

When Sexting Turns to Violence

by Abigale M. Stolfe and Sara B. Cohen

As of Jan. 2014, approximately 90 percent of American adults own a cellphone.¹ Further, as of Oct. 2014, approximately 64 percent of American adults own a smartphone.² As technology has advanced, so have the crimes and types of crimes associated with it, including sexting (the act of transmitting suggestive or sexually explicit photographs via cellphones). New Jersey is one of 20 states to have a law relating specifically to sexting.³ However, it is not specifically incorporated into the domestic violence statute, but instead through the development of case law, redefining harassment.

The States' Approaches

Twenty of the 50 states in America have sexting laws.⁴ A summary of the sexting laws in

State	Sexting Law	Includes Sexting	Addresses Under 18 Sending	Addresses Under 18 Receiving
New Jersey	YES	YES	YES	YES
New York	YES	NO	YES	YES
Pennsylvania	YES	NO	YES	YES

the tri-state area is as follows:⁵

In New Jersey, pursuant to N.J.S.A. 2C:14-9:

An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he discloses any photograph, film, videotape, recording or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, unless that person has consented to such disclosure. For purposes of this subsection, “disclose” means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer.

Notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine not to exceed \$30,000 may be imposed for a violation of this subsection.

While this statute does offer protection for victims of crimes involving sexting, it is not specifically incorporated into the domestic violence statute at N.J.S.A. 2C:33-4. Instead, the concept of harassment has been utilized to address these acts. A review of relevant New Jersey case law shows what courts most often look to when seeking a conviction of a person for a sexting crime.

In *State v. Parsons*, the parties met through a dating application and began exchanging photographs with one another, clothed and unclothed.⁶ When the plaintiff attempted to end the relationship, the defendant threatened to send the unclothed photographs of the plaintiff via email to her employer, which he ultimately did, stating “you have an educator there that is...not proper.”⁷ The defendant did not “seriously challenge” the proofs regarding the disclosure of the photo.⁸ Further, he conceded to sending “the photographs to the school; the photographs depicted

J.B.'s intimate parts; and J.B. did not consent to the dissemination of the photographs.”⁹ As a result of the defendant’s acts, he was sentenced to 18 months’ imprisonment, together with mandated fines and penalties.¹⁰

In *K.M. v. J.G.*, the Appellate Division held that the defendant committed “acts of harassment under both subsections (a) and (c) of N.J.S.A. 2C:33–4.”¹¹ Holding that “[u]nder subsection (c), defendant’s numerous e-mails threatening to release nude photographs of plaintiff into the public domain, attempting to extort money from her, bragging that he enlarged them—a fact later confirmed at the custody exchange on March 11, 2012—and intimating that they have already been disseminated, constitute a course of conduct clearly meant to alarm, intimidate and seriously annoy plaintiff.”¹² The Appellate Division affirmed the entry of the final restraining order entered by the trial court.¹³

The Appellate Division, in *State v. Fairley*, similarly found that a defendant’s actions represented a course of conduct, when he conducted surveillance of the victim’s fiancé and sent her sexual emails and messages.¹⁴ In *Fairley*, the defendant caused the plaintiff such fear for her safety that she left her job and church and moved in with her fiancé.¹⁵

Youth and Sexting

Though New Jersey’s law is developing concerning adults, the most substantive issue involves teenagers. In fact, sexting has become such a problem for New Jersey youth that the New Jersey Legislature designated February of each year as “‘Teen Dating Violence Awareness and Prevention Month’...to promote public awareness and increase prevention of teen dating violence.”¹⁶ The legislative purpose is clear from the preamble: “Digital abuse and ‘sexting’ are becoming a new frontier for teen dating abuse and one in four teens in a relationship say they have been called names, harassed, or put down by their partner through cell phones and texting.”¹⁷ Further, the preamble states “[t]hree in 10 young people have sent or received nude pictures of other young people on their cell or online, while 61 percent who have ‘sexted’ report being pressured to do so at least once.”¹⁸

N.J.S.A. 2A:4A-71.1 provides remedial measures and counseling programs for juveniles “who are criminally charged for sexting or posting sexual images.” These measures and programs act as alternatives to criminal prosecution for those who post “suggestive or sexually explicit photographs, or who engage in the behavior commonly known as ‘sexting,’ in which these pictures are transmitted via cell phones.” The statute is specifically limited to juveniles.¹⁹

Conclusion

As time moves forward and more Americans obtain cellphones, it is clear that crimes of this nature will become more popular and widespread. Over time, the continued development of direct laws specific to sexting, and enforcement/interpretation will be necessary and the catalyst in curtailing this conduct.

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Endnotes

1. *Mobile Technology Fact Sheet*, Pew Research Center (Dec. 27, 2013), <http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/>.
2. *Id.*

3. N.J.S.A. 2C:14-9.
4. Sammeer Hinduja and Justin Patchin, *State Sexting Laws: A Brief Review of State Sexting and Revenge Porn Laws and Policies* (July 2015), available at <http://cyberbullying.org/state-sexting-laws.pdf> (listing state sexting laws for all 50 states).
5. *Id.*
6. 2011 WL 6089210, Indictment No. 10-06-01372 (App. Div. 2011).
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. 2013 WL 3184781, Docket No. FV-03-1313-12 (App. Div. 2013).
12. *Id.*
13. *Id.*
14. 2015 WL 5009110, Indictment No. 11-07-0664 (App. Div. 2015).
15. *Id.*
16. N.J.S.A. 36:2-224 (2014).
17. *Id.*
18. *Id.*
19. (2) the creator and subject of the photograph are juveniles or were juveniles at the time of its making.