

**REPORT TO THE  
JUVENILE COURT JUDGES' COMMISSION  
Considerations in Response to Pennsylvania's Sexting Statute  
Act 198 of 2012**



**This report was developed by Mary Achilles, Achilles Consulting Services, LLC under the direction of Susan Blackburn, Project Director of the Balanced and Restorative Justice/System Enhancement Project. This project was supported by Sub grant #2004 -DS-16T-17350 awarded by the Pennsylvania Commission on Crime and Delinquency (PCCD).**

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## Considerations in Response to Pennsylvania's Sexting Statute Act 198 of 2012

### INTRODUCTION

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In the summer of 2013 the Juvenile Court Judges' Commission (JCJC) initiated a project to research the collateral consequences of Act 198, Pennsylvania's sexting statute enacted in December of 2012. The project consisted of three stages concluding with a written report and recommendations to define the role of the JCJC in response to the passage of the Act. This project was part of the Balanced and Restorative Justice and System Enhancement grant awarded to the JCJC by the Pennsylvania Commission on Crime and Delinquency.

### THE LAW

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Act 198 created the crime of transmission of sexually explicit images by a minor in order to assist law enforcement in addressing the issue of juveniles and sexting. Prior to the passage of Act 198, juveniles were being charged under Pennsylvania's pornography statute, 18 Pa.C.S. § 8312 the sexual abuse of children. Sexting is defined as an act by a minor of producing, possessing, and disseminating an electronic communication containing a sexually explicit image of himself or herself or another juvenile.

Although a legally applicable statute, the child pornography statute did not take into account the contextual and developmental issues related to juveniles. Act 198 was intended to replace the use of the child pornography statute by addressing these issues. Full text of both statutes are included later in this report.

### PROJECT OVERVIEW

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**Stage One** of the project involved the collection of relevant research and data, which included the following:

- The frequency and use of sexually explicit images by juveniles
- Pennsylvania statistics on charges filed
- Education information for juveniles
- Reporting and legal information
- Diversion and intervention programs for juveniles
- Impact of the release of the sexually explicit image on the victim
- Existing resources for intervention and prevention

**Stage Two** of the project involved convening a focus group of system wide stakeholders, including representatives from the magisterial district justices, chief juvenile probation officers, juvenile probation officers, community-based victim assistance programs, statewide domestic violence and sexual assault coalitions, policy makers, education support service providers, and legal advocates for children. Members reviewed the research and data collected in stage one; provided information from their experience working with teens around the issue of sexting; and made recommendations for the role of JCJC in response to Act 198.

**Stage Three** of the project involved the completion of this report and recommendations.

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**Stage One** – Review of all relevant research and other data collected

### F. Academic Research

#### 1. Sexting Among Young Adults

**Published:**

Journal of Adolescent Health Vol. 52, Issue 3, pages 301 to 306, May 2012.  
Researched conducted by the University of Michigan, Prevention Research Center.

**Purpose:**

To describe the sexting behavior of young adults age 18 to 25 in the United States, and examine its association with sexual behavior and psychological well-being.

**Results:**

- More than ½ of the respondents were non-sexters
- 28.2 % were two-way sexters
- 12.6 % were receivers and 2 % were senders
- Male respondents were more likely to be receivers
- Sexually active respondents were more likely to be two-way sexters
- Researchers also found no relationship between sexting and psychological well-being

#### 2. Teen Sexting Behavior and its Association with Sexual Behaviors

**Published:**

Pediatrics and Adolescent Medicine, on-line September 2012, Volume 166, (9), pages 828-833. Research conducted by the University of Texas Medical Branch.

**Purpose:**

To examine the prevalence of sexting behaviors as well as their relation to dating, sex, and risky sexual behaviors using a large school-based sample of adolescents.

**Results:**

- 28 % reported sexting a naked picture of themselves
- 31 % reported having asked someone for a sext
- 51% had been asked to send a sext, with most being bothered by having been asked
- Adolescents who engaged in sexting behaviors were more likely to have begun dating and to have had sex than those who did not sext.
- For girls, sexting was also associated with risky sexual behavior
- Research suggest that teen sexting is prevalent and potentially indicative of teen sexual behaviors.
- Teen-focused health care providers should consider screening for sexting behaviors to provide age-specific education about the potential consequences of sexting and as a mechanism for discussing sexual behaviors

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### 3. **Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging**

**Published:**

Pew Internet and American Life Project, December 15, 2009 Amanda Lenhart, Senior Research Specialist

**Purpose:**

To assess the use of cell phones by teens and specifically provide some insight into why and how teens are sexting.

**Results:**

- 4 % of cell phone-owning teens say they have sent sexually suggestive nude or nearly nude images of themselves to someone else
- 15% of cell phone-owning teens say they have received sexually suggestive nude or nearly nude images of someone they know via text messaging on their cell phone
- Older teens are more likely to send and receive these images
- Teens who pay their own phone bills are more likely to send sexts:
  - 17% of teens who pay all of the costs associated with their cell phones send sexually suggestive images via text
  - Just 3% of teens who do not pay for, or only pay a portion of the costs of the cell phone bill, send these images, etc.

### 4. **Teens and Technology 2013**

**Published:**

Pew Research Center - Berkman Center for Internet & Society at Harvard University, March 13, 2013 Madden M., Lenhart A., Duggan M., Cortessi S., Gasser U.

**Purpose:**

Assess the use of cell phones and cell phone internet access among teens.

**Results:**

- Smartphone adoption among American teens has increased substantially and mobile access to the internet is pervasive
- One in four teens is a "cell-mostly" internet user, who say they mostly go on on-line using their phone and not using some other device such as a desktop or lap top computer

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### 5. **Sexting: A Typology**

**Published:**

Crimes Against Children Research Center of the University of New Hampshire, March 2011, Wolak, Janis and Finkelhor, David.

