



SEXTING PREVENTION LEGISLATION SIGNED INTO LAW

by Texas Attorney General Greg Abbott

A DISTURBING NEW PRACTICE KNOWN AS sexting has become increasingly common among teenage children. This term is used to describe sending or receiving sexually explicit images via mobile telephones. When sexting involves images of minors it can become an issue for law enforcement, because sending or receiving sexually explicit images of persons under the age of 17 can constitute the promotion of child pornography.

But what happens when a high school student receives an explicit image of a boyfriend or girlfriend? Worse, what happens if the message is forwarded on to a friend? Until recently, Texas teenagers who engaged in sexting could have faced the possibility of criminal prosecution, felony convictions, and lifetime registration as a sex offender – life-altering consequences for youthful mistakes.

Imposing these severe long-term consequences on young Texans simply did not make sense. Because the Penal Code's remedies for this conduct were so severe and inflexible, Texas prosecutors and law enforcement were justifiably reticent about pursuing these cases. But harmful and improper conduct with no adverse consequences is difficult to prevent – and sexting is a dangerous practice that must be curbed.

With the Texas Legislature poised to convene for the 82nd Legislative Session,

we recognized that law enforcement and the courts needed new tools to prevent teenagers from sexting without having to resort to measures that correctly apply to child pornographers. Fortunately, we found a forceful and creative ally in Senator Kirk Watson (Austin), who recognized the importance of creating an innovative statutory solution to this problem.

The result of our collaboration was Senate Bill 407, which was sponsored by Rep. Tom Craddick (Midland) and Rep. Pete Gallego (Alpine) in the House of Representatives. Under this bipartisan legislation, which Governor Perry signed in June and becomes effective on September 1, the Penal Code will have a new offense that prevents minors from intentionally and knowingly promoting or possessing text messages that contain explicit images of those 17 years old or younger. Importantly, the new offense is a misdemeanor – not a felony – and does not require that minors register as sex offenders in the state.

First-time violators who send or possess these illicit messages face a class C misdemeanor. Subsequent violations could be upgraded to a class B misdemeanor. The upgraded charge is also available for defendants who promote these explicit “with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another.” Minors

who have two or more sexting promotion or possession convictions could face a class A misdemeanor for a third offense.

Under SB 407, there are several defenses to prosecution – including affirmative defenses for communications between minor spouses or minors within two years of age who are engaged in a dating relationship. Separate defenses were also created for law enforcement officials or school administrators who confiscate a sexting messages from minors and handle them in accordance with the law.

Minors charged with violating the new sexting law are required to appear in court. Under the new law, judges are required to compel not only the minor offender – but also their parents – to make the required court appearance. These provisions are intended to teach children and their parents about the seriousness of their offense – but do so in a reasonable way that holds them accountable without imposing severe criminal penalties. At the sentencing phase, the new law authorizes courts to require that minors complete an educational program about sexting's long-term, harmful repercussions.

In addition to court-ordered educational programs, the Texas School Safety Center and the Attorney General's Office are required to develop educational programs that school districts can use to teach students about sexting. The course addresses not

only the potential legal consequences of sexting, but also the social consequences – such as lost educational or professional opportunities as well as potential removal from school-related activities.

Under SB 407, every Texas school district must make these sexting-prevention programs available on a yearly basis beginning in 2012. However, school districts have the flexibility to determine how to distribute sexting-prevention information to parents and students. The districts are also given discretion to determine which grade-levels should be required to participate.

Consistent with SB 407's goal of imposing some punishment – but not life-altering consequences – the bill allows many minors convicted of sexting offenses to expunge their convictions before they apply for college. Under the new law, eligible minors can seek an expunction order from the courts on or after their 17th birthday.

Thanks to a joint effort between Sen. Watson, Rep. Craddick, Rep. Gallego and the Attorney General's Office, law enforcement and educators will have new legal tools that allow them to hold teenagers accountable for sexting – without imposing long-term and life-altering consequences for youthful mistakes.

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