A LEGAL ANALYSIS OF CYBERBULLYING WITH SEXTING CASES

by

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A dissertation submitted to the faculty of
The University of North Carolina at Charlotte
in partial fulfillment of the requirements
for the degree of Doctor of Education in
Educational Leadership

Charlotte

2016

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ABSTRACT

DANA LEE AYERS. A legal analysis of cyberbullying with sexting cases (Under the direction of DR. DAVID M. DUNAWAY)

The misuse of social media and technology is an emerging threat to adolescents. The court systems are being forced to address the legality and fine line of social media use and the First Amendment rights of those involved. This research study is a legal analysis of cyberbullying with sexting cases primarily in North Carolina. The researcher examined how cyberbullying with sexting case law in North Carolina addresses students' First Amendment free speech rights. In addition, a glimpse into these cases revealed the frequency with which these cases are decided under child pornography laws. The cases were primarily limited to cyberbullying with sexting.

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CHAPTER 1: INTRODUCTION

In a society that increasingly views technology as a conduit for interpersonal relationships, the boundaries between the legality of action and constitutional rights have become blurred, both legally and culturally. The purpose of this study was to analyze cyberbullying and to assess sexting laws and how they relate to juvenile students' constitutional rights in school. The goal was to bring a measure of clarity to school officials, who are frequently called on to deal with the issues surrounding texting. The cases analyzed were limited to cyberbullying with sexting. Slanderous, obscene, or pornographic online messages may not be constitutionally protected under the First Amendment.

Statement of the Problem

Sexting is a combination of the words "sex" and "texting." It is defined as "the practice of sending or posting sexually explicit images (including nude or partially nude photographs) or messages via cell phones or over the Internet."[1] The sending of sexually explicit messages and images between teens under the age of majority is illegal, even if they are never shared with anyone else.[2]

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[1]Miller v. Mitchell, 598 F.3d 139, 143 (3d Cir. 2010).

[2]This situation, which has become a popular and legal activity among consenting adults, is unlike sexting between two adults. Sexting allows the proposition of or the memorialization of sex to be convenient and impulsive, with the illusion of intimacy between two people. In most cases, the messages are initially

The vignettes shown in Figure 1 illustrate two of the myriad issues in the controversial arena of sexting. Depending on the state in which they reside, these adolescents may be committing a felony, and if convicted, they may be forced to go to prison or to register as sex offenders.

Figure 1. Vignettes*

Vignette 1

Ramon, age 17, and Sarah, age 16, met in math class at their high school in North Carolina. They hit it off immediately and began dating. Two weeks later on a whim, Sarah texted Ramon some nude pictures of herself. Ramon did the same in response. Neither person ever showed the texted pictures to anyone else.

Vignette 2

During the final week of classes in June of 2009, Hope Witsell, a 13-year-old middle school student in Florida, took a picture of her breasts with her cell phone camera and texted the image to her boyfriend. From there, the picture was shared with many students at nine different schools in the area. Hope experienced online and face-to-face bullying that persisted throughout the summer and into the next school year. School officials suspended her for the first week of the following school year for sexting. Hope killed herself on September 12, 2009. Even after her death, the online taunting continued.[3]

*Although none of the students in these vignettes was charged with a crime, they did break the laws in their states.

intended to be kept private. However, as evidenced by the public disclosure of sexts allegedly sent by high-profile individuals, this does not always happen. It is not surprising that the modeling of sexting behavior by respected and well-known adults who are professional athletes, journalists, and politicians, even when the pictures go public, is attractive to adolescents who are already technological savvy and not aware of the possible legal consequences of their actions.

[3]This vignette was compiled from the following news accounts: Randi Kaye, "How a Cell Phone Picture Led to a Girl's Suicide," CNN, October 13, 2010, http://www.cnn.com/2010/LIVING/10/07/hope.witsells.story/index.html; Aina Hunter, "Hope Witsell Cyberbully Suicide: Did She Have a Chance? (Pictures)" *CBSNews,* October 7, 2010, http://www.cbsnews.com/news/hope-witsell-cyberbully-suicide-did-she-have-a-chance-pictures/; Pete Kotz, "Hope Witsell, 13, Commits Suicide Due to Bullying Over Topless Photo She Texted," *True Crime Report,* December 2, 2009, http://www.truecrimereport.com/2009/12/hope_witsell_13_commits_suicid.php. A similar incident involving high school student Jessica Logan also ended in a teen suicide: Melissa Thomas, "Teen Hangs Herself After Harassment for a Sexting Message, Parents Say," *Courthouse News Service,* December 7, 2009, http://www.courthousenews.com/2009/12/07/Teen_Hangs_Herself_After_Harassment_For_a_Sexting_Message_Parents_Say.htm

A sexual image sent to another teen that is disseminated to others without the sender's consent illustrates how primary sexting can turn into secondary sexting with the added element of cyberbullying. From this situation, many other unintended consequences can occur. If the sexually explicit texts do go public, teens may experience embarrassment, damage to their reputations, or mental anguish. The person(s) who sends the secondary sext may be culpable, depending on the state's laws, for possession and distribution of child pornography. In addition to sexting statutes, if the intent was to harass or torment a person, cyberbullying may be charged. If parents discover sexually explicit texts on their child's phone or computer or bullying occurs at school because of sexts, school officials can be held accountable when there is a documented disruption of school, and no action taken is by school officials.

Although all 50 states have bullying statutes and 22 states have specific cyberbullying statutes (3 have proposed laws), few distinguish sexting (particularly secondary sexting) as a separate criminal offense. Twenty states address sexting through the law. With the lack of clear direction regarding sexting by juvenile students used in cyberbullying, other laws such as those dealing with child pornography and obscenity, may be used to charge the underage person. Simply put, in many states, the laws have not yet caught up with technology, and there is no legal distinction between underage people sending naked or suggestive pictures of themselves to each other and persons disseminating child pornography.

Purpose of the Study

This study provided analysis of cyberbullying with sexting case law in North Carolina. The researcher examined how state cyberbullying with sexting decisions by the

state and federal courts address students' First Amendment free speech rights. The cases were limited to cyberbullying with sexting, although all online messages may not be constitutionally protected under the First Amendment. This study helps to clarify the legal status of cyberbullying as state and federal constitutional issues, provides legal and administrative guidance to school personnel, and clarifies child pornography laws as they relate to cyberbullying with sexting.

Research Questions

The primary research questions was, "when cyberbullying with sexting occurs between minors in the school setting, what federal and state constitutional and statutory rights are at issue?" The supporting questions for this study were as follows:

1. When are First Amendment and child pornography laws included to decide cyberbullying with sexting cases?
2. How do state and federal laws addressing cyberbullying with sexting compare?

Significance of the Study

Because sexting and cyberbullying, with implications of child pornography, have emerged as significant issues in the national consciousness, and more specifically in schools, the current legal status must be defined and a set of guidelines must be established. When the justice system fails to agree, it is not possible to develop consistent guidelines for and by school officials and others working with the offending juveniles or to keep other juveniles safe from the influence.

The first significant factor is the juveniles involved in cyberbullying with sexting acts—those brought into the acts not of their own choosing and, just as importantly, those susceptible to the influence of others. The need for protection as students while present at school and virtually connected to school implies a reemergence of *in loco parentis* authority. As school leaders address the victims, offenders, and other students, it is critical to take authority on school grounds. But what authority does *in loco parentis* grant schools and staff with regard to the First Amendment? A British legal scholar, William Blackstone, wrote that a parent "may delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis,* and had such a portion of the power of the parent committed to his charge."[4] This statement, in part, relieves schools of liability in an investigation that may require a search; however, *in loco parentis* may infringe on students' right to freedom of speech.

In the case of *New Jersey v. TLO*[5] a New Jersey high school teacher found two 14-year-old freshman smoking cigarettes in a school restroom. The students were taken to the principal's office, where they met with the assistant principal. When questioned, both students denied smoking. The assistant principal demanded to see inside one of the students' purse. In searching the purse, a pack of cigarettes and a package of cigarette rolling papers commonly associated with the use of marijuana were found. The assistant principal proceeded to search the purse more thoroughly and found some marijuana, a pipe, plastic bags, a large amount of money, a card with a list of students who owed money, and two letters that implicated her in marijuana dealing. Prosecutors brought

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[4]*See* Phillip Lee, "The Curious Life of In Loco Parentis at American Universities," *Higher Education in Review 8* (2011): 65–90.

