TAKING IT EASY ON TEEN PORNOGRAPHERS: STATES RESPOND TO MINORS’ SEXTING

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I. Introduction

Cell phones have become a staple in the American teenager’s everyday life. Adolescents today cannot recall a world without cell phones and texting, and it has become a priority form of communication. In 2009, seventy-one percent of American teens between twelve and seventeen owned cell phones. Furthermore, a 2009 study conducted by the Pew Internet & American Life Project found that twenty-five percent of teens aged twelve through fourteen text daily, and fifty-one percent of teens aged fifteen to seventeen text daily. The constant use of cell phones has not only been a reliable source of communication for young teenagers, but also, an outlet for them to express their sexual identity.

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1 See Cell Phones Key to Teens’ Social Lives, 47% Can Text with Eyes Closed, MARKETING CHARTS, Sept. 23, 2008, archived at www.webcitation.org/6EkeO5hd1 (providing statistic that nearly 60 percent of teenagers “credit their mobile device with improving their life . . .”).
2 See id. (finding that 80 percent of teenagers rely on their phone for “a sense of security while on the go . . .”).

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“Sexting” evolved from adolescents’ need to explore their sexuality and the rise in technology that allows them to build sexual relationships via private photographs. Sexting has been defined as “the practice of sending or posting sexually suggestive text messages and images, including nude or semi-nude photographs via cell phones or over the Internet.” Recently young adolescents have turned to sexting as form of sexual enticement. In 2008, The National Campaign to Prevent Teen and Unplanned Pregnancy concluded that one in five teenagers has “electronically sent, or posted online, nude or semi-nude pictures or video of themselves.” In 2009, a survey conducted by Cox Communications revealed that nineteen percent of teens from ages thirteen to eighteen engaged in sexting. Even though sexting is a private act among teenagers, there are severe legal consequences to sending such photographs.

The rise in teen sexting has led to an increase in claims against minors for child pornography. With states not having statutes address-

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5 See Melody Sabedra, TEENS, TECHNOLOGY, AND SEX: FINDING THE APPROPRIATE BALANCE AND SYMMETRY WHEN SEEKING TO PUNISH THE MODERN CHILD PREDATOR, at 1-2 (2010), archived at www.webcitation.org/653hfKGGa (explaining how teens have sexually expressed themselves with the rise in technological advancements).
6 See Elizabeth C. Eraker, Note, Stemming Sexting: Sensible Legal Approaches to Teenagers’ Exchange of Self-Produced Pornography, 25 BERKELEY TECH. L.J. 555, 556-57 (2010) (indicating how new technology has allowed teens to produce indecent images and spread them to other people).
8 See The Nat’l Campaign to Prevent Teen & Unplanned Pregnancy, SEX AND TECH: RESULTS FROM A SURVEY OF TEENS AND YOUNG ADULTS 1, 2008 [hereinafter Sex and Tech], archived at www.webcitation.org/653mlm6PJ (introducing statistics to show the rise in teen sexting).
9 See id.
10 See Cox’s New Survey on Cyber-Safety Finds Many Teens Going Online Wirelessly Without Limits or Controls, COX COMMUNICATIONS, [hereinafter Cox Survey], May 14, 2009. archived at www.webcitation.org/6Ekk2XwxE (giving results of a survey conducted by Cox Communications in 2009 about the number of teens that were engaged in sexting).
11 See Eraker, supra note 6, at 557 (stating that courts have upheld juvenile child pornography convictions).
12 See Tonya Fennell, Sexting Cases on the Rise, SEDALIA DEMOCRAT (Dec. 26, 2009), archived at www.webcitation.org/653rHVLk1 (indicating a rise in sexting cases).
ing teenage sexting prior to 2009, prosecutors used traditional child pornography laws to deal with minors who engaged in sexting. Moreover, depending on the state in which they lived, minors ran the risk of being placed on the state’s sex offender registry. Recognizing that penalties against minors for sexting were too severe, states in 2009 began implementing laws that addressed sexting and provided penalties that would not seriously affect a minor’s future. There are a few states, however, that have decided to address teen sexting while still leaving the door open for minors to be prosecuted under state child pornography laws and to become registered sex offenders. Regardless of the varying approaches taken by states, their response to the teen sexting issue may have recently impacted adolescents’ views on sexting for the better.


14 See Brief of Juvenile Law Center as Amici Curiae in Support of Appellees at 27-30, Miller v. Mitchell, 598 F.3d 139 (3rd Cir. 2010), aff’g Miller v. Skumanick, 605 F. Supp. 2d 634 (M.D. Pa. 2009), (No. 09-2144), 2009 WL 5538635 (providing the details of SORNA and how a minor can be placed on a sex offender registry). The Adam Walsh Child Protection and Safety Act (“Act”) requires that minors be subjected to sex offender registry requirements. See id. at 28. The Act requires that all states substantially comply with the requirements of the Sex Offender Registration and Notification Act (“SORNA”) or risk losing funding from the Omnibus Crime Control and Safe Street Act. See id.

15 See 2009 “Sexting” Legislation, NAT’L CONF. ST. LEGIS., Sept. 1, 2010, archived at www.webcitation.org/653vOIs1F (providing a list of states that have introduced sexting legislation); see also Mike Celizic, Vermont Moves to Reduce Teen ‘Sexting’ Charges, TODAY, Apr. 15, 2009, archived at www.webcitation.org/653w28Ram (pointing to Vermont legislature’s reasoning for reducing the penalty for teen sexting).

16 See NEB. REV. STAT. § 28-813.01 (2011) (indicating that minors will be charged with a felony for possession of sexually explicit conduct); see also R.I. GEN. LAWS § 11-9-1-4(b),(c) (2012) (addressing that a minor that distributes or possesses an sexually explicit image of another minor is subject to felony charges).

This Note will first examine the history of child pornography laws and their eventual affect on teen sexting cases. Second, the Note will introduce the states that have implemented laws in response to the rising number of teen sexting incidents and the current state of teen sexting. Third, the Note will compare and contrast the differences between penalties enforced by the states from the most severe approaches to the states that are more lenient towards sexting minors. Finally, the Note will assess the possible impact these states’ laws have had on mitigating the teen sexting issue.

II. History of U.S. Child Pornography Laws

The history of child pornography laws can be traced back to 1977 and the Protection of Children Against Sexual Exploitation Act. The Act was implemented to criminalize the act of forcing a child to engage in sexual conduct in order to create a visual depiction that would be distributed through interstate commerce. However, the Act was not widely used, and only one person was convicted under the statute.

The issue of child pornography was amplified in the 1982 case of New York v. Ferber. In Ferber, an adult bookstore owner was convicted under a New York statute that prohibits promoting and distributing material that depicts a child under the age of 16 engaging in a sexual performance. The U.S. Supreme Court determined that child pornography was not obscene under the Miller test, yet was concerned with the exploitation of children, stating, “the use of children as subjects of pornographic materials is harmful to the physiological, emotion, and mental

19 See Sternberg, supra note 18, at 2795 (outlining the purpose of the law).
20 See Sternberg, supra note 18, at 2795 (providing that there were an insignificant amount of convictions under the law).
22 See id. at 751-52 (describing the facts of the case).
health of the child." In upholding New York’s child pornography statute, the Court in *Ferber* linked the distribution of photographs that contained children engaging in sexual activity to the sexual abuse of children. According to the Court, the critical issue always has been “whether a child has been physically or psychologically harmed in the production of the work.” The Court determined that the only way to effectively control the production of material which requires sexual exploitation of children was to regulate the distribution network of child pornography.

Using the holding set out in *Ferber*, Congress passed the Child Protection Act of 1984. The Act followed the reasoning in *Ferber* and prohibited the distribution, production, or possession of child pornography. In addition, the Act limited the work only to material that visually depicted children engaging in sexual behavior. In 1986, Congress expanded how it wanted to tackle child pornography with the Child Sexual Abuse and Pornography Act and Child Abuse Victims’ Rights Act. These Acts, prohibited advertisements of child pornography and subjected pornographers to liability for injuries suffered by child mod-

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23 See id. at 760-61. Obscenity is
   (a) whether ‘the average person, applying contemporary community
   standards’ would find that the work, taken as a whole, appeals to the
   prurient interest, (b) whether the work depicts or describes, in a pa-
   tently offensive way, sexual conduct specifically defined by the ap-
   plicable state law; and (c) whether the work, taken as a whole, lacks
   serious literary, artistic, political, or scientific value.

24 See *Ferber*, 458 U.S. at 759 (explaining how the distribution of child pornog-
   raphy is correlated to child abuse).

25 See id. at 761.

26 See id. at 756-57 (focusing efforts to control distribution channels of child porn-
   ography).

   (providing a person cannot distribute or sell child pornography); see also Sternberg
   *supra* note 18, at 2795 (pointing to how the Child Prevention Act of 1984 was cre-
   ated).

28 See Sternberg, *supra* note 18, at 2795 (outlining the meaning of the Act).

29 See Sternberg, *supra* note 18, at 2795 (pointing to the Act focusing on the sexual
   exploitation of children).

30 See Sternberg, *supra* note 18, at 2795 (describing new legislation that Congress
   implemented in 1986).
els. Congress went another step further in 1988 with The Child Protection and Obscenity Enforcement Act, which prohibited using computers to distribute child pornography.

In 1990, the Supreme Court faced another child pornography issue in Osborne v. Ohio. An Ohio man was prosecuted for violating an Ohio law that made the possession of child pornography illegal. The Court upheld the ruling in Ferber, and extended it by holding that the Ohio law was valid in its attempt to ban possession of child pornography in the interest of preventing child abuse. Although people have a First Amendment right to possess child pornography, the Court explained that the intent behind Ohio’s law was to protect the victims of child pornography. Agreeing with the reasoning established in Ferber, the Court concluded that Ohio had a compelling interest in the “physical and psychological welfare of a minor” and is allowed to enact laws that further that interest.