**Purpose:**

To provide a topology of sexting episodes based on a review of 550 cases obtained from a national survey of law enforcement agencies.

**Summary:**

This bulletin presents a typology of sexting episodes based on a review of over 550 cases obtained from a national survey of law enforcement agencies. The authors created two groups identified as aggravated and experimental. Aggravated consisted of sexting situations that were criminal and malicious in nature while experimental included sexting situations based on juvenile/teen behavior of attention seeking, romantic interests etc. These included no cases where there was criminal action beyond the actual creation of the sexually explicit image. The authors identify implications for consideration in dealing with sexting among teens.

### 6. **The Adverse Childhood Experience (ACE) Study**

**Published:**

Centers for Disease Control and Prevention and Kaiser Permanente, 1998, Robert F. Anda, MD, MS, with the Centers for Disease Control and Prevention, and Vincent J. Felitti, MD, with Kaiser Permanente

**Purpose:**

To assess associations between childhood maltreatment and later life health and well-being.

**Summary:**

This research, conducted between 1995 and 1996, included 17,000 individuals who were taking a routine physical examination and agreed to participate in a survey that solicited detailed information about their childhood history of abuse, neglect and family dysfunction. The ACE Study findings suggest that certain experiences are major risk factors for the leading causes of illness and death as well as poor quality of life in the United States. Progress in preventing and recovering from the nation's worst health and social problems is likely to benefit from understanding that many of these problems arise as a consequence of adverse childhood experiences. The information is continually under analysis. The results of the study to date along with at least 50 scholarly publications can be found at [www.acestudy.org](http://www.acestudy.org) or [www.cdc.gov/ace/about](http://www.cdc.gov/ace/about).

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### 7. "Scared Straight" and Other Juvenile Awareness Programs for Preventing Juvenile Delinquency

**Published:**

Campbell Systematic Reviews 2004. Primary authors Petrosino A, Turpin-Petrosino C, Buehler J.

**Purpose:**

This research looked at the effects of programs comprised of organized visits to prisons with the desired effect of deterring juveniles from future offending.

**Summary:**

The authors found that programs of this type were likely to have a harmful effect and increase delinquency. The idea that the law or fear of the law would deter criminal behavior was not supported.

### 8. National Annenberg Survey of Youth 2010

**Published:**

Adolescent Communications Institute, The Annenberg Public Policy Center of the University of Pennsylvania (2010). Adolescent and young adult victims of cyberbullying at increased risk of suicide. Female youth especially at risk.

**Purpose:**

To explore the link between cyberbullying and suicide.

**Summary:**

Research is derived from the Annenberg National Survey of Youth which consisted of a telephone survey of adolescents and young adults between the ages of 14 and 22. Some of the findings include:

- Cyberbullying can lead to an increase in the likelihood of depression in victims of cyberbullying, particularly when compared to non-victims or those individuals experiencing other forms of bullying
- Victims of cyberbullying are more likely to experience symptoms of depression in the last year such as sadness and hopelessness
- Female youth are at a higher risk of being targets of cyberbullying
- Research does not show cyberbullying as the cause of suicidal tendencies, however, it does show that youth who are victims of cyberbullying are also at increased risk of depression and suicide.
- Perpetrators of cyberbullying are as troubled as those who are victims

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### 9. Trends in Unwanted Online Experiences and Sexting

**Published:**

Crimes Against Children Research Center of the University of New Hampshire, February 2014.

**Purpose:**

Summarizes findings from the Third Youth Internet Safety Survey conducted by the Center.

**Results:**

- 21% of those who appeared in or created image reported feeling very or extremely upset , embarrassed or afraid as a result, as did 25% of youth receiving images
- 28% who appeared in or created images and 28% of those who received images either reported incidents to an authority or an authority found out in the past year
- The most commonly reported reason for incidents was romance as part of an existing relationship, then pranks and jokes or trying to start a relationship
- Sexually explicit images were distributed in 10% of incidents when youth appeared in or created the image and in 3% when youth received the image