[5]Chicago-Kent College of Law at Illinois Tech. "New Jersey v. T.L.O." Oyez. https://www.oyez.org/cases/1983/83-712 (accessed February 17, 2016).

delinquency charges against the offender. The court held that the Fourth Amendment applied to searches by school officials; however, the search was a reasonable one. The Appellate Division of the New Jersey Superior Court affirmed the trial court's finding that there had been no violation of the Fourth Amendment. The New Jersey Supreme Court reversed the decision and ordered the suppression of the evidence found in respondent's purse, holding that the search of the purse was unreasonable. Therefore, *in loco parentis* was not a valid argument for the administrators in this case.

A second significant factor is the transmission of nude images to a student at school that occurred outside of the confines of the school building. Does the school have any authority when the transmission occurred outside the walls of the school building? Indeed it does, if it becomes a disruption in school. *Tinker v. Des Moines Independent Community School District* established this precedence. The U.S. Supreme Court purported that students do not cast off their free-expression rights "at the schoolhouse gate."[6] Just as importantly, the court noted that school can intrude on those rights only when the student expressions of those rights "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."[7] More recently, the concern has become whether school officials can extend their authority from the schoolhouse gate to students' phones and personal devices. School officials have extended their authority by punishing students for online speech even though students created the speech off campus.

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[6]Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969).
[7]Chicago-Kent College of Law at Illinois Tech. "Tinker v. Des Moines Independent Community School District." Oyez. https://www.oyez.org/cases/1968/21 (accessed February 15, 2016).

The Supreme Court addressed student Internet speech as a pure First Amendment case in *Morse v. Frederick.*[8] This case detailed a student who was suspended for displaying a banner promoting illegal drugs. Initially, the district court found no evidence of a constitutional violation with the suspension from Principal Deborah Morse. The U.S. Court of Appeals for the Ninth Circuit reversed the decision, using *Tinker* as precedent. It was ruled that the student, Joseph Frederick, was punished for his message and not an actual disturbance. Therefore, the Constitution and the First Amendment, both crucial to personal freedoms inside and outside of the schools, leave a murky legal area to be addressed by the Supreme Court. Finally, in the absence of a U.S. Supreme Court decision on cyberbullying with sexting and when myriad verdicts and appellate decisions form a murky, foggy swamp in which decisions still must be made by the various parties such as the *Tinker* or *Morse* cases, it was critical for an analysis, even if temporarily, to clear the air until a U.S. Supreme Court decision settles the law for all involved.

Overview of Federal and North Carolina Statutes That Apply to Sexting

A minor who has sent nude images and text messages can be charged in the United States under federal laws and in North Carolina under state statutes regarding cyberbullying. The most significant consequence is a violation of the federal statute 18 U.S.C. §2256 that defines child pornography as "any visual depiction . . . [of a minor] engaging in sexually explicit conduct." The law makes a distinction between possession and receipt of pornography (up to 5 years in federal prison) compared with distribution (up to 15 years in federal prison).

[8]Chicago-Kent College of Law at Illinois Tech. "Morse v. Frederick." Oyez. https://www.oyez.org/cases/2006/06-278 (accessed February 15, 2016).

To date, no case has been decided solely on cyberbullying with sexting involving minors in North Carolina. A multitude of cases brought with that offense has been decided under the umbrella of child pornography, antibullying, or First Amendment precedence. Although North Carolina does not have a specific sexting statute, it does have a criminal statute that makes cyberbullying an offense punishable as a Class 1 misdemeanor (individuals 18 years and older) or a Class 2 misdemeanor (if the individual is younger than 18 years old). North Carolina General Statute §14-458.1 *Cyberbullying;* penalty enacted by Governor Beverly Perdue in 2009, made illegal several activities by "any person" that possesses an "intent to intimidate or torment a minor" through use of a "computer or computer network." This law was written broadly and can be applied to multiple offenses. The bifurcated nature of the punishment provisions of this statute allows judges to order special considerations for offenders under the age of 18 who plead guilty. Offenders can be placed on probation without entering a judgment of guilt. Once the terms of probation are satisfied, the individual is deemed by the court to not have a conviction, and he or she can move to expunge the record. Of note, in North Carolina, the age of majority is 18 years old and the age of consent is 16 years old. The fact that a person 16 years of age can legally engage in sexual acts with another 16 year old but cannot legally sext with someone the same age muddies the legal waters for all parties involved.

Two other statutes in North Carolina relate to aspects of sexting. N.C.G.S. §14-190.1 Obscene Literature and Exhibition makes it a Class 1 felony to intentionally disseminate "obscenity" defined as any material depicting sexual content in a "patently

offensive way sexual conduct . . .”[9] The statute explains obscenity largely in terms of community standards. According to a second statute, N.C.G.S. §14-190.16, first-degree sexual exploitation of a minor can apply to one who “records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.”[10] A conviction under this law constitutes a Class C felony.

These laws, enacted to protect young people from sexual predators, can now implicate these teens in criminal activity, often through ignorance on the part of the teens. For example,

- Teens, through sexting, may be recording or photographing images of sexual content. Can that be considered obscene?
- Could a cell phone be considered a computer in the transmission of pornography, cyberbullying with sexting, and bullying?

These questions create a conundrum: in North Carolina, children are often both the offenders and victims of cyberbullying with sexting. Because these state laws attempt to fill the void left by the absence of federal law, they make it difficult and often impossible for those creating and enforcing state statutes through the court system and the schools.

Cyberbullying with sexting has become a cultural phenomenon among teens, often at school, through the ease of technology. It is a pressing, yet incredibly murky, legal issue. It has created a legal and moral miasma that directly affects parents, schools,

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[9]North Carolina General Assembly, § 14-190.1. Obscene literature and exhibitions. http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_14/gs_14-190.1.html
[10]North Carolina General Assembly, § 14-190.16. First-degree sexual exploitation of a minor. http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-190.16.html

school districts, society, law enforcement, and courts, not to mention the adolescents involved. State and federal statutes, constitutional rights, age of consent, legal definitions of child pornography, and appropriate punishment have not produced collectively or individually a reasonable way forward for anyone involved. As King observed in the *Vanderbilt Law Review,* "Cyberbullying is already too grave a problem to be ignored, and it is quickly escalating with the proliferation of Internet use and the popularity of social-networking websites."[11]

Brief Overview of Methodology

This study was a legal analysis. Current cyberbullying with sexting statutes in all 50 states were reviewed to build a conceptual matrix of statutory commonalities. Online legal research tools, including campus Westlaw, LexisNexis, FindLaw, Supreme Court Yearbook, and Black's Law Dictionary, were used to review the current legal literature and to identify court opinions for analysis. Professional journals and previous dissertations were reviewed to establish an academic framework for this study. The limited amount of literature available for review was a negative aspect in terms of setting the framework for this research, if proven to true, it will further support the significance of this study. However, because there is not a vast amount of literature available from a legal analysis standpoint, this dissertation adds to the body of literature available for future reference.

The legal analysis of state cyberbullying with texting statutes and constitutional issues and child pornography cases provided the findings for this study. Because by its

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[11]*See* Alison Virginia King, "Constitutionality of Cyberbullying Laws: Keeping the Online Playground Safe for Both Teens and Free Speech," *Vanderbilt Law Review* 63, no. 3 (2010): 848.

nature, the study was a compilation, analysis, and assessment of myriad legal materials, it was impossible to initiate this study with a hypothesis. Therefore, the analysis most closely resembled methods of grounded theory while not adhering strictly to its tenets. Legal analysis requires the researcher to follow the winding path of statutory law across multiple jurisdictions. Most importantly, it is built on the concept of common law or judge-made law, which is built on precedent and succeeding opinions, again often over multiple jurisdictions. The researcher began with a review of a sample of cases and statutes to establish the frameworks that were then used in the analysis of all other cases and statutes. The results of this analysis were integrated into a final discussion (conclusion) that provides the most current legal picture of these perplexing issues.

Organization

Chapter 1 introduces the study's problem, the research questions, and the methodology. The literature review in Chapter 2 explores relevant federal and state cases involving cyberbullying with sexting. Chapter 3 explains the methodology of legal analysis used in this study. Chapter 4 presents the findings from the 50-state cyberbullying with sexting statute analysis and the legal analysis of current cases of cyberbullying, First Amendment, and child pornography cases. Finally, Chapter 5 presents the study's findings, conclusions, implications, and recommendations.

