

## **Sexting between minors: Ethical, legal, and clinical considerations**

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*Sexting has not been specifically addressed in relevant professional ethical codes or state/federal laws. Complicating this issue is the lack of consensus on the definition of sexting resulting in variance in the reported prevalence of sexting. Counselors are charged with addressing the ethical and legal challenges related to sexting when minors seek counseling due to treatment needs resulting from their involvement in sexting, referrals from schools and school counselors, or the mental health issues associated with sexting (e.g., trauma, anxiety, low self-esteem). In this article, the authors explore the definitions of sexting and the prevalence of sexting and minors, discuss the ethical and legal implications and the clinical considerations of sexting and minors, and provide treatment recommendations.*

*Keywords: sexting, minors, ethics, legal issues*

Technology is developing at an increasingly rapid pace, and ethical codes and laws are not always inclusive of relevant current issues. Sexting, often defined as an individual sharing sexually explicit images (Judge, 2012), is a topic that has recently gained attention, but is not specifically addressed in the current ethical codes or in all state laws. Counselors are still charged with the responsibility of navigating these scenarios in

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in practice and must consider the ethical and legal implications specific to sexting between minors. Although sexting can occur between adults and between adults and minors, sexting between an adult and minor is illegal and a reportable crime due to the abuse of a minor. The focus of this article is on sexting between minors. In this article, the authors will define and conceptualize sexting, discuss the ethical and legal implications in clinical practice, explore the clinical considerations for minors who engage in sexting, and provide treatment recommendations for individuals working with minors who engage in sexting.

### **Overview of Sexting**

In this first section, an overview of sexting is provided, including how sexting is defined and conceptualized. The conceptualization of sexting includes an overview of the evolution of technology and the implications on sexting. The prevalence of sexting will also be discussed.

### **Defining and Conceptualizing Sexting**

Sexting can generally be defined as sending sexually explicit material via a cellular device or social media sites. Sexting can involve behaviors such as sending a nude image (i.e., picture or video) or forwarding such material to another individual (Leary, 2010). Individuals can be the sender of a sext, a receiver of it, or can engage in reciprocal sexting behavior (i.e., both sending and receiving sexts). Advances in technology have confounded the exchange of sexually provocative material and led to concerns related to the potential permanence of digital images (Judge, 2012). For example, sexting is no longer limited to text messages and the advent of social media sites, particularly those where pictures disappear once the recipient reviews them, have made it easy for pictures to be shared en masse and under a façade of being untraceable.

Because the issue of sexting among minors involves legal ramifications, some researchers have argued for terminology that reflects the legal issues inherent within the

behavior. Wolak and Finkelhor (2012) defined the term *youth-produced sexual images* as “pictures created by minors depict minors that are or could be child pornography under applicable criminal statutes” (p.1) and offered it as a better conceptualization of sexting that involves minors. By definition, this type of sexting behavior involves the transmission of sexualized images that meet the definition of child pornography as set forth by statutory laws. Although this definition captures the legal concerns associated with sexting, it offers a narrow definition that focuses exclusively on the transmission of sexualized issues. Thus, for purposes of this paper, the term *sexting* will be used to reflect the broader issue of sexually transmitted content among minors.

Sexting is a complex, multi-faceted topic that involves issues of consent, legality, and normative sexual expression. Although most of the research has focused on negative aspects of sexting, some research has suggested that it may play a role in the development of adolescents’ sexual agency and sexual-expression (Angelides 2013; Karaian 2012; Le et al., 2014) with adolescent sexting serving a flirting function within the context of romantic relationships (Van Ouytsel, Van Gool, Walrave, Ponnet & Peeters, 2017). Although sexting may, in some cases, represent a developmentally appropriate exploration of sexuality, research has also underscored a potentially coercive component to sexting. Some individuals have reported feeling pressure to engage in the behavior because of fear of losing a relationship or missing the opportunity to begin a relationship (Englander 2015; Renfrow & Rollo, 2014; Van Ouytsel, Van Gool, Walrave, Ponnet & Peeters, 2016). Another concern is the potential transmission to other non-intended recipients; an individual may consent to sharing images with one person, only to later discover that those images have been shared with other, unintended recipients without the individual’s consent. Even in situations in which the individual intentionally shares the picture with someone, there is a risk of the image being forwarded to someone else, the picture or video being used as a means to blackmail, or the images being used after a breakup in an effort to exact revenge (Van Ouytsel et al., 2017). The potential abuse of sexually explicit material further highlights the numerous complexities involved with this behavior.

