

# Consent, Sexting & the Law

*A Lesson Plan from Rights, Respect, Responsibility: A K-12 Curriculum*

*Fostering responsibility by respecting young people's rights to honest sexuality education.*

## **NSES ALIGNMENT:**

**SH.10.INF.3** - Explain the federal and states laws that prohibit the creation, sharing, and viewing of sexually explicit media by minors (e.g. sexting)

**SH.12.INF.4** - Analyze the state and federal laws related to minors' ability to give and receive sexual consent and their association with sexually explicit media

**TARGET GRADE:** High School

**TIME:** 50 Minutes

## **MATERIALS NEEDED:**

- Sexting News Story - one per each pair of students
- Sexting News Story: Teacher's Guide
- Our State Sexting Laws Student Handout - one per student (template provided)
- What Happens Now? Scenarios - 1 per each group of three group (several scenarios provided for variety)
- Computer with internet access and speakers
- Screen and projector

## **LEARNING OBJECTIVES:**

By the end of this lesson, students will be able to:

1. Define "revenge porn" as dictated by their state's sexting laws [Knowledge]
2. Describe state laws related to creation, sharing, and viewing of sexually explicit media, specifically sexting [Knowledge]
3. Analyze a minor's ability to give consent for the creation and distribution of sexually explicit media [Skill]

## **LESSON RATIONALE:**

Data indicates that young people are sexting; in 2019, approximately 14% sent a sext and 23% received one<sup>1</sup>. Sexting is often defined as people taking and sharing naked images of themselves and sharing them with others. However, many students don't realize that sexting is illegal for people under the age of 18, and is often considered child pornography. Laws related to sexting (such as child pornography, "revenge" porn, and laws about teen sexting) vary by state, and it's important for students to learn the laws related to child pornography in their own communities, and how it relates to sexting behavior. Given the high prevalence of sexting, the intent of this lesson is not to shame young people, but instead make them aware of, and consider the legal consequences of, their decisions about sexting. This lesson also includes information about consent, often missing from conversations about pornography, to emphasize the importance of consenting to all sexual behaviors, including the creating and sharing of sexually explicit media.

## **ADVANCED PREPARATION:**

- Create a handout that includes information about your state's laws related to sexting. It is essential that you are familiar with the basic laws of your state that govern the creating, distribution, and possession of sexually explicit material in your state prior to teaching this lesson. Make sure you've found the laws for:
  - Age of consent in your state
  - Whether your state has a "revenge porn" law
  - Whether your state has a specific sexting law, anything to consider, such as the age of people sexting.

Last Revised Date: June 10, 2021

<sup>1</sup> <https://www.sciencedirect.com/science/article/abs/pii/S1054139X19305099?via%3Dihub>

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- Some of the websites below can be helpful resources in researching and understanding your state's laws on sexting. However, it will be helpful to check multiple sources to ensure you're prepared with the most up to date information:
  - » <https://cyberbullying.org/sexting-laws>
  - » <https://sexetc.org/action-center/sex-in-the-states/> (select your state and then select sexting laws)
  - » <https://www.criminaldefenselawyer.com/crime-penalties/juvenile/sexting.htm>
- Confirm you can access the AMAZE.org video on pornography: <https://amaze.org/video/porn-fact-fiction/>
  - As an alternative, this video can also teach components of the lesson: <https://www.youtube.com/watch?v=f29mh5ntlw4>
  - Make sure to review the two videos in this lesson in advance to determine if they (or one of them) are a good fit for your students and/or community. Confirm with your supervisor to ensure they can be shown in the context of this lesson, since this is a sensitive topic.

### PROCEDURE:

#### STEP 1:

Introduce this idea to students by saying, **“You likely have heard of pornography, and in some cases, you may have seen it. In general, these images or videos are considered pornography. Although we know some young people are sexting each other, according to the law, sexting among minors (a person under 18) is considered child pornography. That is why it’s important to understand our state’s laws that govern sexting, how it relates to pornography, and things to consider if you’re thinking about sexting with another person - including your right to consent to an image being shared. Let’s start with a quick review of some key ideas.”**

Show students the selected and approved video, either AMAZE.org’s Porn: Fact or Fiction: <https://amaze.org/video/porn-fact-fiction/>. As an alternative, you may show this New Zealand PSA: <https://www.youtube.com/watch?v=f29mh5ntlw4>

