

Sexting Decision Grid

The advent of cell phones with cameras and the popularity of SMS (“texting”) has inevitably led to youth sending nude or semi-nude pictures to each other (“Sexting”). Due to the ages of the individuals involved, these pictures often meet the Dost criteria for Exploitation of Children. Law enforcement and prosecuting attorneys are faced with complex and often difficult charging decisions surrounding sexting.

The decision to charge individuals involved in sexting should, in our opinion, be based on a careful analysis of the interaction of several variables. To help those in the decision making positions, we have created the Sexting Decision Grid found below. Charging decisions should be made only after a holistic interpretation of the entire grid. The questions in each cell are representative of the types of questions which should be asked in each category. The actual questions would be case dependent.

	Photographer Who took the picture?	Subject Who is in the picture?	Sender Who sent the picture?	Recipient Who received the picture?
Age	Age of Photographer(s)	Age of subject(s).	Age of sender(s).	Age of recipient(s)
Gender	Gender of photographer(s)	Gender of subject(s).	Gender of sender(s)	Gender of recipient(s)
Relationship	What is the relationship between photographer(s) and subject?	What is the relationship between the photographer(s) and the subject?	What is the relationship between the subject and the sender(s)?	What is the relationship between the recipient(s) and the subject and/or sender(s)?
Volume	How many images were taken? How many photographers were involved?	How many subjects were in the images? How many images were created of the subject(s)?	How many images did the sender transmit? How many individuals sent the images?	How many individuals received the images? How many images were received by each recipient?
Consent	Did the photographer have the subject’s consent to take the image? Was there coercion or grooming by the photographer(s)?	Did the subject give consent to be photographed? Did the subject feel pressured or coerced into having the image(s) taken?	Did the sender have the subject’s permission to send the image(s)?	Did the recipient have the subject’s permission to receive or view the image(s)?
Effect	What was the effect of the images on the photographer(s)?	What was the effect on the subject of the image(s) being taken?	What was the effect on the sender of the image(s) being disseminated? What was the effect on the subject of the sender disseminating the image(s)?	What was the effect on the recipient of the image(s) being disseminated? What was the effect on the subject of the image(s) being sent to the specific recipient(s)?

Once the cells of the decision grid are populated, decisions about charging can be made at two levels:

- A. Charge or not charge.
- B. If charged, do you file a sex crime (exploitation) or ‘lessor charge’ (e.g. harassment).

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