Minors may report numerous reasons for engaging in sexting behavior. Excitement and risk-taking tend to be main motivators for individuals who engage in sexting outside of a defined romantic relationship (Van Ouytsel, Ponnet, Walrave, & d'Haenens, 2017) whereas those who score high on measures of rational thinking have demonstrated a significantly reduced likelihood of engaging in the behavior (Van Ouytsel, Van Gool, Ponnet, & Walrave, 2014). Another key dynamic may be the minor's perceived social norm of the behavior (i.e., do they believe that their peers are engaging in the behavior; Walrave, Ponnet, Van Ouytsel, Van Goll, Heriman, & Verbeek, 2015). Thus, certainly an element of peer-related pressure is potentially involved in the sexting behavior of teens.

### **Prevalence**

Prevalence estimates for sexting range and may reflect the difficulty in accurately ascertaining the frequency in which this behavior occurs. Prevalence estimates for sexting among minors range between 2.5% and 21%; the wide disparity here potentially being due to variations in definitions and sampling (Döring, 2014). A survey of over 1000 Belgian adolescents found that approximately 11% reported sexting a sexually explicit picture of themselves (Van Ouytsel, Van Gool, Ponnet, & Walrave, 2014). Other research (e.g., Rice et al, 2012; Temple et al., 2012) has suggested that about 15% - 28% of minors have sent at least one sexually explicit message. There does appear to be a reciprocal component to sexting, with about 66% of those who engage in the behavior reporting that they have both sent and received sexts (Gordon-Messer, Arturo Bauermeister, Grodzinski, & Zimmerman, 2012). A study of 1,334 Italian adolescents suggested that individuals who identified as male engaged in more sexting behavior, as did those who identified as a sexual minority (Morelli, Bianchi, Baiocco, Pezzuti, & Chirumbolo, 2016); other research (e.g., Samimi & Alderson, 2014) identified nearly equal prevalence rates among males and females.

### **Ethical and Legal Implications in Clinical Practice**

Just as there is ambiguity in the definitions of sexting, there is much abstruseness in the laws and ethical codes addressing sexting between minors. Most legal decisions are made on a case-by-case basis and views fluctuate across states due to the variability in addressing and prosecuting such cases (Lorang, McNielm, & Binder, 2016). It is important to note that sexting between a minor and adult is illegal and a reportable crime. An example is offered in the current court decision involving former democratic congressman Anthony Weiner, an adult, who was rendered a 21-month prison-sentence for sexting a minor (U.S. Attorney's Office for the Southern District of New York, 2017).

Sexting between minors can be illegal but there is not a national consensus or federal law presiding the adjudication of such cases. Current legislation has been enacted by several states to address sexting between minors, but most legal information is currently found in case-by-case decisions. In states lacking laws specific to sexting, reliance is often placed on child pornography laws (Lorang, McNielm & Binder, 2016). For example, Ohio's state laws may not specifically use the term 'sexting' resulting in a need to determine the appropriate category of the offense, such as child pornography.

### **Relevant Ethical Codes**

Counselors are bound to both legal and ethical codes of conduct but are reminded that law supersedes ethics. Codes of Ethics offer counselors standards of practice but do not provide the legal guidance necessary to address client-reported sexting between minors. Although, many of the issues involving sexting between minors are legal issues, ethical considerations are also warranted. The legality of sexting is arguable as highlighted above due to the variance in definition, prosecutorial decisions regarding the charge to pursue, various legal precedence, and nuances in each case (e.g., how much nudity, was the exchange consensual, age of sender and recipient). The most relevant ethical codes pertain to client welfare and limits of confidentiality.

