

Sexting: What are the clinical and legal implications?

To best help teens, ask them about sexting and educate them about potential consequences

Sexting includes sending sexually explicit (or sexually suggestive) text messages and photos, usually by cell phone. This article focuses on sexts involving photos. Cell phones are almost ubiquitous among American teens, and with technological advances, sexts are getting easier to send. Sexting may occur to initiate a relationship or sustain one. Some teenagers are coerced into sexting. Many people do not realize the potential long-term consequences of sexting—particularly because of the impulsive nature of sexting and the belief that the behavior is harmless.

Media attention has recently focused on teens who face legal charges related to sexting. Sexting photos may be considered child pornography—even though the teens made it themselves. There are also social consequences to sexting. Photos meant to be private are sometimes forwarded to others. Cyberbullying is not uncommon with teen sexting, and suicides after experiencing this behavior have been reported.

Sexting may be a form of modern flirtation, but in some cases, it may be a marker of other risk behaviors, such as substance abuse. Psychiatrists must be aware of the frequency and meaning of this potentially dangerous behavior. Clinicians should feel comfortable asking their patients about it and provide education and counseling.

CASE

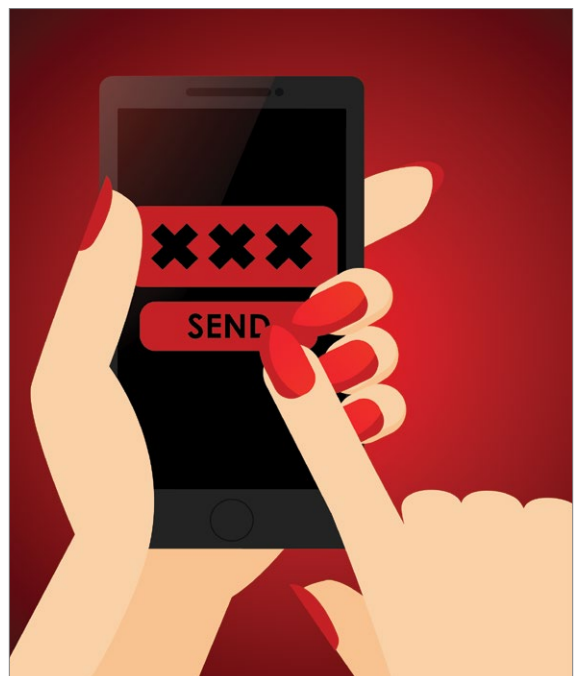
Private photos get shared

K, age 14, a freshman with no psychiatric history, is referred to you by her school psychologist for evaluation of suicidal ideation.

continued

Disclosures

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Teens and sexting

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One study found that many teens who sent sexts were aware of the potential consequences



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Table 1

Studies of sexting in the United States: Rates of sexts sent and received

Source	Age (years)	Sent sexts	Received sexts
Mitchell et al ¹ 2012	10 to 17	2.5%	7.1%
Lenhart ² 2009	12 to 17	4%	15%
	17 (subsample)	8%	30%
Temple et al ³ 2012	7 Texas public high schools	28%	
	17 (subsample)	33%	
Gordon-Messer et al ⁴ 2013	18 to 24	30%	41%
Henderson ⁵ 2011	18 to 30; university students	60%	
National Campaign to Prevent Teen and Unplanned Pregnancy ⁶ 2008	13 to 19	20%	
	20 to 26	33%	
Strassberg et al ⁷ 2013	Private southwestern high school	18% males	50% males
		17% females	31% females
Houck et al ⁸ 2014	12 to 14; at-risk seventh graders	5%	
Benotsch et al ⁹ 2013	18 to 25; undergraduates	44%	

K reports depressed mood, poor sleep, inattention, loss of appetite, anhedonia, and feelings of guilt for the past month. She recently ended a relationship with her boyfriend of 1 year after she learned that he had shared with his friends naked photos of her that she had sent him. The school administration learned of the photos when a student posted them on one of the school computers.