*Note to the Teacher: Make sure to review the two videos in this lesson in advance to determine if they (or one of them) are a good fit for your students or community. Check with a supervisor to ensure they can be shown in the context of this lesson, too. If neither video is appropriate for your students or approved to show, skip showing a video altogether but cover the key point in the paragraph below regarding pornography not reflecting real life.*

Share some key messages from the video with students by saying, **“Many of the images we see in pornography do not represent real people or real sexual experiences. They are created for entertainment. In addition, pornography doesn’t include or focus on conversations about consent. Consent is always a crucial part of sexual experiences, and that includes taking, sending, posting or sharing a nude image.”**

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State laws vary widely and although some sexting is consensual it might still be illegal. Sometimes, people intentionally share sexts of someone else on purpose, to be hurtful. Define revenge porn as **“the act of sending/posting/distributing a sexually explicit image of another person with the intent to harass, threaten, coerce or intimidate without their consent.”** This may happen when someone is feeling angry or upset with another person and shares/posts their nude or sexual images without their permission with the intent to cause emotional harm.

*(8 minutes)*

### STEP 2:

Explain to students that they have an opportunity to review a news story about two students who were sexting with each other. After reading, we'll discuss legal implications of sexting, and how it relates to child pornography.

*Note to the Teacher: The case study represents an actual news story; identifying details have been removed.*

Divide students into pairs. Distribute a copy of the “Sexting News Story” to each pair. Ask each pair to read the story and discuss the questions that follow the story.

After 5 minutes, ask students to return their attention to you and review each question using the answers provided on the Teacher’s Guide, emphasizing each key point after a few students have an opportunity to share their answers.

*Note to the Teacher: This is intended to be a quick introduction to concepts explored in the lesson, so it’s okay to keep the discussion limited here. There will be opportunities to explore each concept further in the scenario activity.*

*(12 minutes)*

### STEP 3:

Say, **“It’s important to think about consent and sexting in the same way we think about consent with other things. For example, can anyone think of a time you might have watched and laughed at a video or other picture that you found online. Have you ever wondered if the person agreed to have it put online or shared with others?”**

Ask students the following question, **“Why is consent so important when it comes to sexting?”**

After a few student responses, make sure to emphasize the following key points about consent, writing them on the board if it’s helpful.

- Consent is always important when it comes to sexting, even though it is not often present in sexually explicit media.
- The person pictured in a sext may have not consented to the image being taken or shared.

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- The purpose of many sexting laws is to hold people accountable for sharing a digital image of someone.
- Sharing digital images can be complicated, so it's best to wait until you're 18 and with another consenting 18 year old or older.
- If a sext, image, or video of you is posted without your permission, often called "revenge porn," you can ask for help in getting it removed, and this usually involves reaching out to the online platform on which it was posted. Distribute one of the Sexually Explicit Media Support Resource Cards to each student with information for how to access the Cyber Civil Rights Initiative

*(10 minutes)*

### STEP 4:

Distribute the handout you've created of your state's laws related to sexting. Quickly review key features of the law with students. This may include whether or not your state has a teen sexting law, or a revenge porn law.

*Note to the Teacher: See Our State's Sexting Law Handout Template at the end of this lesson for guidance on where to find this information.*

Break students into groups of 3 and distribute one of the two Sexting Scenarios to each group. Ask students to review their scenario and determine if and how the people in the scenario are breaking the law and whether consent was present in their interaction.

After 5 minutes of small group discussion, ask students to transition to a large group discussion. Starting with groups who read Scenario One, ask each group to share one take-away from the scenario, asking them to not repeat any key ideas shared by a previous group. Once all the groups have shared their key points, summarize by sharing the Scenario One key points on the Teacher's Guide. Repeat these steps with the groups who read Scenario Two.

*Note to the Teacher: As you facilitate this discussion, reinforce key points as they apply directly to your state. For example, does your state have a provision that considers minor sexting a misdemeanor or is teen sexting always considered a felony?*

*(20 minutes)*

### RECOMMENDED ASSESSMENT OF LEARNING OBJECTIVES AT CONCLUSION OF LESSON:

The first learning objective is assessed through Step One, the second objective is assessed through Step Four, and third learning objective is assessed through Step Two.