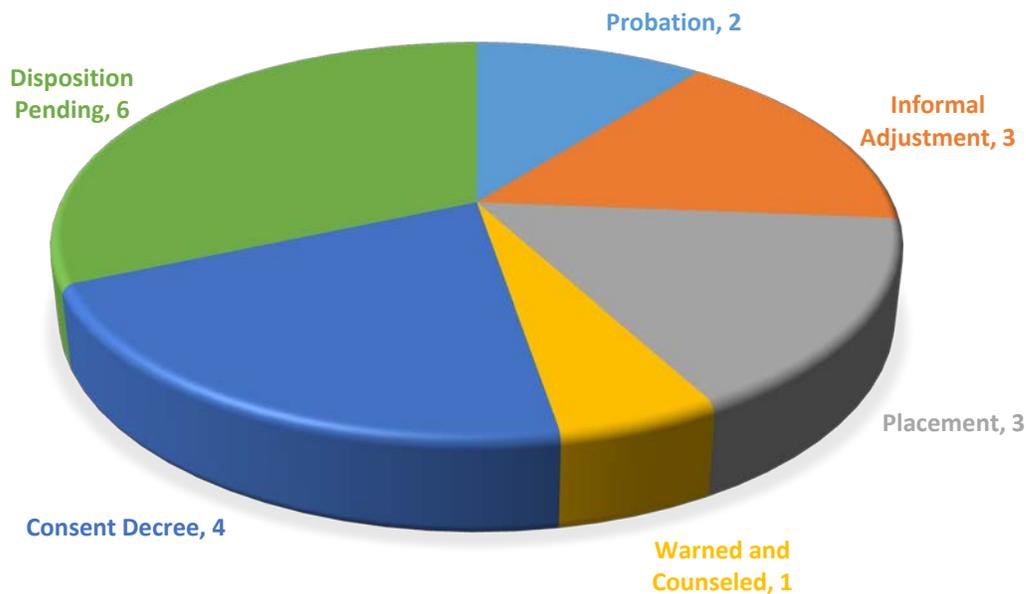
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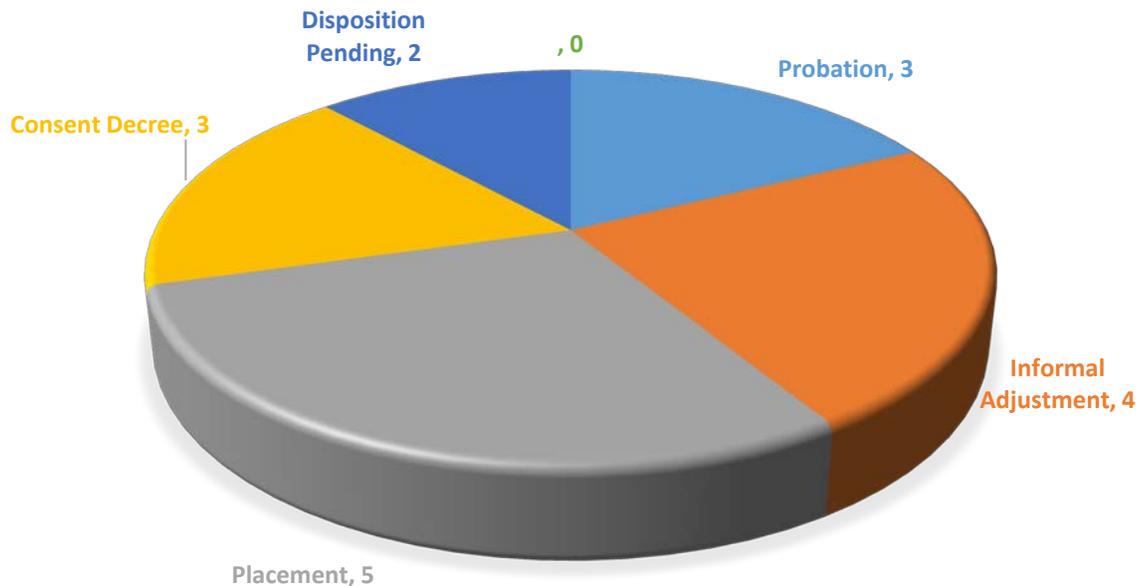
### G. Pennsylvania County Statistics

The statistics reviewed for this project were drawn from county information submitted to the JCJC from January 1, 2013 through October 10, 2013. These statistics do not represent information on summary offenses. Summary offense information is maintained by the Administrative Office of Pennsylvania Courts.

#### Pa.C.S. 18 §6321 Transmission of sexually explicit images by minors (sexting) Dispositions involving 19 Juveniles



#### Pa.C.S. 18 § 6312 Sexual abuse of children Dispositions involving 17 Juveniles



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### H. Resources for Parents, Courts and the General Public

1. **Netzsmartz.org**

A program of the National Center for Missing and Exploited Children. The program provides resources for parents, teachers and kids on cyberbullying, sexting, and social media including "Tip Sheets" for both parents and teens/kids and "Discussion Starters" for parents. Access to the [www.cybertipline.com](http://www.cybertipline.com) for reporting is available from this site and the main site of the National Center for Missing and Exploited Children.

2. **Teens Who Click, Send and Sext, The Importance of Sexting Prevention Rather Than Intervention**

Published in Teen Angst, Psychology Today, August 7, 2013, Lohmann, Raychelle Casandra M.S. L.P.C. [www.psychologytoday.com/em/130658](http://www.psychologytoday.com/em/130658). This article talks to parents about some prevention steps to take with teens. Also discusses information for parents once their teen has been found sexting.

3. **The Dangers of Teen Sexting**

Published in Teen Angst, Psychology Today, July 12, 2012, Lohmann, Raychelle Casandra, M.S. L.P.C. The article discusses the following:

- Emotional consequences of sexting on teens when the image gets into the wrong hands
- The unique ability of teens to know that it is wrong but think they are invincible and will not get caught
- The connection between sexting and bullying
- The impact on the teen's reputation
- Connecting the issue of sexting to parental need to discuss sex with teen. The article can be found at [www.psychologytoday.com/blog/teen-angst/201207/the-dangers-teen-sexting](http://www.psychologytoday.com/blog/teen-angst/201207/the-dangers-teen-sexting)

4. **Effective Responses to Teen Sexting: A Guide for Judges and Other Professionals**

Published by Futures without Violence, Family Violence Prevention Fund, July 2012, Carter, Lucy Salcido JD, Edited by White, Stephanie L. JD and Runner, Michael W. JD authors. This document provides an overview of the issue from a variety of perspectives including definition, harms, prevalence, case law and the development of legislation, criminal and juvenile justice response including intervention programs and diversion programs. The document can be found at [www.futureswithoutviolence.org/userfiles/file/Judicial/Effective Responses to Teen Sexting.pdf](http://www.futureswithoutviolence.org/userfiles/file/Judicial/Effective%20Responses%20to%20Teen%20Sexting.pdf)

*Sexting - Sexting under Pennsylvania law is an act, by a minor, of producing, possessing, and dissemination of an electronic communication containing a sexually explicit image of him or herself or another juvenile.*

*Selfie - is defined by the American Oxford Dictionary as a photograph that one has taken of oneself, typically taken with a Smartphone or webcam and uploaded to a social media website.*

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5. **New Sexting Legislation Victimizes Teens Turning Adolescents into Criminals**  
Juvenile Law Center blog posted October 18, 2012. This blog, posted after the passage of the new sexting legislation, argues the law stands to humiliate teens and engage a new group of teens in the juvenile justice system. It argues that what teens need is education and guidance not criminal prosecution in response to teen sexting behavior. This blog post can be found at [www.jlc.org/blog/newsextinglegislation-victimizes-teens-turning-typical-adolescents-criminals](http://www.jlc.org/blog/newsextinglegislation-victimizes-teens-turning-typical-adolescents-criminals)

### I. Reporting and State Statute Information

1. **CyberTipline.com – 1-800-843-5678**

This is a cooperative initiative between the FBI, Immigration and Customs Services, U.S. Postal Inspection Services, U.S. Secret Service, military criminal investigation services, U.S. Department of Justice, Internet Crimes Against Children Task Force Program, and many other state and local law enforcement agencies.