CHAPTER 2: REVIEW OF LITERATURE

The primary purpose of this study was to analyze cyberbullying with the element of sexting in case law in North Carolina. The case law was limited to cyberbullying with sexting and examined how state decisions by the courts primarily in North Carolina addressed students' First Amendment free speech rights. This study contributes to the legal research on First Amendment and child pornography laws as they relate to cyberbullying with sexting. North Carolina has had no such cases in its state courts in which sexting was viewed as a separate issue or as an example of cyberbullying in and of itself. The scope of cyberbullying with sexting, child pornography, and the potential legal implications, was addressed.

Scope of Cyberbullying

The Cyberbullying Research Center found that 15% of students in one study were the target of cyberbullying in the previous 30 days before the study was initiated. In this study, boys represented 11% and girls 18.5% of victims.[12] Victims reporting cyberbullying have been on the rise in the past decade. In 2007, an estimated 18% of students were victims of cyberbullying; by 2009, there was an increase to 28.7%; in 2015, the percentage of victims reporting cyberbullying was 34.0.[13] This increase in

[12]Cyberbullying Research Center. "Cyberbullying Facts." http://cyberbullying.org/facts/ (accessed November 23, 2015).
[13]Ibid.

cyberbullying with sexting as a criminal act in the United States prompted an examination of the laws and generally how the courts have addressed the issue to date, with an in-depth analysis in North Carolina.

Cyberbullying is a crime in 49 states. The National Crime Prevention Counsel reported, "43 percent of teens have been victims of cyberbullying, but many are too ashamed or embarrassed to report the incidents to their parents or other authorities."[14] In addition to being a serious legal issue, cyberbullying can cause severe, life-threatening health issues. The Centers for Disease Control and Prevention (CDC) characterized the increase in the secondary mental health consequences of cyberbullying as an "emerging public health problem."[15] The identification of health-risk behaviors that contribute to the leading causes of morbidity and mortality among youth and adults should raise awareness of and potentially prevent such behaviors. Suicide is one of those behaviors, as reported by the CDC. Current research findings show that being bullied, in any manner, is one of several important risk factors that increase the risk of suicide among youth.[16]

The National Crime Association reported that cyberbullying is a noted health risk as determined by the Youth Risk Behavior Surveillance System.[17] The Youth Risk

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[14]National Crime Prevention Council – Newsroom. "Bullying Beyond the Playground: New Research Says 43 Percent of Teens Have Been Victimized But Only One in Ten Tell Their Parents." Mar. 6, 2007, http://vocuspr.vocus.com/VocusPR30/Newsroom/Query.aspx?SiteName=NCPCNew&Entity=PRAsset&SF_PRAsset_PRAssetID_EQ=99308&XSL=PressRelease&Cache

[15]Stacy Katz Carchman, "Cyberbullying: A Growing Threat Among Students," *Sun-Sentinel* (Fort Lauderdale, Fla.), Feb. 3, 2009, at 5 (reporting conclusions from a cyberbullying conference that cyberbullying is on the rise and that parents and teachers are not fully aware of the severity of the problem). This report is conducted by the Centers for Disease Control and focuses on types of health-risk behaviors that contribute to causes of death and disability among youth and adults.

[16]Centers for Disease Control and Prevention. http://www.cdc.gov/healthyyouth/yrbs/pdf/system_overview_yrbs.pdf (accessed February 22, 2016).

[17]Centers for Disease Control and Prevention. http://www.cdc.gov/healthyyouth/yrbs/pdf/system_overview_yrbs.pdf

Behavior Surveillance System was developed by the CDC in 1990 to monitor behaviors that contribute to the leading causes of death, disability, and social problems among youth and adults in the United States. The percentage of students who reported being electronically bullied in 2013 was approximately 15%, yet some research suggests that up to 42% of students have been electronically bullied.[18] These data exhibit an obvious health risk. Table 1 was compiled from CDC data from 2011–2013 and shows the percentage of high school students reporting being electronically bullied by state.[19] This table shows that a greater percentage of girls are experiencing electronic bullying than boys.

Cyberbullying is distinct from traditional bullying in that the offender is often unknown. For example, N. H. Goodno in the *Wake Forrest Law Review* wrote, "cyberbullying is ubiquitous . . . with a few keystrokes, the bullying statements can be circulated far and wide in an instant."[20] Goodno further wrote that cyberbullying offers the anonymity aspect that face-to-face physical bullying lacks. Along with being hidden with anonymity, cyberbullying can be relived repeatedly as it is accessed in online settings. Additionally, in cyberbullying with sexting, the lines become blurred in legal

TABLE 1: Percentage of high school students electronically bullied

	Female		**Male**		**Total**	
	%	CI	%	CI	%	CI
Alabama	18.3	15.0–22.1	8.7	6.5–11.4	13.5	11.6–15.6
Alaska	19.5	16.2–23.2	10.1	7.9–12.8	14.7	12.6–17.0
Arizona	—	—	—	—	—	—
Arkansas	24.4	21.3–27.8	10.7	8.4–13.6	17.6	15.5–19.8
Connecticut	22.8	18.9–27.2	12.3	10.3–14.6	17.5	15.1–20.2

[18]Cyberbullying: Scourge of the Internet [INFOGRAPHIC]. http://mashable.com/2012/07/08/cyberbullying-infographic/ (accessed February 24, 2016).
[19]Centers for Disease Control and Prevention. Youth Online: High School YRBS. https://nccd.cdc.gov/YouthOnline/App/Default.aspx (accessed September 28, 2014).
[20]N. H. Goodno, "How Public Schools Can Constitutionally Halt Cyberbullying: A Model Cyberbullying Policy that Considers First Amendment, Due Process, and Fourth Amendment Challenges," *Wake Forest Law Review* 46, no. 4 (2011): 650–651.

Delaware	17.5	15.1–20.2	9.4	7.8–11.3	13.4	11.9–15.0
Florida	16.9	15.4–18.5	7.8	6.9–9.0	12.3	11.3–13.5
Georgia	16.4	14.0–19.1	11.2	9.0–14.0	13.9	12.0–15.9
Hawaii	18.6	15.4–22.3	12.4	10.4–14.6	15.6	13.8–17.6
Idaho	27.4	24.0–31.1	10.6	8.2–13.6	18.8	16.5–21.3
Illinois	22.6	19.2–26.3	11.2	10.1–12.4	16.9	15.4–18.6
Kansas	25.2	22.2–28.5	9.0	7.2–11.2	16.9	15.0–19.0
Kentucky	16.4	13.3–20.1	9.9	7.8–12.5	13.2	11.2–15.5
Louisiana	19.5	14.0–26.5	13.9	10.3–18.6	16.9	13.2–21.4
Maine	28.9	26.6–31.3	12.7	11.6–14.0	20.6	19.4–21.9
Maryland	17.2	16.6–17.7	10.7	10.1–11.2	14.0	13.6–14.4
Massachusetts	18.7	16.1–21.5	9.0	7.1–11.5	13.8	12.3–15.6
Michigan	25.2	21.4–29.5	12.5	10.4–15.0	18.8	16.4–21.4
Mississippi	17.2	14.7–19.9	6.5	4.5–9.3	11.9	10.4–13.5
Missouri	—	—	—	—	—	—
Montana	25.9	23.8–28.2	10.6	9.5–11.8	18.1	16.9–19.4
Nebraska	22.2	19.2–25.5	9.7	7.7–12.2	15.7	14.0–17.6
Nevada	21.6	17.0–27.0	8.6	6.5–11.1	15.0	12.5–18.0
New Hampshire	23.7	20.5–27.3	12.8	10.6–15.3	18.1	16.1–20.2
New Jersey	19.9	16.3–23.9	9.9	6.9–14.0	14.8	12.4–17.7
New Mexico	18.3	15.8–21.0	8.1	7.1–9.2	13.1	11.7–14.6
New York	20.4	17.7–23.5	10.2	8.6–12.0	15.3	13.6–17.1
North Carolina	17.8	14.3–22.0	7.4	5.6–9.7	12.5	10.3–15.0
North Dakota	22.6	19.7–25.8	11.9	9.9–14.1	17.1	15.5–18.8
Ohio	22.1	17.9–27.0	8.5	6.1–11.7	15.1	12.6–18.0
Oklahoma	21.5	17.6–26.1	7.4	5.7–9.4	14.3	11.7–17.2
Rhode Island	19.3	15.8–23.3	9.3	6.8–12.5	14.3	12.1–16.9
South Carolina	17.9	15.8–20.3	9.6	7.2–12.8	13.8	11.8–16.0
South Dakota	21.8	17.8–26.4	13.9	12.0–16.1	17.8	15.7–20.1
Tennessee	21.4	18.8–24.2	9.8	7.7–12.5	15.5	13.6–17.5
Texas	19.3	16.3–22.6	8.6	6.7–10.9	13.8	11.8–16.2
Utah	22.2	20.2–24.4	11.9	9.4–14.9	16.9	15.2–18.8
Vermont	26.0	24.9–27.1	10.3	9.0–11.6	18.0	17.3–18.7
Virginia	19.5	17.8–21.3	9.3	7.7–11.2	14.5	13.3–15.8
West Virginia	27.4	24.2–30.9	7.7	6.2–9.7	17.2	15.5–19.2
Wisconsin	24.6	22.3–27.0	10.9	9.1–13.0	17.6	15.9–19.4
Wyoming	23.2	20.9–25.6	9.2	7.6–11.1	16.1	14.7–17.6
Median		21.4		9.9		15.4
Range		16.4–28.9		6.5–13.9		11.9–20.6