**Client welfare.** The American Counseling Association (ACA, 2014) and American Mental Health Counseling Association (AMHCA, 2015) *Codes of Ethics* remind counselors that their primary responsibility is to promote the welfare of the client (ACA, 2014, A.1.a.; AMHCA, 2015, A.1.a). As discussed in detail below, clients involved in sexting may experience clinical distress that impacts their mental health diagnosis and treatment plan (Temple et al., 2014; Van Ouytsel, et al., 2014). Consideration should be given to selecting treatment interventions and addressing presenting issues and symptoms that are in the best interest of the client in turn promoting client welfare e.g., offering preventative education in schools that teaches about victimization and bullying; teaching assertiveness skills to assist clients with advocating for their legal rights).

**Mandated reporting.** Counselors are ethically and legally required to explain exceptions to confidentiality including risk of foreseeable harm to self or others (ACA, 2014, B.1.d., B.2.a.). There is a risk of harm when individuals choose to sext. Results of a quantitative study completed by Morelli et al. (2016) supported this risk in their findings that suggested that individuals who engage in high and moderate exchanges of 'sexts' are more likely to perpetrate violent crimes (i.e., dating violence) and engage in high risk sexting behaviors (e.g., substance use, forced sexting participation, sexting strangers). A thorough risk assessment may be necessary when sexting is reported and duty to report enacted if necessary (i.e., risk assessment yields risk if imminent danger). While a comprehensive understanding of issues related to informed consent, including exceptions to confidentiality and high-risk behavior is imperative for counselors, a discussion on this topic is beyond the scope of this manuscript.

The variability in legal decisions regarding sexting between minors leaves counselors wondering if they have a duty to report suspected abuse to the governing children's services board or program. A forensic examiner may be needed to review the specifics of each reported case (Lorang et al., 2016). An overall recommendation is to always consult supervisors and peers, as well as an attorney and report sexting between

minors to children's services for investigation if warranted or advised by legal counsel. Sexting between an adult and a minor is a crime and should be reported to children's services and law enforcement. Counselors are encouraged to defer to state law for specific rules and regulations.

### **Legal Trends and Case Law**

As stated earlier, there are minimal laws that currently specifically address sexting between minors due to recency of the topic, rapid growth of technology and the process and duration of time that it takes to approve new laws. It appears that both consensual and non-consensual sexting between minors is a crime but there are few specific sexting laws (Lorang et al., 2016). It is often left to the prosecutor's discretion to determine the offense (e.g., child exploitation, child pornography, pandering obscenity involving a minor, etc.).

In most states, it is illegal for anyone to possess or distribute a sexually explicit image of a minor, this includes a minor's possession of the image. It may also be illegal for a minor to distribute a sexually explicit image of his or herself. The recipient of a sexually explicit image of a minor (even an involuntary recipient) is at risk of being charged with a crime. Individuals in possession of sexually explicit images of a minor can face both criminal and civil charges. Another worthy consideration is the possibility that a guilty individual will have to register as a sex offender (Parental Solutions, 2011).

Legal decisions are being made on case-by-case considerations as legal issues are heard and verdicts given by judges. State bills are being proposed to offer guidance as well, but few have been signed into law. There is a need for laws that specifically outline the parameters of sexting between minors (e.g., consensual and mutual sexting between minors, non-consensual sexting), as well as legal consequences for sexting between minors (Lorang et al., 2016). Case examples are offered below to demonstrate the range of legal conclusions. The current trend suggests that there are legal consequences for sexting between minors, but consideration should be given to the seriousness of the offense (e.g., consensual v. non-consensual sexting) and minors should

be charged with the lesser offense (e.g., cyber-bullying v. child pornography; Lorang et al., 2016).

According to the Ohio Bar Association, sexting involving a minor is a crime, but the specific charge is determined by the prosecutor (e.g., sexual exploitation of a minor, child pornography). The Ohio Revised Code does not explicitly use the term 'sexting,' but bills are currently proposed that may result in legal updates (Ohio State Bar Association, 2018).

Ohio lawmakers, as well as lawmakers in many states, recently passed or proposed bills requiring schools to have policies and procedures for handling harassment, intimidation, and bullying, including cyber-bullying. Another Ohio law was proposed to specifically ban sexting between consenting teens but has not yet been accepted. There is much debate around the proposed law. Proponents are in favor of harsher penalties for child exploitation. Opponents are concerned about the impact of labeling a minor as a "sex offender" for sexting (Cleveland Metro News, 2018).