2. **National Council of State Legislatures**

The website of the National Council of State Legislatures lists all sexting laws across the nation as of December 2012. The information can be retrieved at [www.ncsl.org/research/telecommunications-and-information-technology/sexting-legislation-2012.aspx3](http://www.ncsl.org/research/telecommunications-and-information-technology/sexting-legislation-2012.aspx3)

### J. Diversion and Education Programs for Juveniles

1. **Phone Safety and Sexting Diversion Program**

This program was developed by the Neuropsychology Center of Utah in collaboration with [Courteducationonline.com](http://Courteducationonline.com) and designed specifically for adolescents between the ages of 12 and 18. [www.Courteducationonline.com](http://www.Courteducationonline.com) has developed the first evidence-based online diversion program specifically designed to address this legal dilemma. This is a web-based program that incorporates parental involvement along with the participation of the juvenile. The online course has the following objectives:

- Prevent sexual exploitation of a minor
- Educate adolescents about safe cell phone practices
- Teach appropriate and effective communication between adolescents
- Assist adolescents in developing healthy interpersonal relationships
- Educate parents about sexting and how they can communicate appropriate and safe cell phone practices with their children

The program is available for use by courts, juvenile probation offices and prosecutors across the country. Courts and others can simply direct juveniles and their parent to log on to [www.courtrducationonline.com](http://www.courtrducationonline.com) to register and take the course for \$49.99. [Courteducationonline.com](http://Courteducationonline.com) will work with probation offices to ensure that they receive notification once the juvenile has completed the program.

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### 2. **Empowering Students to Engage in Positive Communication: K-12 Combating Student Sexting**

This school-based curriculum was developed by the Miami-Dade County Florida Public Schools Division of Student Services as a proactive approach to the rising incidence of student sexting. This is designed within a framework of positive communication and incorporates information and education on sexting, its consequences and strategies for students to deal with texting/sexting and peer pressure to participate. This site also includes resources for parents and the overall curriculum includes additional information for teachers. The curriculum is available on line at [www.studentservices.dadeschools.net/sexting/sexting\\_curriculum.asp](http://www.studentservices.dadeschools.net/sexting/sexting_curriculum.asp)

### 3. **Westmoreland County Probation Department - Empowering Students to Engage in Positive Communication**

The Westmoreland County Juvenile Probation Department has adapted the Miami-Dade County Public Schools curriculum for use with juveniles in a group setting. As of 2012, the probation department is committed to the following regarding juveniles and sexting:

- Requiring youth adjudicated on sexting related charges to participate and successfully complete a sexting curriculum group as part of the Court's disposition
- Reaching out to Westmoreland County communities on issues such as:
  - The public atmosphere on cyber space; nothing is private
  - What constitutes cyber bullying and cyber sexual bullying
  - The ramifications when juveniles are involved in cyber bullying
  - Criminal charges against them and civil suits against their families
  - Understanding that bullying may cause depression, isolation and/or suicide
- Exploring ways in which juvenile probation can alert parents and families of youth on active probation of the dangers and consequences of sexting.

### 4. **Sexting Education Program**

This education program was created in 2009 by the Victim Resource Center of Northeast Pennsylvania in collaboration and cooperation with the Wyoming County District Attorney and Juvenile Probation Officer to address cases of juvenile sexting. Juveniles are required to pay the Victim Resource Center for the program. The goals include:

- Learning about sexual violence
- Understanding behaviors that foster or encourage violence
- Terminology surrounding sexting
- Social and legal consequences of sexting
- Identification of ways to prevent violence
- Application of the information learned to everyday life

The Victim Resource Center of Northeastern Pennsylvania provides this program to juveniles outside of their service area for a fee.

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### 5. **Sexting**

This is a program of the Network of Victim Assistance in Bucks County designed to inform students about what sexting is and its connections to unhealthy relationships. This program also discusses the dangers of digital media and the possible ramifications of unsafe decision making.

### 6. **Beforeyoutext.com**

This is the sexting prevention educational program for the state of Texas. The on-line program covers the terminology and the concepts of sexting; the consequences of sexting and the permanence of digital images.

## K. **Potential Concerns Surrounding Implementation of Interventions.**

Several issues of controversy drove the debate around passage of Act 198. Those issues, listed below, are highlighted as they help frame the recommendations in stage three of this report. These same issues were raised by the focus group in stage two of this project. The issues are important as they provide an awareness of and further insight into a complex social issue that is not limited simply to juvenile justice intervention.

### 1. **Uneven Application of the Law**

More often than not sexting cases are brought to the attention of law enforcement when they are referred by schools or parents. Research shows a significant gap between the prevalence of teen sexting in comparison to the county-based statistics reported to the JCJC between January 1, 2013 and October 10, 2013. This gap in numbers raises questions regarding the application of the law such as, but not limited to the following:

- Who is being charged and when
- What is the criteria for referral to law enforcement
- How knowledgeable is the law enforcement community on Act 198
- Why are some cases not referred to law enforcement

### 2. **Criminalizing the Taking of a Sexually Explicit Selfie Thwarts Reporting**

Sexting often comes to the attention of law enforcement when the sexually explicit image, originally produced between two teens in a dating relationship, is distributed beyond the original intended recipient. This third party distribution sometimes creates a situation whereby other juveniles would bully and harass the individual depicted in the image. As a consequence the victim of cyberbullying may be reluctant to report as they can be arrested for taking the sexually explicit image of themselves and transmitting, disseminating or distributing.