K's boyfriend, age 16, was suspended after the school learned that he had shared the photos without K's consent. K, who is a good student, missed several days of school, including cheerleading practice; previously she had never missed a day of school.

On evaluation, K is tearful, stating that her life is "over." She says that her ex-boyfriend's friends are harassing her, calling her "slut" and making sexual comments. She also feels guilty, because she learned that the police interviewed her ex-boyfriend in connection with posting her photos on the Internet. In a text, he said he "might get charged with child pornography."

On further questioning, K confides that she had naked photos of her ex-boyfriend on her phone. She admits to sharing the pictures with her best friend, because she was "angry and wanted to get back" at her ex-boyfriend. She also reports a several-month history of sexting with her ex-boyfriend. K deleted the photos and texts after learning

that her ex-boyfriend "was in trouble with the police."

K has no prior sexual experience. She dated 1 boy her age prior to her ex-boyfriend. She had never been evaluated by a mental health clinician. She is dysphoric and reports feeling "hopeless . . . Unless this can be erased, I can't go back to school."

Sexting: What is the extent of the problem?

The true prevalence of sexting is difficult to ascertain, because different studies have used different definitions and methodologies. However, the rates are far from negligible. Sexting rates increase with age, over the teen years.¹⁻³ Among American minors, 2.5% to 28% of middle school and high school students report that they have sent a sext (*Table 1*¹⁻⁹). Studies of American young adults (age ≥18) and university students have found 30% to 60% have sent sexts, and >40% have received a sext.^{4,5}

Many people receive sexts—including individuals who are not the intended recipient. In 1 study, although most teens intended to share sexts only with their boyfriend/girlfriend, 25% to 33% had received sext photos intended for other people.⁶ In another recent study, 25% of teens had forwarded a sext that they

received.⁷ Moreover, 12% of teenage boys and 5% of teenage girls had sent a sexually explicit photo that they took of another teen to a third person.⁷ Forwarding sexts can add exponentially to the psychosocial risks of the photographed teenager.

Who sexts? Current research indicates that the likelihood of sexting is related to age, personality, and social situation. Teens are approaching the peak age of their sex drive, and often are curious and feel invincible. Teens are more impulsive than adults. When it takes less than a minute to send a sext, irreversible poor choices can be made quickly. Teens who send sexts often engage in more text messaging than other teens.⁷

Teens may use sexting to initiate or sustain a relationship. Sexts also may be sent because of coercion. More than one-half of girls cited pressure to sext from a boy.⁶ Temple et al³ found that more than one-half of their study sample had been asked to send a sext. Girls were more likely than boys to be asked to send a sext; most were troubled by this.

One study that assessed knowledge of potential legal consequences of sexting found that many teens who sent sexts were aware of the potential consequences.⁷ Regarding personality traits, sexting among undergraduates was predicted by neuroticism and low agreeableness.¹⁰ Conversely, sending text messages with sexually suggestive writing was predicted by extraversion and problematic cell phone use.

Comorbidities. There are mixed findings about whether sexting is simply a modern dating strategy or a marker of other risk behaviors; age may play an important discriminating role. Sexual activity appears to be correlated with sexting. According to Temple and Choi,¹¹ “Sexting fits within the context of adolescent sexual development and may be a viable indicator of adolescent sexual activity.”¹¹

Some authors have suggested that sexting is a contemporary risk behavior that is likely to correlate with other risk behaviors. Among young teens—seventh graders who were referred to a risk prevention trial because of behavioral/emotional difficulties—those who sexted were more likely

to engage in early sexual behaviors.⁸ These younger at-risk teens also had less understanding of their emotions and greater difficulty in regulating their emotions.

