

Conclusion

In this article, we have summarized recent data concerning the prevalence of sexting by adolescents. Sexting by minors has led to both criminal and civil legal charges, and has been the subject of legislative action in several states. Forensic mental health professionals, especially those with child and adolescent training, are likely to become more involved in these cases, as cell phone use by minors continues to increase. Further research into effective forms and implementation of education for minors about sexting may help decrease the number of minors involved in legal sequelae. Investigation into effective forms of treatment for minors with emotional damage caused by sexting would help inform the forensic mental health professional about the best treatment recommendations. Such investigations would allow professionals to make better recommendations to school boards and educators on how to prevent sexting and decrease the emotional distress and safety risk to victims. It would also allow professionals a research-based approach to get involved in advocacy for legal change and could guide professionals in when to support implementation of focused treatment and prevention, as opposed to penalties.

Another area for further study would be to examine how child pornography laws are being applied to adults in possession of a text message with a sexually explicit image of a minor. As discussed above, there are multiple examples of young adults being given harsh sentences that include registering as sex offenders when they were not significantly older than the subject in the text message. Forensic mental health professionals will have to stay up to date with legislative and judicial developments that distinguish between child pornography and sexting involving a young adult or minor in a consensual relationship with a minor of a similar developmental stage.

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