*Cyberbullying is the electronic posting of mean-spirited messages about a person (such as a student) often done anonymously (Merriam-Webster 2014).*

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### 3. Attitudes of Teens about Sexting

"Teens and Sexting," a report published in 2009 by the Pew Research Center's Internet and American Life Project, reported that teens' attitudes toward sexting vary widely. The teens who participated in the project's focus groups reported the following:

- At one end of the spectrum teens viewed sexting as a safer alternative to real life activity
- Other teens avoid it because of their concerns about the legality and the potential for public release of the images
- Some teens brand these images, particularly images of girls, as inappropriate and make judgments about those who appear in them
- Teens make fine distinctions between what is acceptable and what is unacceptable in transmitted images – depending on what body parts are exposed

### 4. Attitudes of Parents Toward Sexting

Although there are no known studies of parents' attitudes toward sexting, the media is full of interviews and comments by parents about this issue. Most parents do not condone the taking of sexually explicit images, nor do they condone the distribution of those same images by their teenage sons or daughters. However, many are not seeking a justice system response to the taking of the images. They are seeking a justice system or school response when the images have been distributed beyond the individual originally intended as the recipient. In many newsworthy cases, parents have been interviewed after the images have been distributed beyond the intended recipient, resulting in their teenage boy or girl being bullied and/or harassed. In many of those cases, parents interviewed believed the original taking of the image was not the crime, but that the dissemination of the image and the bullying and harassment that followed should be considered criminal offenses.

### L. Categories of Sexting

1. Teen takes a sexually explicit image of themselves
2. Teen shares image taken by themselves with another teen. This is often done within the context of some form of teen dating relationships
3. Teen who receives the image from their romantic interest/dating partner disseminates it outside of the relationship with another or several other teens or posts it to a social media website
4. Teen receives an unsolicited image and resends it to other teens or posts it on a social media website
5. Teen sends a sexually explicit image of themselves to a non-consensual recipient
6. Teen creates a sexually explicit image of another teen without the knowledge and consent of the teen depicted in the image
7. Teen disseminates the sexually explicit image of another teen that was taken without the knowledge and consent of the teen depicted in the image
8. Teen threatens to disseminate the sexually explicit image of his or her dating partner to coerce the other partner to stay in the relationship or for other motives

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### Stage Two – Focus Group Review

The focus group of system-wide stakeholders included magisterial district justices, chief juvenile probation officers, juvenile probation officers, community-based victim assistance programs, statewide domestic violence and sexual assault coalitions, policy makers, education support services providers, legal advocates for children. The focus group was held on November 17, 2013. The focus group members reviewed the research and data collected in stage one; shared their experiences working with teens around the issue of sexting; and made suggested recommendations on interventions, strategies and education needed to ensure an effective response for the Juvenile Court Judges' Commission response to Act 198.

#### A. Focus Group Participants

The following individuals participated in the focus group:

1. The Honorable Kim L. Bagenstose, Magisterial District Justice
2. Carmen Barrios, Probation Officer, Victim Assistance, Berks County Juvenile Probation Office
3. Addie Beighley, Chief Juvenile Probation Officer, Westmoreland County Juvenile Probation Office
4. Danielle De Matteo, Chief Juvenile Probation Officer Delaware County, Representing the Council of Chief Juvenile Probation Officers
5. Steve Doemer, Secondary Education Coordinator, Network of Victim Assistance
6. Michael J. Durning, Juvenile Probation Officer, Chester County Juvenile Probation Office
7. Joyce Lukima, Director of Field Operations, Pennsylvania Coalition Against Rape
8. Kathleen McGrath, Chief Juvenile Probation Officer, Franklin County
9. Michelle Nutter, Safe and Supportive Schools Program Manager, Center for Safe Schools
10. Riya Shah, Attorney, Juvenile Law Center\*
11. Jill Swiontek, Staff Attorney, LAP Project Manager, Pennsylvania Coalition Against Domestic Violence
12. Susan Blackburn, Juvenile Court Consultant, Center for Juvenile Justice Training and Research / Juvenile Court Judges' Commission
13. Monica Iskric, Project Assistant, Center for Juvenile Justice Training and Research / Juvenile Court Judges' Commission
14. Mary Achilles, Owner, Achilles Consulting Services

\*Participated by phone for a portion of the meeting but provided input prior to the meeting.

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### B. Focus Group Discussion Summary

The focus group members brought a breadth of experience to the discussion from a variety of different perspectives. Listed below are issues raised by the focus group members and identified as issues that must be taken into consideration by the JCJC when determining a

*The differences in attitudes and response of juveniles toward the individuals depicted in the image became apparent during a role play around sexting in our Impact of Crime Class. For example, the response of one male juvenile who was portraying a male depicted in the sexually explicit image was "Are you kidding me, I would not consider myself a victim. Do you know how many girls I could get that way?" Almost as if the distribution of his image was free publicity and a stroke to his ego.*

*The response of one female juvenile who was portraying a female depicted in a sexually explicit image was "I would be mortified. Everyone who knew me might think less of me and I would be embarrassed."*

*Carmen Barrios, Berks County Juvenile Probation*

response to Act 198.

#### 1. Sensitivity to Issues Related to Gender and Victimization

- Research indicates that boys are more likely to be image receivers; therefore, there is a potential for girls to be arrested more often (Journal of Adolescent Health 2012)
- There is no clear research to date to identify the level of consent by the girl or boy depicted in the sexually explicit image; therefore, there is a need to be alert to the possibility that coercion may be used within the context of a teen dating relationship
- Victim advocates across Pennsylvania have begun to identify teen clients who have been threatened with the release of sexually explicit images as coercion to keep the teen in a dating relationship
- How will the juvenile court address the issue of gender disparity? How can we ensure the fair treatment of girls in the juvenile court?
- The use of the phrase "revenge porn" was deemed inappropriate for use within the juvenile justice system. This phrase seems to be judgmental and could potentially have adverse consequences related to the self-worth of the teen depicted in the image.