Note. Only 42 of the states participated; California, Pennsylvania, Colorado, Washington, Indiana, Iowa, Minnesota, and Oregon did not participate. CI = 95% confidence interval; — = Not available.

aspects determining the breaking of the law as it is interpreted with First Amendment cases and child pornography cases.

Sexting

Sexting incidents, like cyberbullying, have become commonplace. This is evident in the number of media reports in both print and broadcast. One example of this is the case involving Jessica Logan, now deceased.

In *Logan v. Sycamore Community School Board of Education,*[21] the parents of Jessica Logan brought suit against the school board on the grounds that the resource officer and guidance counselor failed to protect their daughter. Logan committed suicide, after allegedly suffering harassment from other high school students involved in sexting a nude picture of her. Although the parents brought suit against the school board, others in the original complaint included the resource officer, who was aware of the situation, and the city council. The city council was included in the suit because the resource officer was an employee of the City of Montgomery Police Department. Logan's parents alleged that the resource officer and school system were aware of the sexting harassment and did not properly address the individual student or students harassing the victim. They further alleged that Officer Payne encouraged Jessica to participate in an interview about her sexting incident. After Jessica did so, her parents alleged she suffered additional harassment because of the interview.

The judge ordered that Officer Payne and the city council be released of responsibility under qualified immunity. However, he ruled that the school board could have been at fault, which made further investigation and discovery necessary. This type

[21]Logan v. Sycamore Community School Board of Education, United States District Court, 780 F. Supp.2d 594 (S.D. Ohio 2011).

of case in which the school officials are held responsible for damages and death of a student is likely to become more frequent.

State Laws Addressing Cyberbullying

Forty-nine states in the United States currently have antibullying statutes—only Montana has no statute. Of those 49 states, 22 include cyberbullying in the antibullying statutes and 3 other states have proposed statutes that directly address cyberbullying. The state on which this study focused, North Carolina, has a specific statute addressing cyberbullying.[22] A comprehensive list of states that have enacted cyberbullying statutes (or laws) and those that have now enacted cyberbullying legislation (proposed law or bill) is included in Appendix F.[23]

Of critical importance is how these statutes and legislation impact school districts that encounter cyberbullying with sexting behaviors from their students. Therefore, to comprehend how each state and school district addresses cyberbullying with sexting, the number of public school districts in each state is also noted in Appendix F. This information clarifies the magnitude of school districts faced with the issue of cyberbullying with sexting and consequences by state.

The cyberbullying statute in North Carolina is unclear in many aspects due to its multiple audiences and its expansive, somewhat unfocused coverage. The statute, and its vagueness due to undefined and confusing terms, is not easily understood and leaves room for much interpretation.

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[22]North Carolina General Assembly, § 14-458.1. Cyber-bullying; penalty. http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-458.1.html (accessed September 3, 2014).
[23]Cyberbullying Research Center. www.cyberbullying.us (accessed March 19, 2015).

Federal Cyberbullying Cases

Once cyberbullying with sexting cases began appearing in state courts, it seemed likely that cases would eventually be brought in the federal court. This, however, has proven to be untrue at the date of this writing.

In 2009, a case was brought before the United States Supreme Court based on the federal Computer Fraud and Abuse Act. *United States v. Lori Drew*[24] addressed criminal behavior associated with Internet bullying under a false alias in which the victim later committed suicide. In 2006, a Missouri mother, Lori Drew, and two others used the *Myspace.com* social media site to create an online profile of a fictitious person named "Josh Evans." Drew's daughter was in an argument with Megan Meier. Drew used the profile to gain an online friendship with Meier to verify rumors Meier spread about Drew's daughter. After weeks of online flirting, "Josh" ended the relationship, telling Meier, "the world would be a better place without you." Meier committed suicide soon afterward.

The case made its way into federal court in California and became the basis for a proposed federal law. U.S. Attorney Thomas O'Brien brought four federal charges against Lori Drew, the offender. She was charged by the federal grand jury with conspiracy and three counts of accessing protected computers without authorization. The trial jury was undecided on the conspiracy charge but found Drew not guilty on the other charges. The felony charges were eventually dismissed by Judge George Wu, but Drew was charged with a misdemeanor violation.

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[24]United States v. Drew, 2009 WL 2872855 (C.D. Cal Aug. 28, 2009).

The proposed federal law may be the positive result from this case. The Megan Meier Cyberbullying Prevention Act (as of December, 2015, not enacted) states,

> [W]hoever transmits in interstate or foreign commerce any communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using electronic means to support severe, repeated, and hostile behavior, shall be fined under this title or imprisoned not more than two years, or both.[25]

Presently, there are no cyberbullying or sexting laws at the federal level. There are, however, federal laws that address child pornography, First Amendment rights, and online content to protect minors from damaging material as noted in the following paragraphs.

The Communications Decency Act (CDA), USCS §230-47, of 1996 was established to protect people under the age of 18. The act criminalizes the knowing transmission of "obscene or indecent" messages sent to anyone under the age of 18 and prohibited the sending or showing of any content "to deter and punish trafficking in obscenity, stalking, and harassment by means of computer"[26] and was intended to protect children.

The U.S. Supreme Court struck down the CDA in *Reno v. ACLU*[27] in which the Court said that the CDA was too vague and, in an attempt to protect minors, the act suppressed material that adults would otherwise be able to access. In 2007, J.P. Markey in the *Capital University Law Review* wrote, "In *Reno v. ACLU,* the Supreme Court held

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[25]Megan Meier Cyberbullying Prevention Act of 2009, H.R. 1966, 111th Cong. (2009–2010).
[26]Communications Decency Act of 1996, 47 U.S.C. §230 (b) (5). (1996).
[27]Reno v. ACLU, 521 U.S. 844 (1997).

that the Internet is a forum fully protected by the First Amendment. Thus, a student's Internet speech should be afforded all protections guaranteed by the First Amendment of the U.S. Constitution."[28,29] This decision further blurred the lines of protected and unprotected student speech for minors. Because of this ruling, free speech on the Internet gained some protection under the law. However, other laws apply when bullying, harassment, child pornography, and other crimes have been committed.

The Child Online Protection Act (COPA), USC §47-231, passed in 1998. However, it never took effect due to persistent legal challenges and injunctions. The act originated after the U.S. Supreme Court decision in *Reno v. ACLU* striking down the CDA as too vague and unclear. This act was intended to narrow the material to include making "any communication . . . that is available to any minor and that includes any material that is harmful to minors shall be fined not more than $50,000, imprisoned not more than 6 months, or both."[30]

In 2007, after a series of cases and appeals, U.S. District Judge Lowell A. Reed, Jr., in *ACLU v. Gonzales* found that the COPA violated the First and the Fourth Amendments, asserting, "Indeed, perhaps we do the minors of this country harm if First Amendment protections which they will with age inherit fully, are chipped away in the name of their protection."[31] Judge Reed also placed a temporary injunction on COPA, stating that it was both under- and overinclusive. In 2008, the U.S. Third Circuit Court of Appeals upheld the *ACLU v. Gonzales* decision in *ACLU v. Mukasey.*[32] Most recently,

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[28]Ibid.
[29]J. P. Markey, "Enough Tinkering With Students' Rights: The Need for an Enhanced First Amendment Standard to Protect Off-Campus Student Internet Speech," *Capital University Law Review* 36, no. 1 (2007): 139.
[30]Child Online Protection Act of 1998. 47 U.S.C. § 231 (a) (1). (1998).
[31]ACLU v. Gonzales*,* 478 F. Supp. 2d 775 (ED. Pa. 2007).
[32]ACLU v. Mukasey, 534 F.3d 181 (2008).

the lower courts have rejected the COPA law as unconstitutional; it has not gone into effect since it was passed. In 2004, the United States Supreme Court upheld the injunction on the grounds that it violated the First Amendment. The American Civil Liberties Union (ACLU) originally challenged COPA in support of writers, artists, and health educators using the Internet to communicate, because it would fine commercial web site operators if they did not require age verification.