Among the general population of high school students, teens who sext are more likely to be sexually active.³ High school girls who engaged in sexting were noted to engage in other risk behaviors, including having multiple partners in the past year and using alcohol or drugs before sex.³ Teens who had sent a sext were more likely to be sexually active 1 year later than teens who had not.¹¹

Studies of sexting among university students also have had mixed findings. One study found that among undergraduates, sexting was associated with substance use and other risk behaviors.⁹ Another young adult study found sexting was not related to sexual risk or psychological well-being.⁴

Legal issues affect psychiatrists as well as patients

As a psychiatrist evaluating K, what are your duties as a mandated reporter?

Psychiatrists are legally required to report suspected maltreatment or abuse of children.¹² The circumstances under which psychiatrists may have a mandate to report include when a psychiatrist:

- evaluates a child and suspects abuse
- suspects child abuse based on an adult patient’s report
- learns from a third party that a child may have been/is being abused.

Psychiatrists usually are not mandated to report other types of potentially criminal behavior. As such, reporting sexting might be considered a breach of confidentiality. Psychiatrists should be familiar with the specific reporting guidelines for the jurisdiction in which they practice. Psychiatrists who work with individuals who commit crimes should focus on changing the potentially dangerous behaviors rather than reporting them.

Does the transmission of naked photos of a minor in a sexual pose or act constitute child pornography or another criminal offense? The legal answer varies, but the role of the psychiatrist does not.

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There are mixed findings about whether sexting is a marker of other risk behaviors



Teens and sexting

Clinical Point

Some states classify underage sexting photos as child pornography

Table 2

American sexting legal cases and outcomes

Year (jurisdiction)	Charge	Summary
2010 (Wyoming County, PA District Court)	Possessing or distributing child pornography	District attorney gave teens (ages 12 to 13) suspected of “sexting” the option of facing felony charges of child pornography or attending an education program. Pictures on girls’ phones included photos of them appearing “provocatively” in bras, bathing suits, and towels after a shower
2010 (Central District of California, District Court)	Reproducing, transporting, and distributing child pornography	Boyfriend (age 17) photographed his consenting girlfriend (age 15) posing as Francisco Goya’s <i>Nuda Maja</i> , and sent photos to his peer
2014 (Prince William County, Manassas, VA)	Manufacture and distribution of child pornography, 2 counts	Boyfriend (age 17) sent his girlfriend (age 15) a video of his genitalia after she had sent him nude photos of herself. Her mother reported to the police. Detectives obtained a search warrant for explicit photos of his erect penis.
2014 (Fayetteville, NC)	Possession of child pornography; sexual exploitation of a minor	Investigators found sexts between a couple (age 16) when searching their phones for an unrelated case. Both were charged as adults
2015 (Bennington, VT, Superior Court)	Knowingly disclosing a visual image of an identifiable person who was nude or was engaged in sexual conduct without his or her consent, with the intent to harm, harass, intimidate, threaten, or coerce the person depicted, and the disclosure would cause a reasonable person to suffer harm	Adult female sent ex-boyfriend nude photographs on Facebook Messenger; his current girlfriend posted them publicly on Facebook
2016 (Douglas County Circuit Court, Superior, WI)	Possession of child pornography; sexual assault of a child; sexual exploitation	Boyfriend (age 17) received sexts from his girlfriend (age 15); school discovered people were sexting and confiscated several phones. Other boys were age 16; however, 17-year-olds can be tried as adults
2016 (Dakota County Court of Appeals, Dakota County, MN)	Felony communication with a minor describing sexual conduct; felony possession of pornographic work involving minors	School lunch lady (age 43) and student (age 15) sent nude photos to each other over Instagram. However, defendant stated in messages they would meet “maybe in four or five years from now”
2016 (Marion County, Knoxville, IA)	Sexual exploitation	Girl (age 14) texted suggestive, but not nude, photos of herself to a boy. Photos were found by the school, and local county attorney is threatening to charge if she does not take an educational course on the dangers of “sexting”

Psychiatrists should educate their patients about potentially dangerous behaviors.