***Sexting as Intimidation** - New cases are coming to the attention of domestic violence centers involving teenage girls seeking assistance in dealing with threats of dissemination of sexting images from current or former dating partners. The threats include sharing the images via social networks, e-mail to classmates, or release of the images to the girls' parents. Interview, Sally Casey, Executive Director, Schuylkill Women in Crisis.*

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### 2. Considerations for Education/Intervention Programs

- Develop all program in collaboration with key stakeholders and experts in the area of teens, sexual assault, teen dating violence, and sexting.
- Recognize that adolescents do not respond to the threat of the law as a way to change their behavior (Petrosino A, Turpin-Petrosino C, Buehler J. "Scared Straight" and other juvenile awareness programs for preventing juvenile delinquency. Campbell Systematic Reviews 2004).
- Separate juveniles charged under the sexting statute from those not charged. Focus group members expressed concern about the psychological impact of having these two groups mixed, especially if the female juvenile depicted in the image is the juvenile charged.
- Avoid having mixed gender classes.
- Create different approaches based on gender.
- Open programming to all juveniles who are under the jurisdiction of the juvenile courts'.
- Be aware that the parents of the teens depicted in the sexually explicit image may have varying views on the behavior of their child, despite the fact that it is now a crime. For example, parents may not condone the behavior but they may not think it is a crime or that it warranted court intervention.

### 3. Impact of Sexting on Teens

- Permanency of the image in cyberspace creates the possibility of long term consequences to the individual depicted in the image. The accessibility of this sexually explicit image ensures its availability to colleges and employers who often check public social media sites as part of a routine employment and acceptance process.
- Permanency of the image in cyberspace also allows others to continually harass the teen depicted in the sexually explicit image.
- Teens may experience a sense of helplessness as a result of not being able to control the extent of the distribution of the image.
- Teens may experience a sense of shame once the sexually explicit image that was intended to be private is redistributed to their parents or classmates and others.
- Teens may experience harassment, taunting and or cyberbullying from other teens who receive the sexually explicit image.
- Depending on the reaction of their classmates and friends, teens may feel a sense of isolation/non-connectedness once the image is redistributed to their classmates and other friends via social media.
- Teens who face the legal consequences of sexting may experience shame and humiliation due to their involvement in the juvenile court, including the impact of having a juvenile record.

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### 4. Who is the Victim?

- There was much discussion and concern around the portion of the law that allows for the charging of teens who take a sexually explicit image of themselves and send it to a friend. There was concern this clause could be misused and could cause damage to the self-esteem of those depicted in the image.
- When the image is resent by the original recipient is most often when it comes to the attention of law enforcement. In some of these situations the release of the image has been followed by bullying and harassment of the teen depicted in the image. This creates a scenario where the teen depicted in the image and who could be charged under the new statute for sending the picture to the original recipient is now the victim of the bullying and harassment.
- The current law, with its potential for arrest of the individual depicted in the image, could inhibit the reporting of bullying and harassment, which also inhibits outreach for support and assistance.

### 5. Primary Prevention vs Secondary Prevention Role

There was discussion around whether or not the new sexting legislation raises the possibility for juvenile probation offices to take on a primary prevention role. Could juvenile probation offices engage in primary prevention activities by providing information and programming on sexting to all juveniles under the court's jurisdiction?

### 6. Partnerships

The focus group raised the issue that the development of any responses to Act 198 by the JCJC should be done in partnership with outside experts. Partnerships were seen as enhancing the opportunity for a more effective intervention. Partner agencies were seen as having additional expertise that is needed to ensure the intervention is developmentally appropriate and research based. Several suggested partnerships included victim assistance programs, rape crisis centers, domestic violence centers, girls and boys clubs, schools, colleges and universities. Many of the potential partner organizations have a variety of programs for teens, parents, justice system staff on issues related to dangers of technology, healthy relationships, sexting, sexual violence as a continuum, and other programs directly or tangentially related to sexting. Some of the suggested partners are:

- Center for Safe Schools [www.safeschools.info](http://www.safeschools.info).
- School Counselors Association [www.psca-web.org](http://www.psca-web.org).
- Pennsylvania Coalition Against Domestic Violence – Teen dating violence curriculum, Project Connect [www.pcadv.org](http://www.pcadv.org).

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- Pennsylvania Coalition Against Rape – Internet Technology Education Program [www.pcar.org](http://www.pcar.org).
- Pennsylvania Association of Student Assistance Professionals [www.pasap.org](http://www.pasap.org).
- Magisterial District Justices of the Administrative Office of Pennsylvania Courts [www.pacourts.us](http://www.pacourts.us)
- Pennsylvania Council of Chief Juvenile Probation Officers [www.pachiefprobationofficers.org](http://www.pachiefprobationofficers.org)
- Pennsylvania Commission on Crime and Delinquency [www.pccd.state.pa.us](http://www.pccd.state.pa.us)

### 7. Training and Education

The focus group identified the following groups as needing increased awareness of the law, sexting and the collateral consequences pertaining to the sexting behavior of teens. These include parents, juveniles, and juvenile probation officers. Suggested content for such training is listed below:

- **Parents**
  - Pennsylvania law on sexting
    - Definition
    - Legal consequences
  - Prevalence of sexting among teens
  - Complexity of the issue
  - Pennsylvania juvenile justice statistics on sexting crimes
  - Why teens sext – teen views on sexting
  - Collateral Consequences:
    - Social impact
      - Redistribution of the image without permission
      - Long term availability of the image
      - Harassment, intimidation, cyberbullying
    - Emotional impact on the victim
      - Societal views on individual depicted in the image
      - Public shame and humiliation once image is disseminated
      - Teen emotional responses to harassment, intimidation and cyberbullying
  - How to have a conversation with your teen about sexting
  - What parents can do to reduce the incidence of sexting
  - Internet safety
  - Resources