Before 1996, Ferber and Osborne were the standard to what was considered Child Pornography. In 1996, Congress enacted the Child Pornography Protection Act (CPPA) to expand on what was already established in Ferber and Osborne. The CPPA regulates “virtual” child pornography. Virtual child pornography can take many forms and can

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31 See Sternberg, supra note 18, at 2795-96 (outlining what each piece of legislation stood for).
32 See Sternberg, supra note 18, at 2796 (addressing how Congress enacted legislation in response to the innovation of computers).
34 See id. at 106-07 (explaining the child pornography claim addressed in the case).
35 See id. at 109 (stating that the Court believed the Ohio statute was meant to protect children and prevent the possession of child pornography).
36 See id. at 108-09 (providing that Ohio wanted to destroy the market for obscene material depicting children).
37 See id. at 109-10 (explaining how the argument in Ferber is persuasive in looking out for the safety and well-being of children).
39 See 18 U.S.C. § 2252A (2012) (providing the current amended version of the CPPA); see also United States v. Hilton, 167 F.3d 61, 65 (1st Cir. 1999) (upholding CPPA as not being overbroad or unconstitutionally vague when properly construed and reversing district court’s favorable ruling on defendant’s motion to dismiss).
40 See Hilton, 167 F.3d at 65 (addressing the legislative intent behind the CPPA was to criminalize the computerized distribution of child pornography).
include a scanned picture of a real child, that is manipulated by a computer to create a sexually oriented photo.\textsuperscript{41} Lawmakers wished to keep pace with technological advancements that made it possible for child pornographers to modify pictures of innocent children and create an image that puts the children in sexually suggestive situations.\textsuperscript{42} With the statute in place, child pornography at the time was defined as:

\begin{quote}
[A] ny visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where-(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct; (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or (D) such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct . . . .\textsuperscript{43}
\end{quote}

Congress believed the statute was broad enough to prevent underground child pornography, the major source, and deprive child pornographers of a “criminal tool” – virtual pornography – which promoted child abuse.\textsuperscript{44}

\textsuperscript{41} See id. (pointing to what depictions the First Circuit Court of Appeals targeted).
\textsuperscript{42} See id. (indicating the relevant forms which virtual child pornography can take).
\textsuperscript{43} See id. at 66 (defining child pornography).

A “visual depiction” includes—but is not necessarily limited to—“undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.” . . . Sexually explicit conduct is described as “actual or simulated—(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same sex or opposite sex; (B) bestiality; (C) masturbation; (D) sadistic or masochistic abuse; or (E) lascivious exhibition of the genitals or pubic area of any person.”

\textit{Id.}
\textsuperscript{44} See id. at 66-67 (providing Congress’ intent behind enacting the statute).
In 2002, however, the Supreme Court found in *Ashcroft v. Free Speech Coalition* that part of the CPPA was overbroad.\(^{45}\) The Free Speech Coalition, an adult entertainment trade association, challenged the CPPA.\(^{46}\) The Coalition specifically challenged the provisions prohibiting images that “appear to be” minors engaged in sexual activity, and speech that “conveys the impression” that minors are engaging in sexual conduct.\(^{47}\) The Coalition believed the provisions were overbroad and violated speech that would otherwise be protected under the First Amendment.\(^{48}\) The Supreme Court once again linked the abuse of children to the validity of laws prohibiting child pornography by stating, “where the images are themselves the product of child abuse . . . the State had an interest in stamping it out without regard to any judgment about its content.”\(^{49}\) The Supreme Court believed that *Ferber’s* interpretation of “child pornography was based upon how it was made, not on what it communicated.”\(^{50}\) In addition, the CPPA goes beyond *Ferber*, as it criminalizes work that does not actually use real children.\(^{51}\)

The Supreme Court agreed with the Free Speech Coalition in finding certain CPPA provisions to be overbroad because virtual child pornography is not related to the sexual abuse of real child pornography.\(^{52}\) Moreover, the threat of future harm from the potential circulation of a photo, either through phones or the Internet, cannot serve as a proper rationale for finding such a statute, or its use, constitutional.\(^{53}\)

With the CPPA faltering in *Free Speech Coalition*, President George W. Bush enacted the Prosecutorial Remedies and Other Tools to

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\(^{45}\) *See Ashcroft*, 535 U.S. at 249 (pointing to how the court found that § 2256(8)(B) and § 2256(8)(D) were unconstitutional because the provisions were overbroad).

\(^{46}\) *See id.* at 234 (stating that the Coalition brought a claim because they feared the CPPA threatened their activities).

\(^{47}\) *See id.* (indicating the basis behind the Coalition’s claim); *see also* 18 U.S.C. §§ 2256(8)(B), 2256(8)(D) (indicating the provisions in the statute that the Coalition challenged).

\(^{48}\) *See Ashcroft*, 535 U.S. at 234 (providing the basis for the respondent’s claim).

\(^{49}\) *See id.* at 249.

\(^{50}\) *See id.* at 250-51.

\(^{51}\) *See id.* at 236 (explaining how CPPA also applies to speech that does not result in a crime or creates victims).

\(^{52}\) *See id.* at 250 (providing the court’s reasoning of how virtual child pornography is not related to child abuse).

\(^{53}\) *See id.* at 253 (explaining that it is not enough to ban virtual child pornography by claiming that it promotes criminal acts).
end the Exploitation of Children Today Act (PROTECT Act) of 2003.\textsuperscript{54} Along with the AMBER Alert program to combat child abduction, the Act strengthened the child pornography statute by adding a requirement for obscenity under the \textit{Miller test}.\textsuperscript{55} The Act criminalized distributing or receiving obscene material that contained any visual depiction of a minor engaging in sexual activity.\textsuperscript{56} In 2008, the U.S. District Court of the Southern District of Iowa ruled in \textit{U.S. v. Handley} that provisions of the Act were unconstitutional because they were overbroad, violating the First Amendment.\textsuperscript{57}

Along with passing the PROTECT Act, Congress in 2003 amended 18 U.S.C. § 2252A, which was part of the original CPPA.\textsuperscript{58} The amendment included criminalizing the advertisement or distribution

\begin{quote}
\textit{An}\textsuperscript{y person who . . . knowingly—(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or (B) advertises, promotes, presents, distributes, or solicit\textsuperscript{s} through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or (ii) a visual depiction of an actual minor engaging in sexually explicit conduct.}
\end{quote}

\textit{Id.}


\textsuperscript{55} See \textit{U.S. v. Handley}, 564 F. Supp. 2d 996, 1000 (S.D. Iowa 2008) (pointing to the language of 18 U.S.C. § 1446A and how it adds one of the requirements from the \textit{Miller test}); see also 18 U.S.C. § 1466A (indicating that § 1446A(a)(2)(A)-(B) has the same requirement as the \textit{Miller test}); see also \textit{Miller}, 413 U.S. at 24 (providing the requirements for obscenity).

\textsuperscript{56} See 18 U.S.C. § 1446A (stating how a person can violate the law).

\textsuperscript{57} See \textit{Handley}, 564 F. Supp. 2d at 1007 (holding that subsections 1446A(a)(2) and (b)(2) of the PROTECT Act were overbroad and unconstitutional when there was no requirement for material involving child pornography to be obscene or involve real children); see also 18 U.S.C. §§ 1466A(a)(2), 1466A(b)(2) (pointing to the two provisions of the statute that were deemed unconstitutional).

of “an obscene visual depiction . . . or . . . visual depiction of a minor engaging in sexually explicit conduct.” The provision still stands in the statute’s current form.

In 2006, Congress further enhanced the regulation of child pornography with the Adam Walsh Child Protection and Safety Act. The Act addressed the growing issue of sexual violence against children and strengthened criminal penalties against offenders who exploited children in a sexual manner. One of the penalties includes placing offenders on a National Sex Offender Registry, which labels them as a “sexually dangerous person.” In addition, The Adam Walsh Act, along with other child pornography statutes at the time, did not distinguish between juveniles and adults in either definitions or punishments. With no distinction between the two groups at the time, anyone who violated the statutes was subject to the penalties.

Florida was one of the first states to prosecute minors who were caught sexting under its child pornography laws. In A.H v. State, a 16-year-old Florida girl was charged under the state child pornography law in 2007 for sending digital photos to her boyfriend that depicted the couple engaging in sexual behavior. A.H. filed a motion to dismiss,

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59 Id.
62 See Adam Walsh Act §102 (indicating the purpose and consequences of the Act).
63 See 18 U.S.C § 4247 (2006) (defining “sexually dangerous person”). The Adam Walsh Act defines a sexually dangerous person as “a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others . . . .” Id.
65 See Penny Spiller, Alarm Bells Ring Over ‘Sexting’, BBC, May 15, 2009, archived at www.webcitation.org/65Bu0Pt6C (describing that there were at least twenty prosecutions related to juveniles being subject to child pornography penalties in 2009).
66 See A.H v. State, 949 So.2d 234, 236 (Fla. Dist. Ct. App.) (describing how the court believed that criminal prosecution was best to further a compelling state interest of preventing a minor from producing a photograph of sexual conduct).
67 See id. at 235 (indicating the facts of the case).
claiming that the Florida statute was unconstitutional in its application to her case because it violated her privacy interest. The First District Court of Appeals however, held that no reasonable expectation of privacy existed in this case because “the decision to take photographs and to keep a record that may be shown to people in the future weighs against a reasonable expectation of privacy.” In addition, the court found that the government has a simultaneous compelling state interest in both protecting and convicting children in child pornography cases despite the fact that those same children lack the “foresight and maturity. . . to make an intelligent decision about engaging in sexual conduct and memorializing it.”

In the dissenting opinion, Judge Philip J. Padovano stated that applying the state statute in this case did violate A.H.’s right to privacy. According to Judge Padovano, “there is always a possibility that something a person intends to keep private will eventually be disclosed to others. But we cannot gauge the reasonableness of a person’s expectation of privacy merely by speculating about the many ways in which it might be violated.” Judge Padovano believed that the court made an error in applying the statute that was intended to protect children but instead subjected them to criminal punishment. The majority however, believed that the penalty for child pornography was proper for a case involving teenage sexting.