Another federal attempt to protect children from harmful content on the Internet is the Children's Internet Protection Act (CIPA), CFR §47-54.520. Public primary and secondary libraries that meet the conditions set forth in the law become eligible for federal funds to purchase discounted technology, otherwise known as E-rate funding. Many schools, specifically low-income schools, participate in E-rate surveys to secure funds. The one caveat is that schools and libraries must have Internet blocks or filters to shield students from pornographic, obscene, and other material harmful to minors to receive the federal funding. The single exemption to the law is that filters can be disabled for "bona fide research," but the act is void of a definition of what type of research would fit that term.

Like the two previous endeavors, CDA and COPA, were deemed unconstitutional, CIPA was challenged and initially deemed unconstitutional in the U.S. District Court for the Eastern District of Pennsylvania. In the end, CIPA, in *U.S. v. A.L.A,*[33] had a different outcome, and the U.S. Supreme Court reversed the federal district court ruling and ruled that CIPA was constitutional based on the fact that "public libraries' use of Internet filtering software does not violate their patrons' First

[33]United States v. American Library Association, 539 U.S. 194 (2003).

Amendment rights, CIPA does not induce libraries to violate the Constitution, and it is a valid exercise of Congress' spending power."[34] In an update to CIPA, the Protecting Children in the 21st Century Act of 2011 requires schools to provide education about appropriate online behavior (including interaction with others on social media sites and in chat rooms) and to provide cyberbullying awareness and responses.[35] However, the update provides no guidance in how to define cyberbullying or which social media sites should be deemed harmful. Unfortunately, these federal laws demonstrate the same lack of clarity that states have had when addressing incidents of cyberbullying with sexting and balancing free speech rights.

State Court Cases

Cyberbullying cases have yet to reach the U.S. Supreme Court. State cases relating to cyberbullying have been granted certiorari in state supreme courts. Many state cases, however, have been decided on the precedent of *Tinker v. Des Moines,*[36] with the *Tinker* material and substantial disruption to school rule offering a First Amendment freedom of speech defense. In the *J.S. v. Blue Mountain School District* (2011) case, the student received a 10-day suspension for creating a mock social media page about the principal. In 2008, the state court ruled in favor of the school district. However, the Third Federal Circuit Court of Appeals overturned the district court and ruled that the school district was in violation of the student's First Amendment free speech rights. Using the

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[34]Chicago-Kent College of Law at Illinois Tech. "United States v. American Library Assn., Inc." Oyez. https://www.oyez.org/cases/2002/02-361 (accessed February 15, 2016).
[35]Protecting Children in the 21st Century Act of 2007. S.49, 110th Cong. (2007–2008).
[36]Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969).

Tinker material and substantial disruption guidelines, the court ruled that the actions of the student's speech caused no substantial disruption in school and no cause to believe that school officials could forecast substantial disruption in school.[37]

In *D.C. v. R.R.*[38], a state court case brought by the parents of a minor, the parents claimed that their son (1) was emotionally distressed because of a hate crime, (2) experienced defamation of character, and (3) had a threat of bodily harm made against him via the Internet by the defendant. Their son maintained a website promoting his music career, and the defendant posted threats on this website. The harassment became so vicious that the victim and his family relocated. This harassment was ruled a true threat and not protected speech and was subject to school officials' authority. Judge Robert Mallano ruled that the comments posted on the website of plaintiff (D.C.) were not protected speech. The defendant (R.R.) made a direct threat to "rip student's heart out and pound his head with an ice pick." Because these threats were not protected by free speech, the case was not dismissed, and the plaintiff sued for the threats of violence and emotional distress caused by the defendant.

First Amendment as It Applies to Cyberbullying With Sexting

The First Amendment of the United States Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[39]

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[37]Snyder v. Blue Mountain School District, 593 F.3d 286 (2010).
[38]D.C. v. R.R., 106 Cal. Rptr. 3d 399, 415–16 (Cal. Ct. App. 2010).
[39]U.S. Const. amend. I, §2.

Although the First Amendment was written in the absence of cell phones, the Internet, and other modern media technologies, the courts must employ the First Amendment protections in judging the limits of cyberbullying with sexting. As of the writing of this document, the Supreme Court of the United States has made no decision on a cyberbullying case, and minor defendants charged with a pornography possession crime from sexting activity have often used First Amendment's protections as a defense. Trial courts at both the state and federal levels have been split in applying the seminal First Amendment court case decisions involving minors in *Tinker* (1969), *Fraser* (1986), and *Hazelwood* (1988) to online student speech. These cases addressed student free speech rights on campus before the rapid growth and use of technology and social media that is prevalent today. Currently, there does not appear to be a clear method by which courts can determine how to apply the standards set in these First Amendment cases to cyberbullying problems. Goodno offered, "courts are conflicted in how to deal with cyberbullying . . . they fail to clearly specify whether and when a school has jurisdiction to regulate off-campus speech that bullies others."[40]

When the U.S. Supreme Court has not ruled on an issue of controversy, lower federal and state courts are left to their own interpretation of constitutional protections or lack thereof. Such is the status quo relating to cyberbullying with sexting. The U.S. Supreme Court held in *Reno v. ACLU*[41] that the Internet as a medium of communication is fully protected by the First Amendment and is more directly related to print than to

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[40]Goodno, "How Public Schools Can Constitutionally Halt Cyberbullying," 649.
[41]Reno v. ACLU, 521 U.S. 844 (1997).

broadcast. The Internet, because of its ubiquitous nature, does not fit neatly into First Amendment precedents regarding freedom of speech and press.[42]

On school campuses historically, five landmark U.S. Supreme Court cases set the precedent for student freedom of speech: (1) *Tinker v. Des Moines* (1969), (2) *Bethel v. Fraser* (1986), (3) *West Virginia State Board of Education v. Barnette* (1943), (4) *Hazelwood v. Kuhlmeier* (1988), and (5) *J.S. v. Bethlehem Area School District* (2002). None of these cases addressed Internet speech in the form of cyberbullying or sexting, yet they created a framework for rights pertaining to student speech.

The *Tinker* case (1969) and later U.S. Supreme Court cases regarding student free speech were paramount for courts addressing cyberbullying with sexting cases. *Tinker v. Des Moines*[43] originated in December 1965. A group of students and adults wore black armbands to symbolize their silent protest to military action in Vietnam. Principals and others from the school district, hearing of the planned action, met and adopted a policy that stated if students wore the armbands to school, they would be asked to remove them. At the refusal from the students, they would be suspended until the armband was removed. The newly adopted policy was made public. Christopher and Mary Beth Eckhardt wore their armbands on December 16, 1965. John Tinker wore his the following day. Each of the three students was disciplined through suspension until they agreed to return to school without the armband. They did not return to school until after January 1, later than the original planned period to wear the armbands ended.

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[42]Kern Alexander and M. David Alexander. *American Public School Law* (Belmont, CA: Wadsworth Cengage Learning, 2009).
[43]Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969).

The Tinker family filed a case against the school officials and board of directors of the school district arguing a violation under §1983 of Title 42 of the U.S. Code. The District Court dismissed the complaint in 1966, ruling that school officials had the constitutional right to take the disciplinary action based on the school officials' fear of the armbands creating a disruption at school. The District Court stated that by wearing the armbands, (1) the students were quiet and passive, not disruptive or infringing on the rights of other students; (2) First Amendment free speech rights were available to teachers and students; and (3) prohibition against expression of opinion without evidence that it was done so to avoid substantial interference of the school discipline or infringement on the rights of other students was not permissible under the First and Fourteenth Amendments. The members of Court of Appeals for the Eighth Circuit, sitting en banc, were divided. The Eighth Circuit affirmed the District Court ruling without opinion.