With regards to the legal consequences, some states classify underage sexting photos as child pornography. Others have less rigid definitions of child pornography and take into account the age of the participants and their intent. Such jurisdictions point out that sexting naked photos

among adolescents is “age appropriate.” Some have enacted specific sexting laws to address the transmission of obscene material to a child through the Internet. In some jurisdictions, sexting laws are categorized to refer to behavior of individuals under or over age 18.

The term “revenge porn” is used to refer to nonconsensual pornography with its

Outcome

All but 3 parents agreed to education program. Those parents filed for injunction; court affirmed

Defendant charge; in appeals

One-year probation; charges dismissed if he abides by all stipulations

Filed a federal civil rights suit against Detective and Assistant Prince William Commonwealth's Attorney

Plea bargain: charges reduced to misdemeanor, disseminating harmful material to minor. One-year probation; charges dropped if he complies

Cased dismissed: law unconstitutional on free-speech grounds

Plea agreement: avoids prison and registering as a sex offender; vacated until he graduates high school

Charges dismissed; court of appeals affirmed

Parents filed a federal lawsuit against Marion County Attorney

intentions of the sender, and the nature of the relationship between the sender and the recipient and the behavior of the recipient.

Laws regarding sexting vary greatly. Sexting may be a misdemeanor or a felony, depending on the state, the specific behavior, and the frequency. In the United States, 11 state laws include a diversion remedy—an option to pursue the case outside of the criminal juvenile system; 10 laws require counseling or another informal sanction; 11 states laws have the potential for misdemeanor punishment; and 4 state laws have the potential for felony punishment.¹⁴ Depending on the criminal charge, the perpetrator may have to register as a sex offender. For example, in some jurisdictions, a conviction for possession of child pornography requires sex offender registration. Thirty-eight states include juvenile sex offenders in their sex offender registries. Other states require juveniles to register if they are age ≥15 years or have been tried as an adult.¹⁵

The frequency of police involvement in sexting cases also greatly varies. A national study examining the characteristics of youth sexting cases revealed that law enforcement agencies handled approximately 3,477 cases of youth-produced sexual photos in 2008 and 2009.¹⁶ Situations that involved an adult or a minor engaged in malicious, nonconsensual, or abusive behavior comprised two-thirds of cases. Arrests occurred in 62% of the adult-involved cases and 36% of the aggravated youth-only cases. Arrests occurred in only 18% of investigated non-aggravated youth-only cases. *Table 2* describes recent American sexting legal cases and their outcomes.

In K's case, depending on the jurisdiction, K or her ex-boyfriend may be subject to arrest for child pornography, revenge pornography, or sexting.

Potential social and psychiatric consequences

What are the social and psychiatric ramifications for K? Aside from potential legal consequences of sexting, K is experiencing psychological and social consequences. She has developed depressive symptoms and suicidal ideation. Her ex-boyfriend's dissemination of her nude photos on the

dissemination motivated by spite.¹³ Some states have defined specific revenge porn laws to address the behavior. Currently, 20 states have sexting laws and 26 states have revenge porn laws.¹⁴ Twenty states address a minor age <18 sending the photo, while only 18 address the recipient. The law in this area can be complex and detailed, taking into account the age of the sender, the

Clinical Point

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Teens and sexting

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Contextualizing sexual questions by asking them while discussing the teen's relationships will make them seem more natural

Table 3

Cyberbullying/sexting cases that ended in suicide

Category	Year	Summary
Sexting, cyberbullying	2008	Jessica Logan (age 18) completed suicide after her ex-boyfriend circulated a nude photo she had sent him
Sexting, cyberbullying	2009	Hope Witsell (age 13) sent naked photos of herself to a crush. A peer forwarded the photos to classmates. Witsell was suspended. She completed suicide after she returned to school
Cyberbullying, video chat	2012	Amanda Todd (age 15) exposed her breasts in a video chat to a stranger she'd been talking to online. The stranger used a topless image of her to create Facebook profiles and contact Todd's peers. After 2 years of being cyberbullied, she completed suicide