On the other side of the map, it appears that Colorado has recently (September, 2018) changed laws to reflect sexting-related issues. Colorado legislature passed a house bill that changed the way prosecutors can address legal cases involving sexting between minors. The revised law provides prosecutors with tiered-options ranging from felony exploitation of a minor (even when participants both engage in the consensual exchange of sexts) to include options that separate hateful and abusive forms of sexting from consensual exchanges of sexually explicit content. In determining the legal consequences of sexting between minors there are many subtleties that need to be considered. The following are examples of questions that may be considered in the decision making process: "did the minor solicit the text" and "was it shared with others when the minor's intent was to keep it between them and the receiver." The revised law appears to maintain that sexting between minors is a crime but now provides latitude in terms of the charge pursued by the prosecuting attorney (House Bill 17-1302). Similar examples of cases can be found in each state resulting in an exhaustive list of diverse prosecution charges and judge's verdicts and decisions suggesting a need for state and federal legislation specific to sexting between minors.



## **Clinical Considerations for Minors who Sext**

After reviewing the current body of research linking mental health concerns with sexting, it appears there are several studies that indicate a link between clinical considerations and sexting. As stated earlier, sexting encompasses a large variety of behaviors and there are many different published definitions. The common use of the term typically fails to distinguish among the range of situations, reasons, or potential risks associated with sexting behaviors (Judge, 2012). There is a general indication relating sexting and clinical considerations.

When considering clinical concerns, most researchers look at risks correlated with dissemination of images or text without consent in contrast to sharing images or texts between consenting minors. Sharing information without consent is often related to potential harm. Harm can include mental health concerns such as depression, anxiety, or suicidal behavior. Risks for these outcomes increase when there is bullying (Medrano, Lopez Rosales, & Gámez-Guadix, 2018).

### **Bullying**

The popularity of the electronic devices and the internet has resulted in what is considered cyberbullying (Davis & Schmidt, 2016). Cyberbullying includes using an electronic device to bully a person by threatening or intimidating (Bartlett & Kowolski, 2018). When someone has sent a sexually explicit image and it is shared, cyber bullying or bullying in person can result. There are many different types of cyber aggression or bullying including online harassment, put downs, outing someone by sharing their personal information or images, exclusion or distributing material against someone's wishes (Slonje & Smith, 2008). The current literature reflects that sexting often results in cyberbullying and cyberbullying is clearly linked with higher rates of depression and suicidal ideation (Vanderbosch & Van Cleemput, 2009).

**Mental Health**

Research has identified significant, positive relationships between sexting, bullying, and depressive symptoms (Temple et al., 2014; Van Ouytsel et al., 2014). Research also supports young people who are high to moderate users of sexting feel sadder and more hopeless and experience more suicidal ideation and attempts (Dake, Price, Maziarz, & Ward, 2012; Van Ouytsel, Walrave, Ponnet, & Heirman, 2015). There are several studies that indicate people who are already suffering from depressive symptoms are more likely to engage in sexting in comparison to the inverse, where people who engage in sexting are more likely to develop symptoms of depression (Gámez-Guadix, & de Santisteban, 2018).

There are additional risks of harm to consider that may also have a correlate to mental health outcomes or risks. In the established literature on childhood vulnerability, research supports that risk factors tend to compound each other (Schoon, 2007). To summarize, there may be an increased risk of harm when more than one factor exists. Depression, cyberbullying, sexting and suicidal ideation would likely compound risk and long-term consequences.

**Self Esteem**

Disseminating images without the sender's consent may also have long term and wide-reaching consequences including a negative effect on self-esteem. These consequences are important to consider because personal images and texts may be used to judge the individual's character. Senders may be viewed as sexually promiscuous or lacking judgment (Livingstone & Smith, 2014). The potential social consequences apply to both consensual and nonconsensual sexting participants and can negatively affect self-esteem (Wolfe, Marcum, Higgins, & Ricketts, 2016).