### HOMEWORK:

If this video was not shown during class, ask students to watch the commercial linked below. If the video was shown during class, ask students to reflect on it. Ask students to write a one-paragraph reflection on why getting consent is so important before sharing any sexually

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explicit images or videos. Consider asking students to ask their parents to watch the video independently and then talk together about their thoughts.

Link to New Zealand PSA: <https://www.youtube.com/watch?v=f29mh5ntlw4> (prior to showing video or assigning it as a part of homework, get approval from a supervisor that it is okay to do so.)

Adapted with permission from Session 8: So-Called Revenge Pornography and Disseminating Sexually Explicit Selfies; from ***The Truth About Pornography: A Pornography-Literacy Curriculum for High School Students Designed to Reduce Sexual and Dating Violence***; Jess Alder, Nicole Daley and Emily F. Rothman, Boston Public Health Commission and Boston University School of Public Health. For more information - <https://www.bphc.org/whatwedo/violence-prevention/start-strong/Pages/Porn-Literacy.aspx>

# Sexting News Story

In Anytown, USA, two 16 year old teens who were dating shared naked images of themselves with each other. At the time, they thought it was no big deal. When a crime happened in their community, they offered their cell phones to be searched by police, not realizing that the images they had of each other on their cell phones could be illegal. The police discovered the sexts while searching their phones and arrested and charged each teen with a felony charge of distributing child pornography. According to Anytown's laws, a person has to be 18 to send and receive sexually explicit material, so because each teen was only 16, they were both the perpetrator and victim of the crime.

One of the teens was dropped from playing on the football team, and faces up to 10 years in jail if convicted, and the other teen opted for a plea deal of one year of probation. Some people thought the two teens were being treated too harshly, other people didn't. Anytown doesn't have any laws related to teen sexting, and therefore, every instance of sending and receiving pictures of a minor, is considered sexual exploitation of minors.

When you're finished reading, discuss the following questions with your partner:

1. What crime was committed here? (Hint: there are two crimes)

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2. Does the crime change if you've just received a nude photo of someone but didn't send one yourself?

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3. Do you think it's ever legal for a teen to send naked photos to another person?

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4. How do you feel about this story? Do you think the teens were treated fairly?

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When you're finished reading, discuss the following questions with your partner:

1. What crime was committed here? (Hint: there are two crimes)

**Answer:** *The crimes were distribution and possession of child pornography. Unfortunately, even though sending naked pictures was consensual between the teens, merely sending and having photos of someone under the age of 18 is considered child pornography in this state. Possession and distribution of child pornography is a crime, even if it is a sext.*

2. Does the crime change if you've just received a nude photo of someone but didn't send one yourself?

**Answer:** *No, even if you've just received a nude photo without asking, it may still be considered possession of child pornography. If a person shares a nude photo, it may be considered distribution of child pornography.*

3. Do you think it's ever legal for a teen to send naked photos to another person?

**Answer:** *Sending a sext of a person who is under the age of 18 is always illegal but there is a lot of variation each's states laws related to teen sexting. In some states, the punishment is less severe, as long as both teens are under 18, it was consensual, and it wasn't "revenge porn," meaning it was sent in a malicious and hurtful way. In other states, the punishment is more severe.*

4. How do you feel about this story? Do you think the teens were treated fairly?

**Answer:** *Think about this for yourself.*

# Sexually Explicit Media Support Resource Cards

Cut apart the cards and distribute one per student.

If you've experienced someone posting a sexually explicit image without your consent, you can get help:

WEBSITE: [www.cybercivilrights.org](http://www.cybercivilrights.org)      CRISIS HOTLINE: [844-878-CCRI](tel:844-878-CCRI)

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# What Happens Now? Sexting Scenarios

Cut up and distribute one scenario per group.

## SCENARIO

Monica, a 15 year old sophomore, and Phil, a 17 year old junior, are dating. Phil has been asking Monica to send him a picture and has sent her many naked pictures every time he asks. Over the summer, Monica and Phil don't get to see each other as much and although they facetime often, Phil keeps asking Monica for a naked picture to look at when he misses her. Since she misses him, and Phil has sent so many naked selfies already, Monica decides to surprise Phil with a naked selfie. What might happen after Monica sends a selfie? Can Monica or Phil consent to their selfie being shared with anyone else?