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- **Juveniles**
  - Pennsylvania law on sexting
  - Prevalence of sexting among teens
  - Complexity of the issue
  - Pennsylvania juvenile justice statistics on sexting crimes
  - Powerlessness around who disseminates the image
  - Collateral Consequences:
    - Social impact
      - Redistribution of the image without permission
      - Long term availability of the image
      - Harassment, intimidation, cyberbullying
    - Emotional impact on the victim
      - Societal views on individual depicted in the image
      - Public shames and humiliation once image is disseminated
      - Emotional responses to harassment, intimidation and cyberbullying
    - Financial Impact
      - Employers access
      - College recruiters access
      - Military, etc.
    - Teen dating violence
  
- **Juvenile Probation Officers**
  - Pennsylvania law on sexting
  - Prevalence of sexting among teens
  - Complexity of the issue
  - Pennsylvania juvenile justice statistics on sexting crimes
  - Why teens sext– teen views on sexting
  - Collateral Consequences:
    - Social impact
      - Redistribution of the image without permission
      - Long term availability of the image
      - Harassment, intimidation, cyberbullying
    - Emotional impact on the victim
      - Societal views on individual depicted in the image
      - Public shame and humiliation once image is disseminated
      - Teen emotional responses to harassment, intimidation and cyberbullying
  - Identification of personal bias and prejudices related to sexting, teens who sext, teens depicted in the sexually explicit image and how such bias and prejudices affect interaction with teens.
  - A sample conversation between a juvenile probation officer and juveniles
  - A sample conversation with parents

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### Recommendations:

#### Collaboration, Information Development and Information Sharing

1. The Juvenile Court Judges staff should collaborate with the Pennsylvania District Attorneys Association and law enforcement organizations to increase awareness of the new charge of "transmission of sexually explicit images by minor" created by Act 198.
2. The Juvenile Court Judges' Commission staff should collaborate with the Administrative Office of Pennsylvania Courts Minor Judiciary Education Board to identify, sanction and disseminate information on programs, educational materials etc. to ensure consistency between these two independent agencies. **(This is essential as juveniles charged with summary offenses under the new sexting statute fall under the jurisdiction of the magisterial district justices while juveniles charged with 2<sup>nd</sup> and 3<sup>rd</sup> degree misdemeanors fall under the jurisdiction of county juvenile probation offices.)**
3. The Juvenile Court Judges' Commission staff should collaborate with key stakeholders and content experts to develop informational fact sheets for dissemination to juvenile court judges and juvenile probation departments/officers. **(Informational fact sheets should include at least the following: relevant research including the prevalence of sexting, who is sexting and why teens are sexting; Pennsylvania law and statistics on sexting; the collateral consequences including the emotional, financial and social impact of sexting, sample conversations between juvenile probation officers and both male and female juveniles; discussion of the inherent bias within our culture toward girls depicted in sexually explicit images; and the role of the juvenile probation officer in response to the new sexting statute.)**
4. The Juvenile Court Judges' Commission staff should collaborate with key stakeholders and content experts to develop informational fact sheets for dissemination by juvenile probation officers to parents, juveniles, and allied professionals. **(Informational fact sheets should include basic facts about the prevalence of sexting, the law, and the collateral consequences of sexting.)**
5. The Juvenile Court Judges' Commission staff should compile and distribute a resource guide of available curriculum and interventions that can be utilized with juveniles charged under the new sexting statute for the minor judiciary and juvenile courts.

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### Critical Considerations

1. Due to the complexity of sexting, collaboration with key stakeholders and content experts when creating any materials, curriculum or strategies in response to Act 198 is encouraged.
2. Development of curriculum and other written materials for juveniles should, whenever possible, be created after conducting focus groups with teens around the issue of sexting.
3. Due to the complexity of sexting delivery of information/education on the issue to juveniles should be within a context of healthy relationships and should not be shame-based.
4. Due to the complexity of the issue any written materials designed for teens should be created after conducting focus groups with teens around the content of the material.

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### The Law

#### **Pa.C.S. § 6321. Transmission of sexually explicit images by minor.**

(a) Summary offense.--Except as provided in section 6312 (relating to sexual abuse of children), a minor commits a summary offense when the minor:

(1) Knowingly transmits, distributes, publishes or disseminates an electronic communication containing a sexually explicit image of himself.

(2) Knowingly possesses or knowingly views a sexually explicit image of a minor who is 12 years of age or older.

(b) Misdemeanor of the third degree.--Except as provided in section 6312, a minor commits a misdemeanor of the third degree when the minor knowingly transmits, distributes, publishes or disseminates an electronic communication containing a sexually explicit image of another minor who is 12 years of age or older.

(c) Misdemeanor of the second degree.--Except as provided in section 6312, a minor commits a misdemeanor of the second degree when, with the intent to coerce, intimidate, torment, harass or otherwise cause emotional distress to another minor, the minor:

(1) Makes a visual depiction of any minor in a state of nudity without the knowledge and consent of the depicted minor; or

(2) Transmits, distributes, publishes or disseminates a visual depiction of any minor in a state of nudity without the knowledge and consent of the depicted minor.

(d) Application of section.--This section shall not apply to the following:

(1) Conduct that involves images that depict sexual intercourse, deviate sexual intercourse or penetration, however slight, of the genitals or anus of a minor, masturbation, sadism, masochism or bestiality.

(2) Conduct that involves a sexually explicit image of a minor if the image was taken, made, used or intended to be used for or in furtherance of a commercial purpose.

(e) Forfeiture.--Any electronic communication device used in violation of this section shall be subject to forfeiture to the Commonwealth, and no property right shall exist in it.