According to Judge (2012), nonconsensual sharing of images can result in self-objectification. Research links self-objectification to impaired performance on mental tasks, such as math or logical reasoning. Self-objectification can result in higher levels of

anxiety about physical appearance and shame about the body and poor sexual health behaviors including not using condoms or having a low threshold for saying “no” to sexual advances (Dake et al., 2012). Youth who are moderate or high users of sexting are more likely to be sexually active, participate in risky sexual activities, and use alcohol and drugs (Dake et al., 2012; Ferguson, 2011; Rice, Rhoades, Winetrobe, Sanchez, Montoya, Plant, & Kordie, 2012; Temple et al., 2014, The Canadian Press, 2019). Research also demonstrates a correlation between minors who sext and other risk-taking behaviors. For example, individuals who are moderate to high users of sexting are more likely to be perpetrators of dating violence, including online violence (Morelli et al., 2016).

### **Treatment Recommendations**

Due to the clinical considerations related to sexting and minors, it is important for counselors to carefully consider how to address the dilemma in their work with minors. Counselors may establish relationships with clients who have experienced or participated in sexting for a multitude of reasons. In clinical settings, individuals engaging in sexting may be referred to counseling due to the mental health concerns discussed above that could be connected with sexting, a mandate by the courts, or a referral from the school due to an incident involving sexting. School counselors may have the opportunity to provide preventative education in the school setting and provide referrals for students who have been involved in sexting. Counselors in any setting may work with clients who have engaged in consensual sexting, clients who were involved in non-consensual sexting, senders of sexts, and receivers of sexts.

Evidence-based treatment has not yet been established to address sexting and its implications specifically, but general themes have emerged from the literature including a focus on prevention, thorough assessment, and psychoeducation for clients, parents, schools, and other individuals in the community. In this section, prevention, assessment, psychoeducation, and treatment recommendations are discussed.

**Prevention**

Due to the increased accessibility of technology, it is important that the potential risks of the use of technology are minimized (Davis & Schmidt, 2016). More specifically, it is important that counselors consider the potential for cyberbullying by the dissemination of images to individuals for whom they were not originally intended (Davis & Schmidt, 2016). Fortunately, counselors have the opportunity to not only provide interventions but also prevention of these risks. Counselors can provide prevention services such as psychoeducational school-based programs, trainings for educators, or parent education workshops in the community to enhance awareness of sexting and its implications (Crespi & Segool, 2013).

Within the school context, counselors can also advocate for prevention strategies to be put in place. Counselors can advocate for the integration of education on sexting and its implication in sexual education courses and technology safety in technology courses (Walrave et al., 2015). Some states such as Illinois are working on bills to require sexting to be included into the sexual education curriculum (House Bill 4007, 2020). Counselors can also advocate for schools to have a plan that is provided to students about how victims of sexting or bystanders of sexting incidences can be supported and incidents reported (Walrave et al., 2015). In general, it is important that there are multiple ways that minors are educated about and sensitized to sexting and its consequences in multiple contexts (Walrave et al., 2015). Counselors can advocate for these prevention opportunities for minors by being proactive and offering educational opportunities about outcomes and consequences for sexting.

**Assessment**

Due to the potential for clinical issues as previously mentioned, it is also important for counselors to assess for depression, suicide, and risky sexual behaviors when a client reports engaging in sexting, due to the potential increased risk for these. Risk assessment for depression and suicide would especially be paramount in situations

where a minor's images have been forwarded to unintended recipients due to the relationship that has been established between depression and sexting (Temple et al., 2014; Van Ouytsel et al., 2014) and the connection made between suicide attempts and moderate to high users of sexting (Dake et al., 2012; Van Ouytsel et al., 2015).

An additional area of assessment that has been addressed in pediatric primary care is the use of a social media screener. Clark, Raphael, and McGuire (2018) shared that due to correlations between mental health and adolescent use of social media, assessing each adolescent's use of social media may provide beneficial insights to the psychosocial aspects of the adolescents. The authors specifically referenced the potential to expand upon the HEADSSS which stands for home life, education, activities, drugs, sexual activity, safety, and suicide and/or depression. Clark et al. (2018) recommended a fourth "S" which would stand for social media question. The authors provide the following example as a question that could be asked: "Have you personally experienced cyberbullying, sexting, or an online user asking to have sexual relations with you?" (p.2).