Another example where a court was one of the first to prosecute minors for sexting was Miller v. Skumanick. In Miller, District Attorney George Skumanick, Jr., threatened to charge a number of teenagers

68 See id. (stating defendant’s reasoning on why she wanted the charges dropped).
69 See id. at 237.
70 See id. at 238-39.
71 See id. at 239 (Padovano, J., dissenting) finding that the child’s right to privacy was violated).
72 See A.H., 949 So.2d at 240.
73 See id. at 241 (providing Judge Padovano’s reasoning in his disagreement with the majority).
74 See id. at 238 (stating that the court believes there is a compelling state interest in preventing the dissemination of sexually explicit images of minors).
75 See Miller, 605 F. Supp. 2d at 637 (indicating that the claim was brought against Pennsylvania female students for possessing sexually explicit images on their cell phones).
with child pornography in 2009.\(^{76}\) School officials in the Tunkhannock School District in Pennsylvania confiscated student cell phones and found digital photos of nude and semi-nude teenage girls.\(^{77}\) Skumanick stated that the photographs of the teenagers violated Pennsylvania’s child pornography statute.\(^{78}\) In addition, he stated to newspaper reporters that student who possess “inappropriate” digital photos of minors expose themselves to becoming registered sex offenders under state law.\(^{79}\)

Skumanick informed all the potential defendants and their parents that he would drop the charges if the teens successfully completed a six-to-nine month program of education and counseling.\(^{80}\) The District Attorney’s office sent a letter to the teens and their parents that warned them of possible felony charges if the teens did not complete the program.\(^{81}\) In addition, Skumanick pointed out that the minors could receive long prison terms and that a guilty verdict would likely subject the three teenage girls “to registration as sex offenders under Pennsylvania’s Registration of Sexual Offenders Act . . ., for at least ten years and have their names and pictures displayed on the state’s sex-offender website.”\(^{82}\)

In March 2009, however, the United States District Court for the Middle District of Pennsylvania granted a temporary restraining order against the District Attorney of Wyoming County, which halted the prosecution of the teenagers.\(^{83}\) As a result, there was no definitive con-

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\(^{76}\) See id. at 637-38 (providing that the teens were potentially facing criminal charges for sexting).

\(^{77}\) See id. at 637 (pointing to the facts of the case).

\(^{78}\) See id. (stating that the minors were subject to the child pornography statute of the state); see also 18. PA. CONS. STAT. ANN. § 6312 (West 2012) (indicating that anyone who makes a child engage in sexual acts will be charged with a felony).

\(^{79}\) See Miller, 605 F. Supp. 2d at 638 (providing that the minors would become registered sex offenders if found guilty under the statute).

\(^{80}\) See id. (providing that the sexting teens could avoid felony charges by completing an educational program).

\(^{81}\) See id. (indicating the penalties involved if the program is not completed).

\(^{82}\) Id.; see also 42 PA. CONS. STAT. ANN. § 9718.4 (West 2012) (pointing to the current law in Pennsylvania as not making an exception for minors regarding registration as sex offenders).

\(^{83}\) See Miller, 605 F.Supp.2d at 647 (providing that the court ordered a restraining order on behalf of the teenagers).
stitutional determination. Pennsylvania is still one of the states that has not passed legislation to address teen sexting. Many other states have added or amended their laws to address suitable punishments for minors who engage in such acts.

III. States Respond to Teen Sexting

From 2008 to 2009, close to 4,000 sexting cases involving minors were reported to police nationwide. States began to respond by reducing their penalties against teens if convicted of sending and possessing depictions of sexually explicit conduct of another minor.

a. The Trail Blazers in Teen Sexting Laws

In 2009, eight states decided to take action on the teen sexting. Utah was the first state in 2009 to sign into law a statute that penalized minors for sexting. Before Utah enacted its sexting legislation, minors

84 See Miller v. Mitchell, 598 F.3d 139, 145 (3d Cir. 2010) (stating that the parents were awarded a temporary restraining order which prevented the children from receiving any criminal charges).
87 See Tanner, supra note 17 (stating that there were thousands of minor sexting cases from 2008 to 2009).
88 See 2009 “Sexting” Legislation, supra note 15 (listing the states that introduced laws that year addressing minors’ sexting); 2010 Legislation Related to “Sexting,” supra note 86 (providing the states that discussed laws in 2010 to address minors’ sexting); 2011 Legislation Related to “Sexting,” supra note 86 (pointing to the states that passed laws in 2011 relating to prosecuting teen sexting).
89 See 2009 “Sexting” Legislation, supra note 15 (highlighting the states that introduced sexting legislation).
90 See 2009 “Sexting” Legislation, supra note 15 (listing Utah as a state that signed their sexting law in 2009); see also UTAH CODE ANN. § 76-10-1204 (West 2009) (defining the statute penalizing minors for creating and distributing sexually explicit images of other minors).
would be charged with a felony offense, receive jail time, and become registered sex offenders if convicted. Prosecutors such as Troy Rawlings, however, believed that charging a minor with a felony for “youthful foolishness” was too harsh a penalty. Rawlings stated, “[W]e were dealing with immature kids who were not fully understanding the serious consequences of their actions.” Prosecutors like Rawlings wanted more legal options to deal with minors who distribute or possess pornographic material. Guided by Rawlings’s advocacy, Utah passed legislation that allows minors to avoid prosecution under the state’s child pornography laws and facing felony charges.

In May 2009, Nebraska was the next state to implement a law that helps teens avoid felony chargers. Before the law was enforced, teens who texted harmless playful pictures to their boyfriend or girlfriend would face felony charges that would require them to become registered sex offenders. Nebraska’s intention was not “to treat child-

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93 Id.; see also Andrew Adams, AG Says Teen ‘Sexting’ Cases Increasing in Utah, KSL.COM, Mar. 29, 2010, archived at www.webcitation.org/65Y2CPoaa (quoting Rawlings’s statements on teen sexting). “It’s a perfect storm of physical maturation, lack of mental maturation and technology.” Id.
94 See Thomson, supra note 92 (stating Rawlings preferred more options when it came to prosecuting minors for sexting).
95 See UTAH CODE ANN. § 76-10-1206 (West 2009) (defining the penalty to minors for sexting); see also Thomson, supra note 92 (reporting Rawlings advocated for a change in Utah’s laws dealing with minors caught sexting); see also Ben Fulton, Sex and the Cell Phone, SALT LAKE TRIBUNE, May 30, 2010, available at www.webcitation.org/6Fx2yta5E (stating that prosecutors have the option to charge a sexting minor with a misdemeanor); see also UTAH CODE ANN. §§ 76-3-204, 76-3-301 (West 2013) (providing the penalties associated with misdemeanors in Utah).
96 See 2009 “Sexting” Legislation, supra note 15 (noting the date that Nebraska sexting legislation was signed).
97 See Dane Stickney, RACY PICS: Teen Sext Phone Fad Leads to Trouble More Youths Are Exchanging Naked Photos of Themselves and Learning How High Technology Magnifies . . ., OMAHA WORLD HERALD, available at 2009 WLNR 27494482 (describing how teens in Nebraska were prosecuted before the sexting legislation).
ish behavior as criminal activity.\textsuperscript{98} Nebraska now offers an affirmative defense to anyone under the age of nineteen if those teens send a sexually explicit photo to a friend.\textsuperscript{99} With the defense in place, teens can be exonerated if the teen in the image “knowingly and voluntarily” generated the picture and sent it to a willing recipient.\textsuperscript{100}

In June 2009, Vermont joined Utah and Nebraska in adding its own law that reduced the penalty against minors convicted of sexting.\textsuperscript{101} The intent behind the law was to distinguish penalties between teens that exchange sexually explicit images among themselves from adults who possess pornographic images of a minor.\textsuperscript{102} Vermont State Sen. John Campbell stated, “[w]e have to understand that there is certainly a difference between bad behavior and bad decision making and criminal behavior.”\textsuperscript{103} Campbell believes that although teenagers are making bad decisions when it comes to sexting, the impact of becoming a sex offender would devastate a minor’s future career.\textsuperscript{104} Vermont now helps teens avoid prosecution under the child pornography statute and sends teens that “knowingly and voluntarily” transmit a sexually explicit image through electronic or computer communication to family court.\textsuperscript{105}

In regards to why Vermont wanted to help teens avoid felony charges,
Campbell stated, “[w]e found that there were certain instances that we needed to make sure to protect those teenagers who make really bad decisions . . . [i]t would be easy for us to have just walked away and let all these cases be handled by prosecutors, but we believe that it is incumbent upon us as legislators to deal with the issue directly.”

One month later, Missouri became the fourth state in 2009 to implement a law that mitigated the penalty against teen sexting. Before the law was enacted, minors would be prosecuted under the state child pornography laws and become registered sex offenders if convicted. Missouri decided to change its stance and amended its child pornography laws by abolishing the first offense felony charge and registered sex offender requirement. Now, prosecutors in Missouri have the option to convict sexting teens under laws that provide punishments that do no impact the life of a young teen’s future.

b. More States Jump on the Teen Sexting Legislation Bandwagon

In 2010, four more states implemented sexting legislation pertaining to minors. In May 2010, Arizona instituted a law that addressed the “unlawful use of an electronic communication device by a

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106 Celizic, supra note 15.
108 See Laws Pertaining to Sexting in the State of Missouri, MOBILE MEDIA GUARD, 2011, archived at www.webcitation.org/65NmSxgN1 (explaining how minors were prosecuted for sexting before the law was enacted).
110 See MO. ANN. STAT. § 573.040 (West 2012) (providing that violators of the statute will be charged with a Class A Misdemeanor); see also MO. ANN. STAT. § 589.400(8) (indicating that people under the age of nineteen have the ability to immediately remove their name off the sex offender registry at the time of conviction).
111 See 2010 Legislation Related to Sexting, supra note 86 (listing the states that implemented sexting legislation).
Prosecutors in Arizona, such as Paul Ahler, did not want to use child pornography laws to deal with the issue of minors sexting. Ahler stated that minors are “not pedophiles, not sex offenders . . . [b]ut they are doing something dangerous that needs to be stopped.” Those who opposed the teen sexting law in Arizona believed that education for teens about sexting provided by teachers and parents was more necessary than a law that could lead to incarceration. With Ahler’s support, however, Arizona enacted a law specifically tailored towards minors, making it a petty offense to transmit or display through the use of electronic communication a sexually explicit image of a minor to one person, which helps them avoid prosecution under the state’s child pornography law.

