



Sexting

Joint Commission on Technology and
Science, Executive Committee

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Virginia State Crime Commission

Overview



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Study Authorization



- The Crime Commission was requested by the Joint Commission on Technology and Science to assist in a review of “sexting,” specifically, how current law applies and how it is being prosecuted.

Background



- Sexting, derived from the word “texting,” is the act of taking a sexually suggestive photo, usually of oneself, and then sending it via a picture message from one cell phone to another.
- Sexting has attracted attention nationwide, as many of the participants taking and receiving such photos are minors.

Background



- 22 % of teenage girls, and 18 % of teenage boys, have sent or posted images or video showing themselves nude or semi-nude.
 - 11 % of young teenage girls, between the ages of 13 and 16, have done so.

Source: “Sex and Tech,” a report issued by the National Campaign to Prevent Teen and Unplanned Pregnancy, based on an online survey conducted from September 25 to October 3, 2008.

Background



- Sexting has raised debates across the country:
 - Are child pornography laws, which were meant to criminalize the predatory behavior of older men, appropriate for the prosecution of teenagers who have engaged in sexting voluntarily?
 - What are the best ways to curtail this activity amongst teenagers?

Criminal Penalties



- Sexting may violate a number of Virginia's criminal statutes.
- Va. Code § 18.2-374.1 criminalizes the production and distribution of child pornography.
- If a minor takes a photo of himself, it is a violation of subsection (B)(2).
- If the minor is under the age of 15, it is an unclassified felony carrying from 5 to 30 years.
- If the minor is 15 or older, it is an unclassified felony carrying from 1 to 20 years.
- It should be noted that unless the minor was tried as an adult, he almost certainly would not receive such a lengthy sentence.

Criminal Penalties



- Va. Code § 374.1:1 criminalizes the possession of any such photos that are sent, making it a Class 6 felony for a first violation, and a Class 5 felony for a second violation.
- If the recipient of the photos then digitally passes them on to a friend, or even just displays them on his phone to another, his act of distribution or display is an unclassified felony carrying from 5 to 20 years.
- A second act of distribution or display also carries from 5 to 20 years, with a mandatory minimum punishment of 5 years.
- Unless the minor is tried as an adult, he also would probably not receive such a lengthy sentence.

Criminal Penalties



- Under Virginia law, actual nudity is not required for the images to be child pornography.
- Under the relevant definitions provided by Va. Code § 18.2-390, “nudity” includes “a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple....”
- The nudity must involve a lewd exhibition; not all naked pictures of children qualify as child pornography. Asa v. Commonwealth, 17 Va. App. 714 (1994).

Criminal Penalties



- A minor can also break the law if he solicits his girlfriend to give him a nude photo of herself.
- A solicitation to a minor to be the subject of child pornography is a violation of Va. Code § 18.2-374.1(B), and carries the same penalties as the actual production of child pornography.
- Additionally, if the minor communicates his solicitation by e-mail, phone, cell phone, or other communications system, it is a violation of Va. Code § 18.2-374.3(B), which is a Class 6 felony.

Registration Requirements



- Under current Virginia law, juveniles are subject to the registration requirements of sex offenders if:
 - They are tried as adults; or
 - They are over the age of 13 at the time of the offense, and
 - The Commonwealth’s Attorney makes a motion for the juvenile to be registered as a sex offender, and
 - The court finds there are sufficient aggravating factors to require registration.
- Juveniles who are adjudicated delinquent of a sexual offense are not automatically required to be registered.

Registration Requirements under the Adam Walsh Act



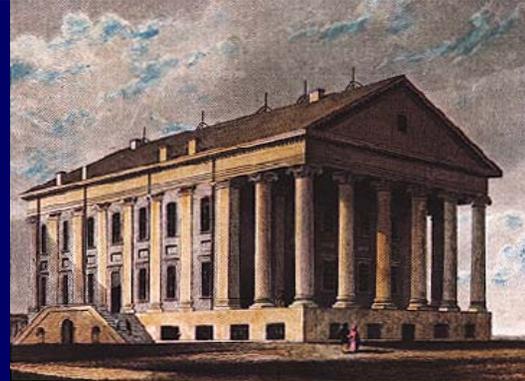
- Title I of the federal Adam Walsh Act requires states to create sex offender registries.
- It contains many specific requirements as to which offenses require registration, and how long offenders must be on the registry.
- Juveniles who are convicted as adults of producing or distributing child pornography must register as sex offenders for at least 25 years.
- Virginia's registration requirements for these offenses comply with the Act.
- Under Virginia's registration laws, producers of child pornography must register for life as having committed a sexually violent offense.
- Distributors of child pornography must register for either life, or for at least 25 years.

Registration Requirements under the Adam Walsh Act



- Under the Adam Walsh Act, juveniles convicted as adults of possession of child pornography must register as sex offenders for at least 15 years.
- Virginia's registration requirement for this offense complies with the Act, for offenses that occurred on or after July 1, 2006.
- Because Virginia does not require registration for this offense if the crime occurred before July 1, 2006, Virginia does not fully meet the requirements of the Act for this offense.

Registration Requirements under Adam Walsh



- Under the Adam Walsh Act, juveniles who are adjudicated delinquent of a sex offense are only required to register if:
 - They are 14 years old or older at the time of the offense; and,
 - The offense was comparable to or more severe than “aggravated sexual abuse,” which is defined in relevant part as engaging in a sexual act that involves actual touching.
- Thus, the Adam Walsh Act does not require that juveniles who engage in sexting be placed on a

General Policy Options



- Maintain the status quo, with no change in Virginia's criminal laws; or
- Create a new offense to specifically deal with sexting by juveniles.
- Request the Virginia Department of Education work to educate students on the dangers and illegality of sexting.

Discussion