Granting certiorari, the U.S. Supreme Court heard the case. Justice Fortas declared in his opinion that students do not "shed their constitutional rights to freedom of speech at the schoolhouse gate."[44] The court declared that the suspensions of the students for wearing the armbands were a violation of the First Amendment and ruled in favor of Tinker in a 7 to 2 majority. The school district could not punish the students for wearing the armbands to avoid potential disruptions over the expression against the Vietnam War.

This U.S. Supreme Court decision created a two-prong test for student speech. First, speech can be limited if it substantially disrupts the educational process. Second, speech can be limited if it impedes the rights of others. It is this standard that most of the

[44]Ibid.

research discusses in cases involving Internet free speech with regard to students. The court ruled that pure student speech is protected in the schools as long as it does not materially or substantially interfere with schoolwork or discipline. The judge ruled, "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[45]

The *Bethel v. Fraser*[46] case of 1983 focused on student Matthew Fraser, who gave a speech on campus using sexual innuendo and metaphors although he was warned not to by two teachers. The speech took place in front of about 600 students (most were 14 years old) during school hours as part of a self-government program. In the concurring opinion, Justice Brennan revisits Fraser's notorious speech,

> I know a man who is firm—he's firm in his pants, he's firm in his shirt, his character is firm—but most . . . of all, his belief in you, the students of Bethel, is firm. Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts—he drives hard, pushing and pushing until finally—he succeeds. Jeff is a man who will go to the very end—even the climax, for each and every one of you. So vote for Jeff for A.S.B. vice-president—he'll never come between you and the best our high school can be.

Several staff members viewed students' reaction to the speech. Many students shouted and mimicked the sexual acts referenced in the speech; others seemed disturbed and embarrassed. Fraser's punishment was a 3-day suspension for violating the school's disruptive-conduct rule, which prohibited the use obscene or profane language or gestures. He admitted that he intentionally used sexual connotations in his speech. Moreover, Fraser was not permitted to speak at the school's commencement exercises. Fraser's family appealed the consequences to the school district. The school district

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[45]Ibid.
[46]Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986).

upheld the school's consequences but allowed Fraser to return to school after 2 days of suspension. Fraser's father brought suit in Federal District Court based on a violation of the First Amendment right to freedom of speech as seen in *Tinker* (1969).

The Federal District Court ruled the school's punishment violated the First Amendment, saying that the disruptive-conduct rule was "unconstitutionally vague and overbroad" and that the school's action of not allowing Fraser to speak at commencement violated his rights under the Due Process Clause of the Fourteenth Amendment. The district took the case to the Court of Appeals and it affirmed the Federal District Court.

The U.S. Supreme Court upheld the student's suspension, ruling that "indecent, lewd, and offensive" speech can be prohibited by the school. Justice Burger delivered the opinion of the court, with Justices Blackmun and Brennan concurring. The court also made it clear that while the same speech is generally protected for adults, minors do not share that same protection and that schools have a responsibility to teach students the boundaries of acceptable behavior.

The next case, *West Virginia State Board of Education v. Barnette,* illustrates a potential violation of both First and Fourteenth Amendment rights. The West Virginia Board of Education required all public school students to salute the flag and recite the Pledge of Allegiance. Students who would not participate could be expelled and their parents could even lose custody. A religious group challenged the law on First Amendment grounds. They argued that the required flag salute was a conflict of their religious beliefs against idolatry and graven images, and the requirement to salute the flag violated their freedom of religion and freedom of speech rights under the First Amendment.

The U.S. Supreme Court, in a 6–3 ruling, held that school officials do violate the First Amendment by compelling students to salute the flag and recite the Pledge of Allegiance. The First Amendment prohibits government officials from compelling individuals to speak or espouse orthodox beliefs that are at odds with their conscience and values. "There is no doubt that, in connection with the pledges, the flag salute is a form of utterance."[47] The purpose of the First Amendment is to ensure that individuals have an individual sphere of freedom of thought and belief that the government cannot invade. Justice Robert Jackson delivered the decision that would set the precedent for such compulsory requirements.

In *Hazelwood v. Kuhlmeier*[48] (1988) a group of students at Hazelwood East High School in St. Louis, Missouri, wrote articles in the school newspaper about teen pregnancy and divorce. The newspaper was written during class as part of the curriculum. The newspaper proofs were to be submitted by the teacher sponsor to the principal for approval. The principal received the proofs on May 10, 1983, for the May 13 edition of the newspaper and subsequently removed the pages with the questionable articles and would not allow them to be printed. The principal was concerned that the article on pregnancy may identify the pregnant students at the school, even though fictitious names were used. The principal cited another reason for removal of the articles: speaking of sex and birth control was unsuitable for younger students. The divorce article was eliminated, because it specifically named a student's parent in which the student made comments about that parent. The principal determined that the parent was not given an opportunity

[47]Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986).
[48]Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988).

to respond. With the quickly approaching deadline, the principal removed the articles because there was not adequate time to edit them.

The U.S. District Court for the Eastern District of Missouri determined there was no violation of the students' First Amendment free speech rights and denied an injunction in 1985. The District Court stated that schools "may impose restraints on students' speech in activities that are 'an integral part of the schools' educational function'—including the publication of a school-sponsored newspaper by the journalism class—so long as their decision has 'a substantial and reasonable basis.'"[49] This case went to the Court of Appeals for the Eighth Circuit in 1986, and the decision was reversed. The Court of Appeals made the distinction ruling the newspaper was a public forum that prevented schools from censoring the content except when "necessary to avoid material and substantial interference with school work or discipline . . . or the rights of others," as stated in *Tinker* (1969).

The U.S. Supreme Court granted certiorari; the decision was reversed by the court of appeals. Justice White delivered the opinion of the court. In the ruling, the Supreme Court held that students in public schools do not inherently have the same rights as adults in other settings. Schools can limit speech if it is seen as school sponsored and they can prove there were "legitimate pedagogical concerns."[50] Additionally, the newspaper could not be characterized as a forum for public expression, so "school officials may impose

[49]Ibid.
[50]Ibid.

reasonable restrictions on the speech of students, teachers, and other members of the school community."[51]

A more recent case, *Doninger v. Niehof,*[52] used the First Amendment defense as well. A 17-year-old student council member posted on a public blog information to contact the school superintendent in an effort to anger her and allow a concert in the new school auditorium. The student did not receive disciplinary actions in the form of suspension but was not permitted by the school administrator and superintendent to run for student council office as a result of the alleged disruption she caused with the blog and mass e-mails. The district courts and court of appeals upheld the decision that the student's speech created a substantial risk of disruption. Therefore, a First Amendment defense was not successful in this case.

Another case, *J.S. v. Bethlehem Area School District* (2002), found that the Bethlehem Area School District in Pennsylvania could punish an eighth grade student for negative, harassing, and threatening comments made on a website about his algebra teacher.[53] Justin Swidler, a 14-year-old in Pennsylvania, was a student at Nitschmann Middle School. Before May 1998, he created a website called "Teacher Sux" that mocked the Principal, Thomas Kartsotis, and teacher, Kathleen Fulmer. The website included illustrations of Kartsotis being hit by a bullet and an image of Fulmer transforming into a picture of Adolf Hitler. A portion of the website listed reasons Fulmer should be killed. The school district was made aware of the site and contacted police and

[51]Ibid.
[52]Doninger v. Niehof, 527 F.3d 41 (2d Cir. 2008).
[53]J.S. v. Bethlehem Area School District, 757 A. 2d 412 (Pa. 2002).

the Federal Bureau of Investigation but, after investigating, declined to press criminal charges.

The school district held disciplinary hearings against Swidler and voted to permanently expel him on the grounds that he violated the district's Student Code of Conduct by making threatening and harassing comments and showing disrespect toward a teacher. Swidler appealed with the Northampton County Court saying the site was protected under the First Amendment and that the district violated his constitutional rights. Swidler's attorneys also stated that the site was not a serious threat and should not have been treated as such.

In July 1999, Judge Robert E. Simpson, Jr., ruled in favor of the school district, claiming the website was disruptive and threatening, did not constitute protected speech, and was a reasonable basis for expulsion. Swidler appealed the decision to the Commonwealth Court of Pennsylvania. On February 15, 2002, a three-judge panel ruled 2–1 to uphold the previous decision.

Each of these five cases clearly exhibits the need for more precedent in case law addressing cyberbullying with sexting. More importantly, though, is the application of First Amendment free speech law in deciding these cases. These First Amendment cases have substantiated the need for more case law addressing cyberbullying with sexting. These cases also offer compelling historical evidence that there is no clear line differentiating whether or not all cases can be decided on First Amendment precedent.