(f) Diversionary program.--The magisterial district judge or any judicial authority with jurisdiction over the violation shall give first consideration to referring a person charged with a violation of subsection (a) to a diversionary program under 42 Pa.C.S. § 1520 (relating to adjudication alternative program) and the Pennsylvania Rules of Criminal Procedure. As part of the diversionary program, the magisterial district judge or any judicial authority with jurisdiction over the violation may order the person to participate in an educational program which includes the legal and non-legal consequences of sharing sexually explicit images. If the person successfully completes the diversionary program, the person's records of the charge of violating subsection (a) shall be expunged as provided for under Pa. R.C.P. No.320 (relating to expungement upon successful completion of ARD program).

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(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Disseminate." To cause or make an electronic or actual communication from one person, place or electronic communication device to two or more other persons, places or electronic communication devices.

"Distribute." To deliver or pass out.

"Electronic communication." As defined in section 5702 (relating to definitions)."

"Knowingly possesses." The deliberate, purposeful, voluntary possession of a sexually explicit image of another minor who is 12 years of age or older. The term shall not include the accidental or inadvertent possession of such an image.

"Knowingly views." The deliberate, purposeful, voluntary viewing of a sexually explicit image of another minor who is 12 years of age or older. The term shall not include the accidental or inadvertent viewing of such an image.

"Minor." An individual under 18 years of age.

"Nudity." The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

"Publish." To issue for distribution.

"Sexually explicit image." A lewd or lascivious visual depiction of a minor's genitals, pubic area, breast or buttocks or nudity, if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such nudity.

"Transmit." To cause or make an electronic communication from one person, place or electronic communication device to only one other person, place or electronic communication device.

"Visual depiction." A representation by picture, including, but not limited to, a photograph, videotape, film or computer image.

(Oct. 25, 2012, P.L.1623, No.198, eff. 60 days)

2012 Amendment. Act 198 added section 6321.

Cross References. Section 6321 is referred to in section 6312

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### Pa.C.S. § 6312. Sexual abuse of children.

(a) Definition.--(Deleted by amendment).

(b) Photographing, videotaping, depicting on computer or filming sexual acts.--Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed. Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.

(c) Dissemination of photographs, videotapes, computer depictions and films.—

(1) Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(d) Child pornography.—

(1) Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(e) Evidence of age.--In the event a person involved in a prohibited sexual act is alleged to be a child under the age of 18 years, competent expert testimony shall be sufficient to establish the age of said person.

(e.1) Mistake as to age.--Under subsection (b) only, it is no defense that the defendant did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that the person is over the specified age shall be a defense.

(f) Exceptions.--This section does not apply to any of the following:

(1) Any material that is viewed, possessed, controlled, brought or caused to be brought into this Commonwealth, or presented, for a bona fide educational, scientific, governmental or judicial purpose.

(2) Conduct prohibited under section 6321 (relating to transmission of sexually explicit images by minor), unless the conduct is specifically excluded by section 6321(d).

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(3) An individual under 18 years of age who knowingly views, photographs, videotapes, depicts on a computer or films or possesses or intentionally views a visual depiction as defined in section 6321 of himself alone in a state of nudity as defined in section 6321.

(f.1) Criminal action.—

(1) A district attorney shall have the authority to investigate and to institute criminal proceedings for any violation of this section.

(2) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of violations of this section involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Intentionally views." The deliberate, purposeful, voluntary viewing of material depicting a child under 18 years of age engaging in a prohibited sexual act or in the simulation of such act. The term shall not include the accidental or inadvertent viewing of such material.

"Prohibited sexual act." Sexual intercourse as defined in section 3101 (relating to definitions), masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

### Related Legal Issues

#### **Pending Legislation – Senate Bill 1167**

This legislation addresses the issue of “intimate partner harassment.” Intimate partner harassment is defined as the exposing of an image of an intimate partner in a sexually explicit act to a third party with the intent to harass, annoy or alarm. This legislation attempts to address for adults what the sexting legislation addresses for juveniles. In the several states that have passed legislation of this nature the act of intimate partner harassment has been referred as “revenge porn.”

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### Senate Bill 1167

#### AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in assault, providing for THE OFFENSE OF intimate partner harassment.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

#### § 2709.2. Intimate partner harassment.

(a) Offense defined.--A person commits the crime of intimate partner harassment by exposing a photograph, film, videotape or similar recording of the identifiable image of an intimate partner who is nude or explicitly engaged in a sexual act to the view of a third party for no legitimate purpose and with the intent to harass, annoy or alarm the person depicted.

(b) Affirmative defense.--It shall not be an offense under this section for a person to expose an image with the consent of the person depicted.

(c) Grading.--An offense under this section shall be:

(1) A ~~felony of the third~~ MISDEMEANOR OF THE FIRST degree when the person depicted is a minor.

(2) A misdemeanor of the ~~third~~ SECOND degree when the person depicted is not a minor.

(D) APPLICABILITY.--THIS SECTION SHALL NOT APPLY TO ANY ACTIVITY DESCRIBED IN SECTION 6321 (RELATING TO TRANSMISSION OF SEXUALLY EXPLICIT IMAGES BY MINOR).

~~(d)~~ (E) Definition.--As used in this section, the term "nude" shall have the meaning provided under section 5903(b) (relating to obscene and other sexual materials and performances).

Section 2. This act shall take effect in 60 days

*Revenge Porn - "Revenge porn" can be defined as the dissemination of sexually explicit image for the purpose of harassment, intimidation, and destruction of the reputation of the individual depicted in the image. Since the label revenge porn is assigned only after the image has been disseminated to a third party or beyond the original recipient the term unfairly places judgment on the individual depicted in the image and not the individual disseminating the image. Revenge porn is a term utilized in the media primarily in situations involving adults. The term revenge porn could have adverse consequences if applied to the situations involving juveniles. Those consequences could be humiliation, shame and other longer term consequences related to the existence of the image in cyberspace for an indeterminate amount of time.*