Connecticut was another state in May 2010 to establish a law helping minors who are caught sexting to avoid felony charges. Rosa Rebimbas—at the time, a Republican state representative—proposed the sexting law and advocated to lessen the penalty against sexting minors. Rebimbas believed that there was a difference between con-

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112 See ARIZ. REV. STAT. ANN. § 8-309 (2010); see also 2010 Legislation Related to “Sexting,” supra note 86 (providing the date when Arizona signed their sexting legislation).
113 See Alia Beard Rau, Arizona Senate Panel endorses ‘sexting’ bill, AZCENTRAL.COM, Feb. 4, 2010, archived at www.webcitation.org/66JWnanC6 (stating that Ahler believed prosecuting teens under the state’s child pornography law may not be proper for certain instances of teen sexting).
114 Id.
115 See id. (noting that there were individuals who opposed the sexting bill and believed that teen sexting should be handled by the parents and not through incarceration).
116 See id. (indicating that Ahler and his organization supported the sexting bill); see also ARIZ. REV. STAT. ANN. § 8-309 (2010) (explaining that violators of the statute are charged with a petty offense or a misdemeanor); see also Laws Pertaining to Sexting in the State of Arizona, MOBILE MEDIA GUARD, 2011, archived at www.webcitation.org/65Y4zJ0cu (stating that minors can be charged with a petty offense or misdemeanor depending on how many people have viewed the sexually explicit image); see also Russ Richelsoph, Arizona Petty Offense, RUSSLAWAZ.COM, 2011, archived at www.webcitation.org/65Y69vNGq (defining a petty offense in Arizona).
118 See Amanda Falcone, Connecticut Bill Would Reduce Penalty For ‘Sexting’ Between Consenting Minors, THE HARTFORD COURANT, Feb. 21, 2010, archived at www.webcitation.org/65Nvo7jfa (indicating Rebimbas proposed the bill); see also Ros Krasny, Bill Would Lessen Teen “Sexting” Charge, REUTERS, Mar. 23, 2010,
senting teens who send each other sexually explicit images, and a person who sends out the same images to another person without their consent. Rebimbas believed that having more options in place would prevent consenting teens from facing felony charges and possible becoming sex offenders. With Rebimbas’ support, Connecticut now has a law that no longer charges minors who distribute and possess any visual depiction of child pornography produced and sent through an electronic communication with a felony.

In July 2010, Louisiana Governor Bobby Jindal signed into law Louisiana’s version of a teen sexting statute. Representative Damon Baldone, who introduced the bill to the House, explained that the law would give minors “a slap on the wrist, not a felony.” Before Louisiana’s sexting laws, teens convicted under state child pornography laws would receive jail time along with a requirement to register as a sex offender. Baldone wanted to “give judges the authority to charge youths with a lesser crime of sexting.” The law eventually passed in both the House and Senate, and now teens under the age of seventeen in

archived at www.webcitation.org/65VEARd4D (indicating the proposed bill would lessen the penalty against teen sexters).

119 See Falcone, supra note 118. (providing Rebimbas’s reasoning behind proposing sexting bill).

120 See Falcone, supra note 118. (stating that Rebimbas wants a lesser punishment for consenting teens who are sexting).


122 See 2010 Legislation Related to “Sexting,” supra note 86 (noting when Louisiana’s sexting legislation was signed); see also Ed Anderson, Cyberbullying and Sexting Bills Are Signed Into Law, NOLA.COM, July 8, 2010, archived at www.webcitation.org/65Nzkpp6W (indicating that Governor Jindal approved of the sexting bill and signed it into law).


124 See Laws Pertaining to Sexting in the State of Louisiana, MOBILE MEDIA GUARD, 2011, archived at www.webcitation.org/65O59gnXk (explaining how minors were charged and prosecuted before the sexting legislation was enacted).

125 Michelle Millhollon, Sexting Legislation Clears Senate Committee, BATON ROUGE ADVOCATE, June 9, 2010, available at 2010 WLNR 11763697 (indicating how Baldone believed the sexting law would give judges an option when prosecuting a minor).
Louisiana who send indecent visual images of themselves through a telecommunication device are no longer charged with a felony or required to register as a sex offender.126

The last state in 2010 to pass a teen sexting law was Illinois.127 Democrat Ira Silverstein, who sponsored the sexting bill, believed that education, not punishment, was the best way to handle sexting teens.128 Silverstein asserted, “Sometimes these kids don’t understand what they’re doing, make a mistake and it follows them for life.”129 With that ideal in mind, Illinois enacted a law that now penalizes minors who distribute “indecent visual depictions” with probation and not a felony under the state’s child pornography statute.130

c. The New States on the Block Addressing Teen Sexting

126 See LA. REV. STAT. ANN. § 14:81.1.1 (2010) (pointing to the law in Louisiana that applies to minors for sexting offenses); see also Laws Pertaining to Sexting in the State of Louisiana, supra note 124 (describing the penalties a minor faces if convicted under the statute); see also Ed Anderson, Legislators Toughen Ban on Historic-District Graffiti; Cyberbullying, Sexting to be Illegal, NEW ORLEANS TIMES PICAYUNE, June 22, 2010, available at 2010 WLNR 12601399 (providing that the law passed in the Senate and House).
127 See 2010 Legislation Related to “Sexting, supra note 86 (documenting Illinois as the last state in 2010 to sign their sexting law).
129 Bill Would Lower Teen “Sexting” Penalties, supra note 128; see also Timothy Magaw, Senate OKs “Sexting” Law for Minors, DAILY HERALD, Mar. 19, 2010, archived at www.webcitation.org/65OAoR0ZR (stating that advocates believe that “diversion programs, working with the families[,] and educating young people” are the solutions to teen sexting).
130 See 705 ILL. COMP. STAT. ANN. 405/3-40 (West 2010) (outlining the provisions of the statute and penalties involved in violation of the statute); Laws Pertaining to Sexting in the State of Illinois, MOBILE MEDIA GUARD, Feb. 11, 2012, archived at www.webcitation.org/650BeGNn1 (indicating a minor would be ordered to receive counseling and/or community service if convicted under the statute); see also Kevin Lee, Quinn Signs “Sexting” Law, ILLINOIS STATEHOUSE NEWS, July 19, 2010, archived at www.webcitation.org/650BwToPG (stating that under the new Illinois sexting law, a person under the age of eighteen could face supervision and community service); see also The Pantagraph Editorial Board, New Law More Logical Way to Address “Sexting,” PANTAGRAPH, July 28, 2010, available at 2010 WLNR 18201910 (noting the new bill can find teens who are caught sexting as minors in need of supervision).
In the March of 2011, North Dakota made changes to its already existing sexting law.¹³¹ This was a result of a District Court Judge ruling that 2009 legislation was unconstitutional for being “overly broad” and prohibiting material protected by free speech.¹³² Before the 2011 law, minors could have been charged under child pornography statutes and become registered sex offenders for “creating, distributing, or possessing a sexually explicit image of a minor (including themselves).”¹³³ North Dakota, however, changed its sexting law to have it apply to everyone, not just minors, and help all of its citizens avoid facing felony charges as well as avoid being required to register as a sex offender if convicted of sexting.¹³⁴

In June of 2011, Nevada lowered its degree of punishment towards sexting minors.¹³⁵ Chief Deputy District Attorney Mary Brown stated that the new law was “designed to address the Romeo's and Juliet's sort of situation where boyfriends and girlfriends are sending consensual pictures of each other.”¹³⁶ Before the new law, Nevada like many other states prosecuted minors under state child pornography laws.¹³⁷ Senator Valerie Wiener, in her proposed laws suggests that “harsh penalties could negatively and permanently alter the children's lives.”¹³⁸ The new Nevada law provides an option that allows minors to

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¹³² See AG Working on Changes to ND “Sexting” Law, WDAY, Nov. 18, 2010, archived at www.webcitation.org/65Ot4ryfs (reporting a judge ruled the previous sexting law unconstitutional).
¹³³ Laws Pertaining to Sexting in the State of North Dakota, supra note 131.
¹³⁴ See N.D. CENT. CODE § 12.1-27.1-03.3 (2011) (stating that a person will receive a misdemeanor for possession and distribution of a sexually explicit image); Laws Pertaining to Sexting in the State of North Dakota, supra note 131 (indicating the law applies to every person and there is no longer a requirement for becoming a registered sex offender).
¹³⁵ See 2011 Legislation Related to “Sexting,” supra note 86 (pointing to when the Nevada sexting legislation was signed).
¹³⁶ Melissa Duran, Nevada Bill Cracks Down on Teens Sexting, 8NEWSNOW.COM, Apr. 6, 2011, archived at www.webcitation.org/65OuowF27.
¹³⁷ See Laws Pertaining to Sexting in the State of Nevada, MOBILE MEDIA GUARD, 2011, archived at www.webcitation.org/65Ovi6ByV (describing how Nevada prosecuted sexting minors before the new law).
¹³⁸ Ed Vogel, Sexting’ Bill Among 14 to Become Law, LAS VEGAS REVIEW JOURNAL, June 3, 2011, archived at www.webcitation.org/65Ovx2VXO.
avoid child pornography charges, and it abolishes the registered sex offender requirement.\textsuperscript{139}

Texas was another state in June 2011 to implement a law that lessened the penalty against sexting minors.\textsuperscript{140} Texas Attorney General Greg Abbott and Senator Kirk Watson joined forces to create a law that deterred minors from sexting while making sure that “youthful mistakes don’t mark kids as sex offenders for the rest of their lives.”\textsuperscript{141} Senator Watson believed that prosecutors should “pursue felony charges against those who constitute a true threat” to minors.\textsuperscript{142} Texas’s new sexting legislation now allows minors to avoid becoming sex offenders and be convicted of a felony that may affect their future life.\textsuperscript{143} In addition, the law required the Texas School Safety Center to develop an education program that can be used by schools to educate their students on the dangers and ramifications of sexting.\textsuperscript{144}

At the end of June 2011, New Jersey proposed a law for first time teen offenders to avoid criminal charges for sexting.\textsuperscript{145} Assem-

\textsuperscript{139} See Nev. Rev. Stat. §§ 200.737(4)(a)(1)-(a)(2) (2011) (stating that for the first offense a minor will be treated as a “child in need of supervision” and would not be required to become a registered sex offender).

\textsuperscript{140} See 2011 Legislation Related to “Sexting”, supra note 86 (noting when Texas signed its sexting legislation).

\textsuperscript{141} New Law Proposed Regarding Teen Sexting, Gainesville Daily Register, Mar. 21, 2011, archived at www.webcitation.org/65OyX2bAu.

\textsuperscript{142} See Texas Gov. Perry Signs Bill Making Teen Sexting a Misdemeanor, Headliner Watch, June 22, 2011, archived at www.webcitation.org/6FSmY2rCu (quoting Senator Watson’s intentions regarding the new law).

\textsuperscript{143} See Tex. Penal Code Ann. § 43.261 (West 2011) (providing that the penalty for electronic possession of a depiction of a minor engaged in sexual conduct is a misdemeanor). See also Laws Pertaining to Sexting in the State of Texas, Mobile Media Guard, 2011, archived at www.webcitation.org/65P02nCiS (indicating that minors caught sexting will required to take an education class); Texas Gov. Perry Signs Bill Making Teen Sexting a Misdemeanor, supra note 142 (introducing the Texas sexting law and how minors are charged with a misdemeanor).