## SCENARIO

Greg and Viv have been talking for a long time. They started off as friends and as the relationship continues to grow deeper, Greg sends Viv a naked picture. Viv, in her excitement, shows it to a few close friends because she thinks Greg is very attractive. What could happen now that Viv has shown the image to friends? Did Greg consent to their image being shared?

# What Happens Now?

## Sexting Scenarios: Teacher's Guide

Update the key points for your state based on specific laws, for example, whether there is a youth sexting law in your state, which often reduces sexting charges to misdemeanors if both participants are over a certain age, but under 18, and they are not sharing the images with malicious intent.

### SCENARIO

Monica, a 15 year old sophomore, and Phil, a 17 year old junior, are dating. Phil has been asking Monica to send him a picture and has sent her many naked pictures every time he asks. Over the summer, Monica and Phil don't get to see each other as much and although they facetime often, Phil keeps asking Monica for a naked picture to look at when he misses her. Since she misses him, and Phil has sent so many naked selfies already, Monica decides to surprise Phil with a naked selfie. What might happen after Monica sends a selfie? Can Monica or Phil consent to their selfie being shared with anyone else?

### Key Points:

- Many things could happen after Phil and Monica send sexts. Since both Phil and Monica are under 18, the sexts they send back and forth would be considered child pornography. They could both get in legal trouble for taking and sending a sext, and they could both get in trouble for possessing the sext.
- If either of them were to share or post the selfie to hurt or embarrass each other (perhaps after a breakup), that would be considered "revenge pornography" and is illegal. It's also not okay to take, send, or post someone's picture without their permission - no matter their age.
- Legally, neither Monica nor Phil can consent to sharing their naked selfie because they are under 18. Because they are underage, they can't consent to the creation or distribution of child pornography.
- (narrow this point based on your state's laws) Based on your state's laws, this sexting incident could be considered a misdemeanor because both people involved were teens, or it could be considered a felony, which carries a stricter penalty.

## SCENARIO

Greg and Viv have been talking for a long time. They started off as friends and as the relationship continues to grow deeper, Greg sends Viv a naked picture. Viv, in her excitement, shows it to a few close friends because she thinks Greg is very attractive. What could happen now that Viv has shown the image to friends? Did Greg consent to their image being shared?

### Key Points:

- Many things could happen after Viv shares the image with her friends. She could be charged with a crime of possessing and distributing child pornography, since AI is 17. Since Viv is 18, she may be charged with a felony because legally, she is an adult.
- If Viv chooses to send a sext back to Greg, it would likely be considered distributing pornography to a minor, since Viv is a legal adult and Greg is still 17.
- In this scenario, Viv didn't ask Greg for his consent to share his naked photo. It's not okay to share or post images of someone else without their consent; people have to respect each other's digital boundaries. However, in this scenario, because Greg is 17, he legally can't give his consent to create or share a naked image of his.
- This likely isn't considered "revenge porn" because it doesn't seem that Viv is sharing a photo of Greg to hurt or threaten him.

# Our State Sexting Laws: Teacher Template

Below is an example/template of a student handout that can explain your state's laws related to sexting. Fill in the blanks on the handout below.

## Understanding The State of \_\_\_\_\_'s Laws About Sexting

- In all states, it is a crime to knowingly create, possess, or distribute a sexually explicit image (sext) of a minor under the age of 18.

- In many states this includes taking naked selfies.

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- A person under the age of 18 may not be able to legally consent to sending or posting a naked selfie, even if they can legally consent to sex.

- This website has information on your state's age of consent.

- <https://sexetc.org/action-center/sex-in-the-states/> (select your state and then select "Age of consent" laws)

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- The state of \_\_\_\_\_ **DOES / DOES NOT** (*circle one*) have a teen sexting law. If our state has a teen sexting law, it may mean that in certain circumstances, such as teens under 18 sexting as part of a dating relationship, or are close in age to each other, the legal consequences are less severe.

- This website will let you know if your state has a teen sexting law:

- <https://sexetc.org/action-center/sex-in-the-states/> (select your state and then select sexting laws)

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- The state of \_\_\_\_\_ **DOES / DOES NOT** (*circle one*) have a "revenge porn" law, which means it is illegal to send/post a sexually explicit images of another person with the intent to harass or threaten without their consent.

- This website will let you know if your state has a "revenge porn" law and where you can find more information: <https://cyberbullying.org/sexting-laws>