Table 4

Patients who sext: Other risk behaviors to consider asking about

Sexual activity
Multiple sexual partners
Substance use (including before sexual activity)
Impulsivity or poor emotional regulation
Suicidal thoughts
Cyberbullying/victimization

school computer could be interpreted as cyberbullying. (The National Center for Missing and Exploited Children defines cyberbullying as "bullying through the use of technology or electronic devices such as telephones, cell phones, computers, and the Internet."¹⁷ All 50 states have enacted laws against bullying; 48 states have electronic harassment in their bullying laws; and 22 states have laws specifically referencing "cyberbullying.")

Her depressive symptoms developed in response to her feelings of guilt and shame related to sexting as well as the subsequent peer harassment. She is refusing to return to school because of her concerns about bullying. A careful inquiry into suicidality should be part of the evaluation when sexting has led to psychiatric symptoms. Several cases of sexting and cyberbullying have ended in suicide (Table 3).

How to ask patients about sexting

To screen patients for sexting, clinicians need to develop a new skill set, which at first may

be uncomfortable. However, the questions to ask are not all that different from other questions about adolescent and young adult sexuality. The importance of patients seeing that we as physicians are comfortable with the topic and approachable about their sexual health cannot be overemphasized. When discussing sexting with patients, it is essential to:

- explain that you are asking questions about their sexual health because they are important to overall health
- engage patients in discussion in a non-threatening and nonjudgmental way
- develop rapport so patients feel comfortable disclosing behavior that may be embarrassing
- listen to their stories and build a context for understanding their experiences. As you listen, ask questions when needed to help move the story along.

Sometimes when asking about topics that are uncomfortable, clinicians revert from open-ended to closed-ended questions, but when asking about a patient's sexual life, it is especially important to be open-ended and ask questions in a nonjudgmental way. Contextualizing sexual questions by (for example) asking them while discussing the teen's relationships will make them seem more natural.¹⁸ To best understand, inquire explicitly about specific behaviors, but do so without appearing voyeuristic.¹⁸

Sexting may precede sexual intercourse. Keep in mind that a patient may report that she (he) is not sexually active but still may be involved in sexting. Therefore, discuss sexting even if your patient reports not being sexually active. By understanding

the prevalence of sexting among teens, you can ask questions in a normalizing way. Clinicians can inquire about sexting while discussing relationships and dating or online risk behaviors.

Also consider whether any of your patient's sexual behaviors, including sexting, are the result of coercion: "Some of my patients tell me they feel pressured or coerced into having sex. Have you ever felt this way?"¹⁹ and "Have you ever been picked on or bullied? Is that still a problem?" are suggested safety screening questions about bullying,¹⁸ and one can also ask about specific cyberbullying behaviors.

Table 4 (page 40) lists additional risk behaviors to ask about in a patient who has been sexting. Sexting is a widely accepted behavior among adolescents, yet many adolescents and parents are unaware of the legal implications of such a behavior. As physicians, we have a role in educating our patients about potentially harmful behaviors, and to do so in a manner that is not viewed as lecturing, which may result in receiving poor-quality information.

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Bottom Line

Although it may seem harmless to adolescents, sexting has potentially serious legal, social, and psychological consequences. Sexting may co-occur with other risk behaviors, such as substance abuse. Clinicians should be prepared to ask patients about sexting, educate them about the risks, and consider whether patients also are engaging in other risky behaviors.

Related Resources

- American Academy of Pediatrics. Talking to kids and teens about social media and sexting. <https://www.aap.org/en-us/about-the-aap/aap-press-room/news-features-and-safety-tips/pages/talking-to-kids-and-teens-about-social-media-and-sexting.aspx>.
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