\textsuperscript{144} See Texas Gov. Perry Signs Bill Making Teen Sexting a Misdemeanor, supra note 142 (articulating new law required Texas School Safety Center along with Texas Attorney General’s Office to create program). See also Tex. Educ. Code Ann. § 37.218 (West 2011) (stating that programs will be developed that address legal consequences of sexting).

\textsuperscript{145} See 2011 Legislation Related to “Sexting,” supra note 86 (providing the date for when the New Jersey bill was sent to the state’s Governor); see also NJ Assembly Approves ‘Sexting’ Bill Allowing Teens To Avoid Charges, CBS New York, Mar.
blywoman Pam Lampitt, who sponsored the bill, wanted to ensure, through the law, that teens understood what they did was wrong, and at the same time prevent them from having a criminal record. Assembl
yman Jon Bramnick, a proponent of the legislation, wanted to give teens an “option other than a criminal past.” With the new law in place, New Jersey now requires first-time teen sexting offenders to be educated on the dangers of sexting rather than be prosecuted under state’s child pornography laws.

In July 2011, Florida was the next state to decriminalize teen sexting for first-time offenders. Republican Joseph Abruzzo, the bill’s sponsor, indicated that child pornography laws did not take the act of teen sexting into consideration when they were written. In regards to why implementing a law addressing teen sexting was important, Abruzzo stated, “At the end of the day, we’re not trying to ruin your life

14, 2011, archived at www.webcitation.org/65P3KdE3K (indicating that the New Jersey sexting law helps teens avoid criminal charges).

146 See id. (quoting Lampitt’s statement regarding punishment of minors who sext); see also Bruce Shipkowski, Legislator Pushes for Program to Fight “Sexting” with Learning, THE PRESS OF ATLANTIC CITY, July 20, 2009, available at 2009 WLNR 13859661 (indicating teens would not face criminal prosecution under Lampitt’s proposal).

147 NJ Assembly Approves “Sexting” Bill Allowing Teens to Avoid Charges, supra note 145.

148 See N.J. STAT. ANN. § 2A:4A-71.1 (West 2013) (establishing remedial programs for teens convicted for sexting); see also Laws Pertaining to Sexting in the State of New Jersey, MOBILE MEDIA GUARD, 2011, archived at www.webcitation.org/65P4jIXBA (indicating that New Jersey sexting law allows teens to avoid criminal charges for the first offense); see also N.J. STAT. ANN. § 2A:4A-71 (West 2013) (listing the factors the court will consider in placing a minor into a diversion program).

149 See 2011 Legislation Related to “Sexting,” supra note 86 (indicating when Florida signed their sexting bill); see also Laws Pertaining to Sexting in the State of Florida, MOBILE MEDIA GUARD, 2011, archived at www.webcitation.org/65P84wxYn (describing the provisions of a new law regarding minors possessing images of another minor); see also John Frank, House Bill Eases Up on Penalties for “Sexting”, ST. PETERSBURG TIMES, Mar. 23, 2010, available at 2010 WLNR 6041553 (describing that the new measure would decriminalize the first offense charge against teens who are caught sexting).

150 See Josh Hafenbrack, Law Would Ease Penalties For Sexting by Teenagers; Youngsters Currently Risk Being Labeled Sex Offenders, SUN SENTINEL, Mar. 23, 2010, available at 2010 WLNR 6033733 (pointing to Abruzzo’s statement that the legislators did not consider teen sexting when writing the state child pornography laws).
and label you a sex offender.” 151 Under the new law, Florida now requires teens to be educated on the dangers of sexting rather than become registered sex offenders if convicted. 152

Also in July 2011, Rhode Island enacted a statute protects minors from being prosecuted under the state’s child pornography laws. 153 Attorney General Patrick C. Lynch, who helped draft the bill, stated that the law is intended to try to “protect young people from themselves — from the impulsive decisions they sometimes make that can haunt them for years, if not a lifetime.” 154 The new law now allows prosecutors the option of charging sexting teens with a status offense, and help teens evade a felony charge and sex offender registry. 155

New York is the most recent state to enact a law that deals with teen sexting in the state. 156 Senator Stephen Saland, a co-sponsor of the law, stated that they wanted a law that “provides the state with tools to help balance the serious nature of sexting… with the considerations that follow from youthful behavior.” 157

155 See R.I. GEN. LAWS ANN. §11-9-1.4(b) (West 2012) (indicating how teens will be charged for violating the statute). See also Andrew Metcalf, Sexting By Minors Officially Illegal in Rhode Island, CRANSTON PATCH, July 15, 2011, archived at www.webcitation.org/65PECx3gN (noting minors in Rhode Island will be charged in Family Court with a status offense for sending indecent images of themselves); see also Sexting Now Illegal in Rhode Island, RI.GOV, July 13, 2011, archived at www.webcitation.org/65V2nveLv (stating that sexting is illegal in Rhode Island and minors will be charged with a status offense if they send sexually explicit images of themselves).
156 See 2011 Legislation Related to “Sexting,” supra note, 15 (indicating that New York is the most recent state to sign their sexting legislation into law).
157 Senate Gives Final Legislative Passage to Juvenile “Sexting” and “Cyberbullying” Prevention Bill [hereinafter Cyber-Crime], NYSenate.GOV, June 22, 2011, archived at www.webcitation.org/65PH3Fhpw.
allows first time teen offenders who send and receive sexually explicit images to partake in an educational program to learn about the consequences of their actions rather than face the criminal charges under the state’s child pornography statute.\footnote{See 2011 N.Y. Sess. Laws 8170-B (McKinney) (introducing the “Cyber-Crime Youth Rescue Act” and providing who is eligible to participate in the educational reform program); see also Jacob Greshman, \textit{Lawmakers Propose Teen ‘Sexting’ Law}, \textit{The Wall Street Journal}, June 6, 2011, archived at www.webcitation.org/65PGW1p3r (pointing to the statements made in the bill regarding how teens may be too inexperienced to understand the ramifications of sexting).}

More states have proposed bills that would enact their own teen sexting law.\footnote{See 2012 Sexting Legislation, NAT’L CONFERENCE OF STATE LEGISLATORS, Dec. 14, 2012, archived at www.webcitation.org/65a6hXkfy (listing states that are considering legislation in regards to teen sexting).} Among the states that are considering reducing penalties against teen sexters are California, South Carolina, Pennsylvania, and Ohio.\footnote{See id. (listing the states that have proposed legislation to reduce penalties against teen sexters).} If these states pass teen sexting legislation, they will join the expanding list of states with teen sexting laws.

d. The Current State of Teen Sexting

Teen sexting nationally has declined significantly since the enactment of sexting laws beginning in 2009.\footnote{See Tanner, \textit{supra} note 17 (providing that teen sexting is less common than people think).} In a December 2011 survey published by the Journal of the American Academy of Pediatrics reported that one percent of children aged ten to seventeen have shared sexually explicit images of themselves or others.\footnote{See Tanner, \textit{supra} note 17 (indicating that one percent of minors are currently sexting); see also Mitchell, \textit{supra} note, 17 (providing the results of the survey conducted).} The study was a cross-national telephone survey that included 1,560 minors.\footnote{See Mitchell, \textit{supra} note 17 (describing how the survey was conducted).} Out of the 1,560 minors surveyed, 1,201 were teenagers who were between the ages of thirteen and seventeen.\footnote{See Mitchell, \textit{supra} note 17 at Table I (pointing to the number of teens that were surveyed and stating all were between the ages of thirteen and seventeen).} Within that age demographic, twelve percent admitted to appearing, sharing, or creating sexually explicit im-

\footnote{158 See 2011 N.Y. Sess. Laws 8170-B (McKinney) (introducing the “Cyber-Crime Youth Rescue Act” and providing who is eligible to participate in the educational reform program); see also Jacob Greshman, \textit{Lawmakers Propose Teen ‘Sexting’ Law}, \textit{The Wall Street Journal}, June 6, 2011, archived at www.webcitation.org/65PGW1p3r (pointing to the statements made in the bill regarding how teens may be too inexperienced to understand the ramifications of sexting).}

\footnote{159 See 2012 Sexting Legislation, NAT’L CONFERENCE OF STATE LEGISLATORS, Dec. 14, 2012, archived at www.webcitation.org/65a6hXkfy (listing states that are considering legislation in regards to teen sexting).}

\footnote{160 See id. (listing the states that have proposed legislation to reduce penalties against teen sexters).}

\footnote{161 See Tanner, \textit{supra} note 17 (providing that teen sexting is less common than people think).}

\footnote{162 See Tanner, \textit{supra} note 17 (indicating that one percent of minors are currently sexting); see also Mitchell, \textit{supra} note, 17 (providing the results of the survey conducted).}

\footnote{163 See Mitchell, \textit{supra} note 17 (describing how the survey was conducted).}

\footnote{164 See Mitchell, \textit{supra} note 17 at Table I (pointing to the number of teens that were surveyed and stating all were between the ages of thirteen and seventeen).}
ages or videos using electronic devices.\(^{165}\) Compared to the 2008 online survey conducted by The National Campaign to Prevent Teen and Unplanned Pregnancy, which surveyed 653 thirteen to nineteen year olds and found that twenty percent of them had electronically sent or posted a nude picture of themselves and thirty-nine percent had electronically sent or posted sexually suggestive images, the current survey shows a significant drop off.\(^{166}\) In addition, compared to the 2009 survey conducted by Cox Communications, which surveyed 655 thirteen to nineteen year olds and found that nineteen percent of those teens had electronically sent, received, or forwarded sexually explicit images, the most recent survey indicates a considerable decline as well.\(^{167}\)

**IV. The Sexting Spectrum: Comparing Teen Sexters’ Punishments**

With a total of fifteen states enacting teen sexting legislation since 2009, each state has its own approach in prosecuting and penalizing a teen sexting offender.\(^{168}\) Some states are very lenient towards teen sexters, while others have reduced their penalties but still leave the door open for potential felony charges.\(^{169}\) With many states still without an answer as to how to prosecute teen sexting, the approaches taken by the fifteen states provides options from both ends of the spectrum on how harshly to penalize teen sexters.

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\(^{165}\) See Mitchell supra note 17 at Table I (calculating the statistics provided by dividing the number of teens that admitted to sexting and the total number of teens between the ages of thirteen and seventeen).

\(^{166}\) Compare Sex and Tech, supra note 8 (providing a survey conducted in 2008 about teen and young adult sexting), with Mitchell, supra note 17 (introducing a survey conducted in 2011 on minors involved in sexting).