Conclusion

Cyberbullying is a relatively new phenomenon that is only exacerbating the bullying problem. The judicial waters relating to cyberbullying with sexting in the

context of First Amendment and child pornography laws are very murky, indeed. Therefore, bringing clarity to school and district administrators is critically important. The literature review in Chapter 2 explored relevant federal and state cases involving cyberbullying with sexting. The literature illustrates a strong link between the cyberbullying with sexting cases and decisions based on First Amendment precedent. Given the substantial number of cases that have been decided at the state and federal levels based on free speech rights, the lack of federal law addressing cyberbullying with sexting is apparent. First Amendment principles must be considered each time a legislature passes a cyberbullying law. Chapter 3 explains the methodology of legal analysis used in this study.

CHAPTER 3: METHODOLOGY

The purpose of this study was to analyze and assess how state cyberbullying with sexting decisions by the district courts in North Carolina address students' First Amendment free speech rights. This study sought to clear the murky legal waters related to this issue. It adds to the legal understanding of the rapidly emerging and changing First Amendment free speech protections afforded to students in the technological age of smart devices and social networks.

Research Questions

The primary research questions was, "when cyberbullying with sexting occurs between minors in the school setting, what federal and state constitutional and statutory rights are at issue?" The supporting questions for this study were as follows:

1. When are First Amendment and child pornography laws included to decide cyberbullying with sexting cases?
2. How do state and federal laws addressing cyberbullying with sexting compare?

Research Design

A comparative analysis of current cyberbullying with sexting statutes in the 50 states was conducted.

Phase 1: Comparative Analysis of Cyberbullying With Sexting Statutes

The comparative analysis examined all state statutes and consequences pertaining to cyberbullying with sexting; states that do not possess current statutes on cyberbullying or sexting were also identified. This analysis used Appendix E: Table of State Sexting Statutes and Penalties.

Phase 2: Analysis of Case Law Including First Amendment and Child Pornography

Cases were selected through purposive methods (Appendix A). The cases identified were analyzed based on criteria to include history, the issue as related to cyberbullying with sexting, plaintiff and defendant arguments, court decision and court reasoning. The legal analysis focused on cases brought under the claim of cyberbullying (with sexting as an element) or sexting as a standalone issue. The analysis determined the extent that cases were decided based on North Carolina bullying statutes, First Amendment free speech issues/protections, or child pornography laws. Further analysis determined whether case decisions were based specifically on cyberbullying or sexting law, First Amendment or child pornography laws, or some combination of these.

Online research tools included Campus Westlaw, LexisNexis, FindLaw, Supreme Court Yearbook, ERIC, Black's Law Dictionary, and professional journals accessed through the University of North Carolina at Charlotte.

Limitations

Limitations are influences, shortcomings, or conditions that the researcher cannot control that may restrict the methodology and the conclusions. One limitation can compromise the validity of the study conclusions. The limitation in this study was that

the focus on case law was from the state of North Carolina only. Because each state has its own statutes, the case law may vary depending on the state.

Delimitations

A *delimitation* is a reasonable choice made by the researcher that indicates how the researcher will bind the study. Delimitations include what is not done in the study and why, literature and topics that will not be included, the population that is not included in the study and why, or the methodological procedures used or not used in this study and why.

This study addressed only the phenomenon of "sexting" as a subcategory of cyberbullying. Cyberbullying that did not incorporate sexting per se was not included in this study so as to focus on cyberbullying where sexting was involved. This delimitation was deemed appropriate to focus the study such that the findings would specifically address this current "gap" in the North Carolina statutes.

Role of the Researcher

As the researcher in this study, my first task was data collection. I was responsible for the collection and organization of state statutes on cyberbullying with sexting from the United States and the identification and the collection of North Carolina case law on these topics. My second task as researcher was to analyze the state statutes addressing cyberbullying for similarities and differences and to synthesize this analysis into a conclusion as to the status of statutory law across the states of the United States.

My third task was to develop from the literature and from reading (but not yet deeply analyzing) the grounded themes related to cyberbullying with sexting, child

pornography issues, and the First Amendment questions and to develop the analysis template from which the deeper analysis was conducted. When compared to other research methods, a legal analysis is most closely aligned with grounded theory. Legal research is first a systematic review of federal and state constitutional protections and statutes that codify those protections related to a particular legal topic. But, the heart of a legal analysis is found in judicial opinions. This begins with a review of cases on a broad scale followed by the development of an analytical structure based on that review. Each case is then closely assessed for (1) unique and new judicial reasoning, (2) reasoning that contradicts previous judicial rulings, or (3) reasoning that affirms previous decisions.

The role of the researcher is to report findings, to synthesize the current status of the law based on the analysis, and to recommend action to those directly affected by the judicial opinions.

My fourth task as researcher was to analyze the North Carolina case law addressing cyberbullying with sexting for similarities and differences and to synthesize this analysis into a conclusion as to the status of case law in North Carolina. My final task is to synthesize my findings in both areas of this research (national and local) and to develop a guiding set of legal principles for school and district administrators.

The researcher's experiences working as a public school administrator with personal experience in these issues prompted this legal analysis.

Data Analysis

The quantitative aspect of this study compared and contrasted statutory law across the United States state statutes related to cyberbullying with sexting laws and child

pornography. The data was compiled into tables. A comparison of the states that have cyberbullying laws as opposed to cyberbullying with sexting laws was constructed. Furthermore, a comparison of the consequences resulting from the conviction of cyberbullying or sexting were included.

The qualitative aspect of this study, a legal analysis of cyberbullying and sexting cases whose decisions were based on First Amendment free speech cases and child pornography laws, was the primary focus of the research. Case law was reviewed using case analysis templates[54] developed for this study from a review of the literature and a reading of North Carolina cases. Data from this analysis were analyzed for common themes and reported. The data were further assessed and synthesized with and presented as recommendations for school and district administrators in the final chapter.

Data that in this study were North Carolina court cases with the judges' decisions as well as a collection of state cyberbullying with sexting statutes. Other archival data included were tables produced by various agencies that highlighted cyberbullying frequency and development and a list of multiple court cases from around the country that address First Amendment as a defense in cyberbullying.

Data Quality Procedures

A table containing state statutes, definitions of the laws, and penalties was collected from multiple legal sites, including LexisNexis, WestLaw, and Thomas (now

[54]The researcher developed case analysis templates as a tool for analysis using the following resource: Michael Makdisi and John Makdisi, "How to Write a Case Brief for Law School," in *Introduction to the Study of Law: Cases and Materials,* 3rd ed. (Newark, NJ: LexisNexis Matthew Bender, 2009). http://www.lexisnexis.com/en-us/lawschool/pre-law/how-to-brief-a-case.page#sthash.mbSaJk3m.dpuf

congress.gov). Data collection was thorough, current, systematic, and rigorous and included multiple data sources.

CHAPTER 4: DATA ANALYSIS AND DISCUSSION

This study examined how cyberbullying with sexting decisions by the state and federal courts address students' First Amendment free speech rights in school. Specifically, the researcher analyzed cyberbullying with sexting case law in North Carolina. The cases analyzed were limited to cases of cyberbullying where sexting was an element. Because federal constitutional protections for online speech have not been clearly delineated by the courts, the cases in this study were limited to cases of cyberbullying with sexting at the state level in North Carolina.

Research Questions

The primary research question was, "when cyberbullying with sexting occurs between minors in the school setting, what federal and state constitutional and statutory rights are at issue?" The supporting questions for this study were as follows:

1. When are First Amendment and child pornography laws included to decide cyberbullying with sexting cases?
2. How do state and federal laws addressing cyberbullying with sexting compare?

Significance of the Study

Sexting and cyberbullying, with implications of child pornography, have emerged as significant issues in the national consciousness, and greater numbers of the incidences

made their way to school principals' desks. The current legal status must be defined and a set of guidelines must be established. Unfortunately, decisions of judiciary, on which guidelines must be based, have not kept pace with the increase in incidences. Without a clear set of legal precedents and administrative guidelines, it is impossible for schools to act to protect the young people under their care. Therefore, this study attempted to clarify the current legal status and created a suggested set of administrative guidelines.

The literature review described in Chapter 2 illustrated the need for this type of research study. A legal analysis methodology was used to analyze the statutes that address cyberbullying with sexting and current, relevant court rulings. This chapter provides the analysis and discussion of the collected data and reports major findings.