It is important to highlight that if counselors were to integrate a social media screener component into their assessment, clients would need to be fully informed of the limits of confidentiality specific to these topics. As discussed earlier, counselors may be required to report instance of sexting between minors and clients need to be aware of this limit of confidentiality so they can determine what information to share.

## **Psychoeducation**

It is important that both minors and parents are provided education regarding safety and technology (Davis & Schmidt, 2016; Sadhu, 2012). Prior to providing this information to parents, it may be beneficial to spend some time sharing that the use of technology is an integral part of the lives of adolescents today and connection with peers is developmentally appropriate for adolescents (Judge, 2012). It is also important for counselors to remind parents that developmentally, adolescence is a time period often marked with increased impulsivity and risk taking, increased focus on peer relationships, and increased interest in their sexual identities (Sadhu, 2012). With these developmental

milestones and the ever presence of technology in adolescents' daily worlds, they are more likely to engage in sexting.

It is important to acknowledge that it can be challenging for counselors and parents when it comes to psychoeducation on this topic. For counselors it can be challenging to be realistic with parents about the potential behavior that their children are engaging in, while also balancing age-appropriate and developmental considerations. For parents, it can be challenging to have discussions related to sex with their adolescents, especially in the context of technology, if a parent feels less knowledgeable about technology and its uses (The Canadian Press, 2019).

Despite these challenges, as a result of the increased likelihood of adolescents to engage in sexting, awareness of the legal, social, emotional, and psychological implications of minors engaging in sexting is important.

In regard to the legal implications, it is important that parents and the adolescent are aware of the laws specific to sexting in their state of residence. As mentioned earlier, there are not clear laws and regulations specific to sexting in each state. It is important that individuals are familiar with the related laws that could apply. Some areas of investigation for parents and minors could include: Can sexting be considered pornography? What are the implications of sending a sexually explicit picture of yourself? What are the legal implications of receiving a sexually explicit picture? What would be the implications of opening and/or forwarding a sext?

It is also important to explore the social, emotional, and psychological implications of posting or sending sexual pictures (i.e., there is no way to “delete” or erase it; what happens if the images are forwarded?). It may be beneficial for minors to understand these implications when making decisions about whether to engage in sexting themselves and when considering their roles when peers are engaging in sexting behaviors. It may also be beneficial to educate minors on the role they can play as “bystanders” of sexting (Walrave et al., 2015, p.805). Minors can be encouraged to be “defender” bystanders instead of “assistant” bystanders, who assist in the dissemination of material to individuals for whom they were not intended (Walrave, et al., 2015). This

bystander approach is frequently discussed in the context of cyberbullying interventions and can lead to a decrease in the forwarding of sexting materials (Walrave et al., 2015).

A final topic that is important to address in regard to psychoeducation, is informed consent. If a client is referred to counseling as a result of the sexting (i.e., a referral from the school or a mandate from the courts), the parent will already be informed of the sexting occurrence. If a clinician becomes aware of an instance of sexting with an adolescent client through the process of counseling and this was not the original reason for the referral, it is possible that the parent is not aware of the adolescents' engagement in sexting and informed consent must be considered. It is suggested that counselors seek supervision regarding how to address each case to ensure that the adolescent's confidentiality is respected and the parent's legal rights are honored.

### **Conclusion**

There are discrepancies between the prevalence of sexting, but it is clear that there are negative social, psychological, and emotional implications when minors engage in sexting. Minors engaging in sexting may experience riskier sexual behavior and cyberbullying which may lead to depression and suicidal ideation and ethical and legal considerations for counselors. For example, counselors are mandated reporters and are required to report any suspicion of abuse to Children's Services. It is important for minors to consider the legal implications of engaging to sexting. Similar to the diverse sexting definitions, the laws related to sexting vary significantly across states and are everchanging. As a result of new developments in sexting, evidence-based treatment modalities have not been developed. There is an emphasis on prevention and psychoeducation for minors, parents, and others working with minors (teachers, administrators, etc.). Finally, it is important that counselors are ensuring that they are fulfilling their mandated reporting expectations and engaging in consultations with other counselors and attorneys to maintain ethical and legal practice.

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