\(^{167}\) Compare Cox Survey, supra note 10 (pointing to a survey conducted in 2009 about teen sexting) with Mitchell, supra note 17 (analyzing a survey conducted in 2011 on minors involved in sexting).

\(^{168}\) See 2009 “Sexting” Legislation supra note 15 (providing the states that enacted sexting laws in 2009); see also 2010 Legislation Related to “Sexting,” supra note 86 (listing the states that signed into law teen sexting bills in 2010); 2011 Legislation Related to “Sexting,” supra note 86 (pointing to the states that signed sexting bills dealing with how to prosecute minors).

\(^{169}\) Compare 705 ILL. COMP. STAT. ANN. 405/3-40 (West 2012) (providing that a minor who violates the statute only receive counseling and possible community service) with NEB. REV. ST. § 28-813.01 (2009) (indicating that if a minor does not fall within the affirmative defense he or she can be subject to a felony charge).
a. The “Hidden Felony” Approach

Nebraska’s approach to attacking teen sexting may be beneficial to some minors but harmful to others. Nebraska enacted a defense specifically for minors. 170 In order for a teen to take advantage of the defense, the image produced must portray the teen sending the picture and he or she must be fifteen years or older, the image cannot have been forwarded to anyone else besides the teen in the picture, and the image must have been “knowingly and voluntarily” produced without coercion. 171 Although minors in Nebraska may avoid criminal prosecution for sexting to a friend or significant other, there are minors who make the mistake of passing on the sexual images to other friends who cannot take advantage of the defense. 172 Teens who forward sexual images that are not of themselves are faced with felony prosecution, a jail sentence of up to twenty years, and could be listed as a sex offender. 173 With this loophole in place, minors still face a life altering penalty for a mistake they may not know they are making.

Rhode Island took a similar approach. Minors who “knowingly and voluntarily” transmit a sexually explicit image of himself or herself through a telecommunication device are charged with a status offense and referred to the state’s family court. 174 However, minors who make the mistake of possessing or distributing sexually explicit images of another minor are not protected under the statute and will be charge under the state’s child pornography laws, which could lead to a five year prison sentence and registration as a sex offender. 175 Rhode Island Attorney General Peter F. Kilmartin stated in a press release that the state will

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170 See Neb. Rev. St. § 28-813.01(3) (2012) (pointing to the affirmative defense available to minors described in the statute).
171 See id. (highlighting the requirements in order for a teen to take advantage of the defense).
172 See Hammel, supra note 98 (indicating that teens who send pictures to others cannot take advantage of the defense).
173 See Neb. Rev. St. § 28-813.01 (2012) (providing that violators of the law are charged with a Class IV Felony); see also Laws Pertaining to Sexting in the State of Nebraska, supra note 100 (describing the sentence a person would face if found guilty under the law).
174 See R.I. Gen. Laws Ann. §§ 11-9-1.4(b)-(c) (2012) (stating that minors who transmits an indecent image of themselves will be charged with a status offense).
175 See Laws Pertaining to Sexting in the State of Rhode Island, supra note 153 (highlighting that minors who posses or distribute indecent images can still be charged under the state’s child pornography laws).
protect minors who make the mistake of sexting only so far, but it comes down to the parents giving their teen the guidance and proper rules when giving them the privilege of having a cell phone. With more guidance from parents, teens may be prevented from making the “impulsive decision” of distributing or possessing sexually explicit images of another. Teens, however, can easily come into possession of an indecent image through a text message unintentionally, and if caught they would face the harsh penalties under the state’s child pornography laws.

Connecticut is another example of a state that protects some minors who send or possess sexually explicit images, but not others. A teen between the ages of thirteen and sixteen who sends a sexually explicit image of themselves to a person between the ages of thirteen and eighteen will be charged with a Class A misdemeanor. A teen that does not fit within the requirements of the statute, however, will be charged under the state’s child pornography laws, which can result in a five-year prison sentence and a requirement to register as sex offender. For instance, a teen that is seventeen years of age who makes the mistake of sending a picture of himself to his seventeen year old girlfriend will be charged under the state’s child pornography statute. Although, Connecticut has protected some minors from committing “foolish acts,” other minors still receive a harsh penalty.

C. The “Jail-Time Misdemeanor” Approach

176 See Sexting Now Illegal in Rhode Island, supra note 155 (indicating that Kilmartin wants parents to teach their children the consequences and dangers of sexting).
177 See Buford, supra note, 154(referring to Lynch’s comment that the state should protect minors from making impulsive decisions that will affect their future).
178 See Laws Pertaining to Sexting in the State of Rhode Island, supra note 153 (indicating that minors who posses sexual images of a minor will be charged under the state’s child pornography laws).
179 See CONN. GEN. STAT. ANN. § 53a-196h(a)(2) (West 2010) (pointing to who can be charged under the statute).
180 See Laws Pertaining to Sexting in the State of Connecticut, supra note 121 (stating that minors who fall outside the statute will be subject to a felony charge).
181 See Laws Pertaining to Sexting in the State of Connecticut, supra note 121 (noting how teens who do not fit within the statute will be charged under the state’s child pornography laws).
182 See Connecticut Bill Would Lessen Teen “Sexting” Charge, supra note 118 (pointing to Remimba’s statement that “minors do foolish acts without appreciating the consequences . . .”).
Louisiana’s sexting law does not allow minors to be subject to the state’s child pornography laws because anyone under the age of seventeen who transmits or possesses a sexually explicit image of themselves or others shall be charged under the sexting statute rather than the child pornography laws.\textsuperscript{183} The law does, however, distinguish between penalties for distributing sexually explicit images of oneself and images of another.\textsuperscript{184} Minors who voluntarily send an indecent image of themselves to another minor will be charged under Title VII of Louisiana Children’s Code where the minors may receive mandatory counseling and other penalties but not jail time.\textsuperscript{185} A minor who possesses or transmits a sexually explicit image of another minor shall receive a fine of up to two hundred and fifty dollars and a jail sentence of up to ten days for the first offense.\textsuperscript{186} Each subsequent offense will result in a higher fine and a longer jail sentence.\textsuperscript{187} Jail time can be suspended if the judge orders a minor to complete at least ten eight-hour days of community service, but there are some judges who do not consider a suspended sentence.\textsuperscript{188} Although the law prevents a minor from facing a felony charge, the potential of possible jail time and a hefty fine may seem harsh to a young teen who made a hasty bad decision.\textsuperscript{189}

\textsuperscript{183} See LA. REV. STAT. ANN. § 14:81.1.1(A) (indicating that the statute addresses anyone under the age of 17 that possess or distributes a sexual image of themselves or others).

\textsuperscript{184} See LA. REV. STAT. ANN. § 14:81.1.1(C)(1)-(2) (providing that there are different penalties depending on if you violated by transmitting or by possessing a sexual image).

\textsuperscript{185} See LA. REV. STAT. ANN. § 14:81.1.1(C)(1) (stating that violators will be subject to Title VII of Louisiana Children’s Code); see also Laws Pertaining to Sexting in the State of Louisiana, supra note 124 (explaining what punishment a minor would receive for send a sexually explicit image of themselves to another minor).

\textsuperscript{186} See LA. REV. STAT. ANN. § 14:81.1.1(C)(2)(a) (specifying the penalty received by a minor for possessing or transmitting a sexually explicit image of another minor).

\textsuperscript{187} See LA. REV. STAT. ANN. § 14:81.1.1(C)(2)(b)-(c) (describing the penalties for multiple offenses).

\textsuperscript{188} See Anderson, supra note 123 (implying judges have discretion in imposing jail sentences); see also Millhollon, supra note 125 (pointing to State Senator Robert Adley’s statement that some judges impose penalties based on the sentence provided in the statute).

\textsuperscript{189} See LA. REV. STAT. ANN. § 14:81.1.1(C)(2) (describing the penalty received by a minor for possessing or transmitting a sexually explicit image of another minor).
Utah is another state that imposes misdemeanor charges against sexting minors but distinguishes the charges based on age. A sixteen- or seventeen-year-old may be convicted of a Class A misdemeanor, while a fifteen-year-old or younger, a Class B misdemeanor charge. In establishing this disparity, Utah decided that the law should take into account the minors' "age, maturity, and level of sophistication." Sixteen or seventeen year olds can receive up to a year of jail time as well as a fine of up to twenty-five hundred dollars. Teens that are younger can receive up to six months of prison time and a fine of up to a thousand dollars. Although this is a better option than the previous felony approach, minors in Utah that are caught sexting still face the possibility of serving their punishment behind bars.

Although teens in Missouri who are caught sexting no longer receive a felony charge or have to register as a sex offender, the penalty "still packs a hefty punch." Both minors and adults will be charged with a Class A misdemeanor for producing or distributing pornographic images of minors to minors. A Class A misdemeanor in Missouri, however, can result in a jail sentence of up to one year and a fine of a thousand dollars. If a minor or adult is caught sexting a second time, they are subject to a Class D felony, which can result in multiple years

190 See UTAH CODE ANN. § 76-10-1204(4)(b)-(c) (West 2009) (providing that teens who are sixteen or seventeen receive a different misdemeanor charge from those teens that are fifteen or younger).
191 See id. (indicating that teens are offered separate charges based on their age).
192 See Thomson, supra note 92 (describing the details of the proposed amendments).
193 See UTAH CODE ANN. §§ 76-3-204, 76-3-301 (providing the penalties associated with misdemeanors in Utah).
194 See UTAH CODE ANN. §§ 76-3-204, 76-3-301 (pointing to the ramifications of a Class B misdemeanor charge).
195 See UTAH CODE ANN. § 76-3-204 (stating that misdemeanors in Utah can result in jail time); see also Laws Pertaining to Sexting in the State of Utah, supra note 91 (noting that sexting by minors is a class A or B misdemeanor).
196 See States Struggle to Set Appropriate Punishment for Sexting, supra note 109 (providing that even though Missouri lessened their penalty against minors, the charge under the law is still harsh).
197 See MO. ANN. STAT. § 573.040(3) (West 2012) (stating that violators of the statute will be charged with a Class A misdemeanor).
198 See Laws Pertaining to Sexting in the State of Missouri, supra note 108 (stating that a misdemeanor in Missouri can lead to a jail sentence and a large fine).
in jail and thousands of dollars in fines. Minors in Missouri may have escaped the cruel punishment of becoming a registered sex offender, but they still face the possibility of jail time and the “humiliation and stigma associated with a child pornography trial and conviction.”

