

Does NC Need a Teen Sexting Law?

A growing number of teens in NC and across the nation are facing criminal charges for sexting.

A few months ago, I wrote a [blog post](#) about a Fayetteville case involving two teens charged with felony child pornography for sending naked selfies to each other. The teens in that case, a boyfriend and girlfriend, ultimately pled guilty to misdemeanors (disseminating harmful material to minors) and their cases will be dismissed if they successfully complete a one-year term of probation under a [deferred prosecution agreement](#). New sexting cases are [reportedly](#) being investigated in Wake County at two separate high schools, one of which may involve extortion. Based on my recent advising requests, other counties are also dealing with sexting issues in their schools. The offending students often end up with felony charges, at least initially, for behavior which one recent [study](#) suggests is a fairly common practice among U.S. teens. The question is how should the state respond?

Sexting Is Considered Child Pornography in NC.

In North Carolina, as well as in many other states, teen sexting is a crime that carries harsh penalties, including sex offender registration depending on the offense. Because our state does not have a sexting specific law, the conduct is typically prosecuted under laws prohibiting child pornography and obscenity which I outline [here](#). For 16 and 17 year olds who are automatically prosecuted in criminal court, the social stigma of a permanent criminal record is another consequence that has a potential lifetime impact.

Perhaps even more troubling is that sexting results in harsher penalties for some teens than actually engaging in sex. In NC, at age 16, teens can legally consent to engage in sexual intercourse but if they exchange sexually explicit photos, they commit a felony. Most teens likely don't realize this disparity which may be contributing to the increasing number of them who are sexting, according to [research](#) by Drexel University.

Some States Already Have Separate Teen Sexting Laws.

The emergence of teen sexting has caused many states to reconsider whether laws primarily intended to protect minors from adult sexual predators should be used to prosecute the minors themselves. The National Conference of State Legislatures reported that since 2009, at least 20 states have passed legislation that treats underage sexting differently from child pornography.

State laws that address teen sexting recognize that even the consensual sharing of sexually explicit images of minors is harmful but generally treat the offense as a misdemeanor with relatively light punishments, such as fines, counseling, community service, and out of court diversion programs (see this [list](#) of state sexting laws). In most states, the laws only apply when all the

parties involved are minors under 18 and they include graduated sanctions. For example:

- In 2010, Arizona enacted a [juvenile sexting law](#) that applies to minors under 18 who send or receive a sexually explicit image of a minor. Distributing the image to only one other person is a petty offense, punishable by a fine. Distributing the image to more than one person elevates the offense to a Class 3 misdemeanor, punishable by a \$500 fine and/or up to 30 days in jail. However, repeat offenders may be charged with a Class 2 misdemeanor, punishable by a \$750 fine and up to 4 months in jail.
- In 2013, Arkansas enacted a [juvenile sexting law](#) that makes the possession of sexually explicit digital material by a juvenile under 18 a Class A misdemeanor. For the first offense, a juvenile may receive up to 8 hours of community service, if he or she pleads no contest or guilty.
- In 2014, Oklahoma created a [misdemeanor offense](#) for minors under the age of 18 who engage in the sexting of images or videos of minors between the ages of 14 and 17. If the minor depicted in the image consented and the image was distributed to five or fewer persons, the juvenile may receive a fine of up to \$500 for the first offense or up to \$1,000 for a second or subsequent offense. Additional penalties include up to 40 hours of community service and juvenile diversion. Sexting that occurs without the consent of the depicted minor, involves images of minors under 14, or is distributed to more than five persons is also a misdemeanor but carries tougher penalties.

In at least four states with sexting specific laws, the offense can also be a felony. [Florida](#) and [Utah](#) make underage sexting a felony for repeat offenders. [Georgia](#) classifies sexting as a felony depending on the facts of the case, and [Nebraska](#) treats all sexting as a felony. However, many sexting laws also provide an affirmative defense for minors who receive unsolicited sexts and take steps to either delete the images or report them to an authority figure.

Does NC Need a Sexting Law?

It's unclear whether North Carolina will soon join the growing list of states with a sexting law. However, last year, the legislature quietly enacted a "revenge porn" statute to address the nonconsensual disclosure of sexually explicit images of another person for the purpose of harassment, intimidation, or humiliation. See [G.S. 14-190.5A](#) and Professor Jessie Smith's Criminal Law [blog post](#) explaining the new offense.

Unlike the child pornography offenses, the revenge porn statute creates separate penalties for adults and minors. The crime is a Class H felony if the defendant is 18 or older. For minors who are under 18, a first offense is a Class 1 misdemeanor and a second or subsequent offense is a Class H felony. This penalty structure suggests that lawmakers recognize that children are generally less culpable than adults due to childhood immaturity and impulsivity. Therefore, the revenge porn statute gives juveniles a “break” on the first offense by treating it as a misdemeanor. On the other hand, NC law ironically now treats revenge porn by juveniles as a less serious offense than consensual sexting.

At least one NC lawmaker has publicly expressed that the state needs a law to specifically address teen sexting. Senator Jeff Tarte, a Republican from Huntersville, [reportedly](#) said he was not aware that sexting was not covered under current NC law and that he would push for the legislature to consider creating new legislation to close this gap. However, other lawmakers recognize potential problems associated with a sexting law. According to this [article](#), Republican Representative Paul “Skip” Stam of Apex expressed concern that such a law might create a loophole for adult pedophiles and send the wrong message to teens that sexting is okay.

While it’s uncertain how lawmakers will respond to this issue, teen sexting will likely need to be addressed at some point. Please share your thoughts. Should NC enact a law to address underage sexting? Why or why not?