Similarly to Missouri, North Dakota has implemented sexting legislation that applies to both minors and adults. A person who possesses or distributes a sexually explicit image without the consent of person in the image will be charged with a Class A misdemeanor. If a person acquires a sexually explicit image that was created without the consent of the depicted person and knowingly distributes the image to other, that person will be charged with a Class B misdemeanor. In addition, a person who is convicted of either charge will not have to register as a sex offender. Although there is no longer a felony charge or a requirement for sex offender registration, a misdemeanor in North Dakota can lead to a sentence of up to one year in jail and up to a thousand dollar fine. Despite it being a lesser offense, teens in North Dakota may still face the cruelty of jail time for the mistake of sexting.

199 See MO. ANN. STAT. § 573.040(3) (West 2012) (stating that a second offense can lead to a felony); Laws Pertaining to Sexting in the State of Missouri, supra note 108 (indicating that a felony charge can lead to four years in jail and fine up to five thousand dollars).

200 See States Struggle to Set Appropriate Punishment for Sexting, supra note 109; see also MO. ANN. STAT. § 589.400(8) (West 2012) (stating that people under the age of nineteen no longer have to register as a sex offender if found guilty of a misdemeanor).

201 See Laws Pertaining to Sexting in the State of North Dakota, supra note 131 (stating that the law applies to everyone, not just minors).

202 See N.D. CENT. CODE ANN. § 12.1-27.1-03.3(1)(a)-(b) (2011) (stating the requirements for a person to be charged with a Class A misdemeanor).

203 See N.D. CENT. CODE ANN. § 12.1-27.1-03.3(2) (2011) (highlighting how a person can be subject to a Class B misdemeanor under the statute).

204 See Laws Pertaining to Sexting in the State of North Dakota, supra note 131 (providing that people who are convicted under the statute don’t have to register as sex offenders).

205 See Laws Pertaining to Sexting in the State of North Dakota, supra note 131 (stating that an offender can receive jail time and a fine if found guilty under the statute); see also N.D. CENT. CODE ANN. § 12.1-32-01 (describing that a Class A misdemeanor can result in a jail sentence and monetary penalty).

206 See Laws Pertaining to Sexting in the State of North Dakota, supra note 131 (providing that if an individual is convicted they may be punished with jail time).
Arizona’s teen sexting penalty is based on the incident’s severity. A minor who sends or intentionally possesses a sexually explicit image to only one person will be charged with a petty offense, which is only punishable by a fine. If the image, however, is sent to multiple people or displayed in any way where it is viewable by many, then that teen will be charged with a Class 3 misdemeanor. Possible convictions may include a jail sentence of thirty days, a five hundred dollar fine, or both. Other penalties include probation and participating in a diversionary program. A multiple offender teen would be charged with a Class 2 misdemeanor, which can carry a maximum of four months in jail, a seven hundred and fifty dollar fine, or both. Although Arizona has taken a more lenient approach compared to the other states, opponents of the law still argue that incarceration should be removed as an option.

d. The “Learn about Sexting” Approach

Vermont was one of the first states to take a rehabilitative approach to prosecuting minors who are caught sexting. If a minor possesses or voluntarily transmits through electronic communication a sexually explicit image of himself or herself, then the minor will be treated

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207 See Laws Pertaining to Sexting in the State of Arizona, supra note 116 (highlighting that a minor who has been caught sexting can receive a different charge depending on how many people have seen the image).
208 See ARIZ. REV. STAT. ANN § 8-309(D)-(E) (2010) (providing that a minor who violates the statute will be charged with a petty offense); see also Arizona Petty Offense, supra note 116 (stating that a petty offense in Arizona is subject to a fine).
209 See Laws Pertaining to Sexting in the State of Arizona, supra note 116 (providing that a minor who is caught sexting in Arizona will be charged with a class 3 misdemeanor).
210 See Laws Pertaining to Sexting in the State of Arizona, supra note116 (describing the penalties handed down to a minor that is charged with a class 3 misdemeanor).
211 See Beard Rau, supra note 113 (providing other penalties offered to minors who are convicted of sexting in Arizona).
212 See Laws Pertaining to Sexting in the State of Arizona, supra note 116 (indicating what the penalties are for a class 2 misdemeanor).
213 See Beard Rau, supra note 113 (pointing to Soler Meetze’s statements in regards to her opposition to the Arizona law). "The kids engaging in these kinds of behaviors need education, support from their teachers and parents, and treatment. . . [t]hey don’t need incarceration.” Beard Rau, supra note 113.
214 See 2009 “Sexting” Legislation, supra note 15(indicating that Vermont was one of the first states to enact a teen sexting law).
as a juvenile and be referred to a diversionary program.\textsuperscript{215} Within that program, a minor would have to report to a probation officer, and would have to complete a certain amount of community service.\textsuperscript{216} In addition, a judge may require the convicted minor to take educational courses to learn about the consequences of sexting.\textsuperscript{217} Once a minor completes the program, the charge is dropped, and they are left with a clean record.\textsuperscript{218} Vermont, however, is not so easy on the teen if they are once again charged with sexting after completing the diversionary program.\textsuperscript{219} A second time offender is subject to prosecution under the state’s child pornography laws, which could lead to a felony conviction and registration as a sex offender.\textsuperscript{220} From the way the law is structured, Vermont wants teens to learn from their first mistakes, but if they don’t, then they shouldn’t be given a second chance.\textsuperscript{221}

New Jersey has also taken an educational approach to first time teen sexting offenders.\textsuperscript{222} Teen sexters who get caught are required to enroll in a state sponsored educational program where they will learn about the dangers of sending sexually explicit images to others.\textsuperscript{223} A prosecutor will determine if the educational program is suitable for the

\textsuperscript{215} See VT. STAT. ANN. tit. 13, § 2802b(b)(1) (West 2009) (providing that the violator’s case will go to family court and the juvenile may be sentenced to a diversionary program) see also Celizic, supra note 15 (stating that Vermont is one of the first states to consider a law that distinguishes teen crimes from adult crimes).

\textsuperscript{216} See Laws Pertaining to Sexting in the State of Vermont, supra note 105 (explaining the aspects of the diversionary program).

\textsuperscript{217} See Laws Pertaining to Sexting in the State of Vermont, supra note 105 (providing that a convicted minor may have to attend educational classes).

\textsuperscript{218} See Laws Pertaining to Sexting in the State of Vermont, supra note 105 (stating that once the minor completes the diversionary program their charge is dropped).

\textsuperscript{219} See VT. STAT. ANN. tit. 13, § 2802b(b)(3) (West 2009) (indicating that a second charge could lead to the minor being prosecuted under the state’s child pornography laws).

\textsuperscript{220} See Laws Pertaining to Sexting in the State of Vermont, supra note 105 (providing the penalties to teens who violate the statute a second time).

\textsuperscript{221} Laws Pertaining to Sexting in the State of Vermont, supra note 105 (describing the structure of Vermont law pertaining to teen sexting, indicating that the first offense will receive lenient punishment while the second offense carries a much heavier punishment).

\textsuperscript{222} See NJ Assembly Approves ’Sexting’ Bill Allowing Teens To Avoid Charges, supra note 145 (providing that first time offenders are required to complete a diversionary program).

\textsuperscript{223} See Laws Pertaining to Sexting in the State of New Jersey, supra note 148 (stating what the educational program will entail).
minor by weighing ten factors. These factors include, the maturity level of the defendant, whether the defendant has had committed any previous crimes, the nature in which the crime took place, and whether an educational program will deter the minor from committing the crime again. If the minor is not found eligible for the educational program, or has committed a second offense after completing the educational program, then the teen will be charged under the state’s child pornography law. Similarly to Vermont, New Jersey’s law educates teens about their mistake before resorting to criminal prosecution.

See N.J. STAT. ANN. § 2A:4A-71 (West 2011) (listing the ten factors that the court considers when sentencing a minor to the diversionary program).

See id. (noting some of the factors listed in the statute).

Court intake services shall consider the following factors in determining whether to recommend diversion: (1) The seriousness of the alleged offense or conduct and the circumstances in which it occurred; (2) The age and maturity of the juvenile; (3) The risk that the juvenile presents as a substantial danger to others; (4) The family circumstances, including any history of drugs, alcohol abuse or child abuse on the part of the juvenile, his parents or guardian; (5) The nature and number of contacts with court intake services and the court that the juvenile or his family have had; (6) The outcome of those contacts, including the services to which the juvenile or family have been referred and the results of those referrals; (7) The availability of appropriate services outside referral to the court; (8) Any recommendations expressed by the victim or complainant, or arresting officer, as to how the case should be resolved; (9) Any recommendation expressed by the county prosecutor; (10) The amenability of the juvenile to participation in a remedial education or counseling program that satisfies the requirements of subsection b. of section 2 of P.L.2011, c. 128 (C.2A:4A-71.1) if the offense alleged is an eligible offense as defined in subsection c. of section 2 of P. L.2011, c. 128 (C.2A:4A-71.1); and (11) Any information relevant to the offense in any case where the juvenile is charged with an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.


See Shipkowski, supra note 146 (pointing to Lampitt’s statement about how the state needs to educate teens before they are prosecuted). “We need to create a path that places education and forgiveness before arrest and prosecution.” Shipkowski, supra note 146.
Florida is another state that wants to teach teens “accountability” and not have teen sexting become “a criminal issue.” A first-time offender will receive a sixty-dollar fine or be required to complete eight hours of community service and possibly an educational course on the dangers of sexting. A minor, however, can avoid this penalty if the minor did not solicit the indecent image, took reasonable steps to report the image, and did not transmit or distribute the image to a third party. If the minor does not learn his lesson after the first offense, he will be charged with a first-degree misdemeanor for a second offense, and a third-degree felony for a third offense. The law, however, only applies to nude images and if a minor solicits or creates images of minors engaging in sexual conduct then he will not be subject to the statute and may be prosecuted under the state’s child pornography laws.

Florida’s law provides a punishment that allows first-time teen sexters to understand the consequences of their actions, but requires multiple offenders “to take some accountability and responsibility for their behavior.”

Texas is the only state to include in its sexting legislation a requirement to establish educational programs that school districts can use to take their students and teach them about the consequences of sexting. Texas implemented a misdemeanor system, where a first-time sexting offender will be convicted of a Class C misdemeanor, a second offense will be a Class B misdemeanor, and third offense a Class

228 See Ceasar, supra note 151 (pointing to Senator Charlie Dean’s statement of how Florida wants to educate teens and not criminally punish them).
229 See Laws Pertaining to Sexting in the State of Florida, supra note 149 (providing the penalty for first-time teen sexting offenders in the state of Florida).
232 See Laws Pertaining to Sexting in the State of Florida, supra note 149 (stating that the law only applies to nude images that are distributed amongst minors).
233 See Frank, supra note 149 (noting the balance of Florida’s law).
234 See Tex. Educ. Code Ann. § 37.218 (West 2011) (providing that programs will be developed that can be used by school districts to teach about the legal consequences of sharing sexually explicit images). See also Texas Gov. Perry Signs Bill Making Teen Sexting a Misdemeanor, supra note 142 (stating that the bill requires educational programs to be developed that can be used by school districts).
A misdemeanor. Repeat offenders, however, can receive jail time and a fine of up to four thousand dollars. Along with a misdemeanor charge, a first time sexting offender as well as his or her parents may be required to take a State sponsored education class, which informs them about the dangers of sexting. With no possible felony conviction given to teen sexters under the statute, Texas’s law finds a balance between holding minors accountable, and not enforcing “life-altering consequences.”

New York, the most recent state to enact teen sexting legislation, also took a rehabilitative approach to prosecuting first time teen sexting offenders. The Cyber-Crime Youth Rescue Act allows judges to place first time teen sexting offenders in an education program where they will learn about what impact sexting can have on their social standing and future career opportunities. New York Majority Senate Leader Dean G. Skelos believes that an educational program is necessary because teens can “fully comprehend the consequences of continuing practices that can be harmful to themselves and others.” New York’s educational reform program option allows the state to “balance the serious nature of sexting … with the considerations that follow from youthful behavior.”

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235 See TEX. PENAL CODE ANN. § 43.261(c)(1)-(2) (West 2011) (illustrating the progressive punishment for repeating sexting offenders).
236 See Laws Pertaining to Sexting in the State of Texas, supra note 143 (stating that a multiple offender is subject to a more severe penalty); Texas Gov. Perry Signs Bill Making Teen Sexting a Misdemeanor, supra note 142 (stating that a misdemeanor is subject to jail time and a fine).
237 See Laws Pertaining to Sexting in the State of Texas, supra note 143 (providing that the convicted minor and their parents would have to take an educational class on sexting).
238 See Texas Gov. Perry Signs Bill Making Teen Sexting a Misdemeanor, supra note 142 (pointing to Attorney General Greg Abbot’s comments on Texas’s new sexting legislation).
239 See 2011 Legislation Related to “Sexting,” supra note 86 (providing that New York is the most recent state to sign into law teen sexting legislation); N.Y. SOC. SERV. LAW § 458-I (McKinney 2012) (introducing the Cyber-Crime Youth Rescue Act, which implements an educational reform program for teens who are caught sexting).
240 See Greshman, supra note 158 (describing what the teens who are placed in the educational program will learn).
D. The “Soft” Approach

Illinois took a more lenient approach to penalizing teen sexters by labeling them as “minors in need of supervision.”243 Under the statute, a minor in need of supervision may be ordered to receive counseling about the dangers of sexting and to perform community service.244 The child pornography laws, however, are still available for those teens who do not learn their lesson from the first incident.245 With no possible jail time or fines given to first time sexting offenders, advocates of the Illinois teen sexting law believe that counseling and educating teens and their families “are the solutions to the growing sexting phenomenon.”246 Nevada has also implemented a law that is liberal on first time teen sexting offenders, deeming “children in need of supervision” for distributing or possessing through an electronic communication device a sexually explicit image of themselves, or other minors.247 A child in need of supervision will get counseling about the dangers of sexting and will not have anything reported on his or her record.248 A minor can avoid being charged under the law, if he or she “did not knowingly purchase, procure, solicit, or request the sexual image to come into his or her possession.”249 In addition, if the minor in good faith “took reasonable steps to destroy the image or reported the matter to a law enforcement agency or a school official,” and let the authority have access to the image; the minor can avoid a charge under the statute.250 Compared to other states, Nevada’s law is also more lenient towards second time

243 See 705 ILL. COMP. STAT. ANN. 405/3-40(c) (West 2013) (stating that a violator under the law will be deemed “a minor in need of supervision”).
244 See 705 ILL. COMP. STAT. ANN. 405/3-40(d)(1)-(2) (providing what a minor in need of supervision may be ordered to receive).
245 See New Law More Logical Way to Address “Sexting,” supra note 130 (noting that the criminal laws will be available for possible second time offenders).
246 See Magaw, supra note 129 (pointing out the pros of the Illinois legislation).
247 See NEV. REV. STAT. ANN. § 200.737(1)-(4)(a)(1) (West 2011) (providing how a minor can violate the law and that a first time violator will be considered “a child in need of supervision”).
248 See Duran, supra note 136 (explaining what the new bill will impose on first time offenders); see also NEV. REV. STAT. ANN. § 200.737(4)(a)(1) (West 2011) (stating that a minor who violates the statute will not be considered a delinquent child).
offenders, as they are only charged with a misdemeanor.\footnote{See NEV. REV. STAT. ANN. § 200.737(4)(b)(1) (West 2011) (indicating that a minor who commits a second offense will receive a misdemeanor charge).} From the way Nevada’s law is written, it is clear that proponents intended that minors would not suffer the “harsh penalties” that could “negatively and permanently” impact their futures.\footnote{See Vogel, supra note 138 (pointing to the statements made in the bill about how harsh penalties would have a negative effect on children’s lives).}

**IV. Which Approach is the Most Effective?**

With states implementing their teen sexting legislation as recently as 2009, and half of the states as currently as 2011, scholars have not compiled enough evidence from each state to determine which approach is most effective against prosecuting teen offenders and preventing them from re-offending. In Utah, the first state to implement a teen sexting law in 2009, its courts saw 59 cases reported involving sexting among minors younger than sixteen years of age, and thirteen case reported among sixteen or seventeen years of age in the first year after signing their law.\footnote{See Fulton, supra note 95 (showing the number of case referrals in Utah juvenile courts regarding teen sexting since 2009).} Although there was an increase in reporting teen sexting in the first year after the implementation of the law, Utah District Attorney Troy Rawlings did not believe that there was an increase in the number incidents.\footnote{See Adams, infra note 93 (pointing to Rawlings statement about the increase in reporting after the state enacted their teen sexting law). “We don't believe that the incidence is increasing . . . [w]hat we are seeing is an increase in reporting.” Adams, infra note 93.} Rawlings handled the teen sexting cases that were reported in his district out of court.\footnote{See Adams, infra note 93 (indicating that Rawlings handled his teen sexting cases out of court).} This did not allow the state to test the effectiveness of newly implemented sexting legislation at the time.

There is not a strong correlation between states enacting sexting laws and the decline in teen sexting, however, since 2009 there has been at least a seven percent decline in sexting amongst minors, when states began to enact teen sexting legislation.\footnote{Compare Cox Survey, infra note 10 (pointing to a survey conducted in 2009 that concluded that nineteen percent of teens were sexting), with Mitchell, infra note 17 (providing a survey conducted in late 2011 that concluded that nine percent of minors ages ten to seventeen admitted to sexting).} Although states were focused
on easing the penalties against teen sexters by enacting their sexting laws, they may have put minors and parents on notice about the dangers and ramifications of sexting.\footnote{See, e.g., \textit{Laws Pertaining to Sexting in the State of Texas, supra} note 143 (providing an example of a state law that forces parent involvement when their children are convicted of sexting).} As a result, these sexting laws may have mitigated teenagers’ desires to share sexually explicit images, and may have encouraged parents to tell their children about the privileges of cell phone use and the rules associated with having a cell phone.\footnote{See, e.g., \textit{Laws Pertaining to Sexting in the State of Texas, supra} note 143 (laying out a means for parents to learn more about the dangers of sexting, which could encourage parents to discuss these dangers with their children).} With more states, including California, Ohio, and Pennsylvania, considering implementing teen sexting legislation, their efforts may not only create punishments more suitable to teen sexters, but put more minors and parents on the forefront of the sexting issue.\footnote{See 2012 Sexting Legislation, \textit{supra} note 159 (listing the states that are considering to implement teen sexting laws in 2012).}

\section*{V. Conclusion}

The growth of cell phone use by teens has allowed them to explore their sexuality and express their feelings towards a boyfriend or girlfriend in a new technological way. Yet, without any guidelines or restrictions, minors have been oblivious to the legal ramifications associated with the act of sexting. Early child pornography laws were not tailored towards such an innovative form of communication, and teens that were caught faced life-altering convictions.

The national and local growth of sexting amongst minors has compelled states to respond to the technological social fad, and implement laws that address electronic transmission and creation of sexually suggestive images, and enforce punishments more suitable for teenagers who do not understand the consequences of their actions. Since 2009, States have taken different approaches in how they penalize their sexting minors. Some States have lessened their penalties against teen sexters by charging misdemeanors, yet leave the door open for teens that possess and distribute sexually explicit images of others to face felony offenses and register as sex offenders. Other states have taken a more rehabilitative approach towards first time offenders by requiring them to take an educational class or counseling on the dangers of sexting. Some states may have put minors and parents on notice about the dangers and ramifications of sexting.
sexting. With states enacting sexting laws as recently as 2009, there is not enough data compiled to determine which approach is most effective in punishing teens and preventing them from committing the offense in the future.

The effect of States enacting their teen sexting legislation, however, has moved the sexting issue into the spotlight, and may have resulted in the recent decline of sexting amongst teens. With teen sexting declining seven percent from 2009, parents and teens may have been put on notice through the new laws their respective states implemented to punish teen sexting. Parents and school officials may have realized that they needed to warn teens about the dangers of cell phone use. In addition, teens may have realized that such actions were illegal and could lead to court imposed penalties ranging from jail time to counseling. Although there is not sufficient data to support the correlation or possible reasoning behind the decline in teen sexting, time will tell if the established teen sexting laws had an influence on teens choosing not to electronically transmit, create, or possess sexually explicit images.

States considering updating their laws to address teen sexting have many different statutory options. Without a consensus on which approach is most effective, states like California and Pennsylvania can either model their bills after one of the States that enacted a teen sexting law, or create a new approach that they believe is most suitable for teen sexting offenders. Whichever approach they decide, if the increasing trend in the number of States enacting teen sexting legislation since 2009 continues, it may not only lead to more states protecting their minors from receiving life altering penalties, but a continued decline in teen sexting overall.