The chapter has four primary sections: Section one covers an analysis of cyberbullying with sexting cases that were decided based on First Amendment case law. Section two analyzes cyberbullying with sexting cases decided based on child pornography case law. Additionally, Table 2 provides a quick reference of the cases analyzed in detail in this chapter. Section three provides a list of the states that have cyberbullying statutes and those with sexting statutes and examines the variances among the states. The final section summarizes the strengths and weaknesses of the cases with implications based on the lack of a Supreme Court decision on cyberbullying with sexting.

TABLE 2: Cases analyzed in legal analysis

Case	Year	State	Statute Charged
People v. Marquan	2014	New York	Albany County Legislature Cyberbullying Statute
In the Matter of J.P	2011	Ohio	Geauga County; disseminating material harmful to juveniles
State of North Carolina v. Robert Bishop	2012	North Carolina	Cyberbullying Statute
Ramsey v. Harman	2007	North Carolina	Online Stalking and First Amendment Free Speech (defense)
United States v. Nash	2012	Alabama	Possession of child pornography
Cormega Copening	2015	North Carolina	Sexual exploitation of a minor
In the matter of: L.D.W.[55]	2011	North Carolina	Indecent liberties with a minor

Section One: Cyberbullying With Sexting Cases Decided Based on the First Amendment

Case Outside of North Carolina

Most often, courts have decided cyberbullying with sexting cases on the basis of the First Amendment Freedom of Speech clause. Controlling online speech and categorizing it as a criminal offense presents substantial First Amendment issues.[56] The government cannot restrict speech based on the content unless it falls into an exception or is narrowly tailored to serve a compelling state interest, as stated in the First Amendment.[57] Further, states cannot pass laws that criminalize a considerable amount of protected speech or that do not clearly define what types of speech are forbidden.

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[55]781 S.E. 2d 717 http://www.plol.org/Pages/Secure/Document.aspx?d=M1W8Oykhut3MgjSlW762gw%3d%3d&l=Cases&rp=4 (Accessed May 14, 2016).

[56]See, for example, John O. Hayward, "Anti-Cyber Bullying Statutes: Threat to Student Free Speech," *Cleveland State Law Review* 59 (2011): 85; Lyrissa Lindsky and Andrea Pinzon Garcia, "How Not to Criminalize Cyberbullying," *Missouri Law Review* 77 (2012): 693.

[57]See U.S. Const. amend. I; *infra* Part I.C.

Cyberbullying statutes frequently violate these rules by criminalizing broad online speech based only on the assumed intent of the writers.

One such case is *People v. Marquan* from 2014, the New York Court of Appeals.[58] A month after the cyberbullying law went into effect in 2011, M. Marquan, a 15-year-old high school student, created a social media page on Facebook under a pseudonym. He posted photos of classmates with descriptions of their sex acts, partners, and other personal and sexually related information. After a police investigation, Marquan was charged with cyberbullying under the New York law. Marquan was prosecuted for the crime of "cyberbullying" under a Local Law No. 11 for 2010 enacted by the Albany County Legislature.

In 2010, the Albany County Legislature introduced the statute of cyberbullying to address "non-physical bullying behaviors transmitted by electronic mean" (Local Law No. 11 for 2010).[59] The New York law defined cyberbullying as

> . . . any act of communicating or causing a communication to be sent by mechanical or electronic means, including posting statements on the internet or through a computer or email network, disseminating embarrassing or sexually explicit photographs; disseminating private, personal, false or sexual information, or sending hate mail, with no legitimate private, personal, or public purpose, with the intent to harass, annoy, threaten, abuse, taunt, intimidate, torment, humiliate, or otherwise inflict significant emotional harm on another person.[60]

The law made cyberbullying a misdemeanor offense punishable by up to 1 year in jail with a $1000 fine.

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[58]19 N.E. 3d 480, 484 (N.Y. 2014).
[59]Local Law No. 11 FOR 2010. A Local Law Prohibiting Cyber-Bullying In Albany County. http://www.albanycounty.com/Libraries/Crime_Victims_and_Sexual_Violence_Center/LocalLaw_No_11_for_2010_CyberBullying.sflb.ashx
[60]Ibid.

At trial, Marquan's defense attorney filed a motion to dismiss, on the grounds that Local Law No. 11 for 2010 violated the Free Speech Clause of the First Amendment, stating that the law was overbroad and unlawfully vague. The defense contended that the law was overbroad, because it proscribed protected expression, and unlawfully vague, because it failed to give fair notice to the public. The court denied the motion to dismiss; the defendant pled guilty but raised constitutional arguments on appeal. The county court affirmed the city court's denial of the motion to dismiss, stating that the law did not violate the defendant's First Amendment rights. The county court found that parts of the law were invalid as it relates to overbreadth and vagueness. A statute is seen as vague if it does not offer a citizen adequate notice of the nature of prohibited conduct and permits arbitrary and discriminatory enforcement, rendering the remainder of the law constitutional. The text of the cyberbullying law does not adequately reflect an intent to restrict its reach to cause emotional harm to children. The legal issue is whether the Albany County Legislature's cyberbullying statute infringed upon Marquan's First Amendment Freedom of Speech rights. Therefore, he was granted an appeal with the New York Court of Appeals.

In the appeal, the cyberbullying conviction was reversed; Marquan's appeal was won in a 5–2 decision. Albany County did not meet the burden of proving that the restrictions on speech contained in its cyberbullying statute survive strict scrutiny. Although the First Amendment may not give defendant the right to engage in the activities at issue, the text of Albany County's statute envelops far more than acts of cyberbullying against children by criminalizing a variety of constitutionally protected modes of expression. Albany County's cyberspace law is overbroad and therefore invalid

under the First Amendment. The New York Court of Appeals concluded that the law infringed upon Marquan's First Amendment freedom of speech rights by criminalizing speech that is "alarmingly broad."[61] Clearly, the appeals court decision to strike down the cyberbullying statute is correct, because the statute was unjustifiably broad. Further, the appeals court applied First Amendment principles in a manner that, if applied to other states' criminal cyberbullying statutes, would assuredly be struck down or rendered largely worthless.[62]

This recent decision provides fair, valid, and relevant judicial opinions as they incorporate First Amendment freedom of speech defenses for those charged or convicted of cyberbullying. Additionally, the overbreadth defense imposes a responsibility of the courts to determine the constitutionality of restricting speech in any manner such as oral, written, or electronically communicated.

North Carolina Cases

The *State of North Carolina v. Robert Bishop*[63] has remarkably similar facts and decisions to the Marquan case. Both the defendant (Robert Bishop) and victim (Dillion Price) were students at the South Alamance High School in Alamance County, North Carolina. Bishop posted comments on a social media site about the victim, which included calling him homosexual, a comment referring to a message the victim had sent to another student as "excessively homoerotic in nature;" a statement, in response to another student's suggestion that they "kick [the victim's] ass"; that the defendant "never

[61]24 N.Y. 3d 1 Court of Appeals of New York (2014).
[62]See H.E. Phillips, "Online Bullying and the First Amendment: State Cyberbullying Statutes After People v. Marquan M," *North Carolinas Law Review Addendum* 93 (2015): 179.
[63]775 S.E.2d 834; 2015 N.C. LEXIS 729. (Accessed May 26, 2016).

got the chance to slap [the victim] down before Christmas break"; and crude comments about the victim's genitals. Price, distraught over these comments, and his mother contacted law enforcement. Bishop confessed to making these comments.

Robert Bishop was charged with cyberbullying under §14-458.1 *Cyberbullying.* The statute, discussed in depth in Chapter 1, specifies that it is an unlawful when "any person" that possesses an "intent to intimidate or torment a minor" through use of a "computer or computer network." Furthermore, the statute makes it unlawful to "post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor."[64] Bishop's defense argued that the cyberbullying statute was unconstitutionally vague and overbroad on its face and as applied and "fails to provide adequate notice of the prohibited speech, lends itself to arbitrary enforcement, and chills protected speech."

Bishop was convicted by the trial court and given a suspended sentence of 30 days with 4 years of probation. He appealed on the grounds that the statute does not give adequate notice of criminal speech, could be enforced arbitrarily, and hinders constitutionally protected speech. The North Carolina Court of Appeals affirmed the conviction, finding that the defendant's vagueness argument was not valid.[65] Regarding the overbreadth argument, the court held that the statute targets conduct, not speech. In *United States v. Stevens,* the U.S. Supreme Court ruled that a statute is deemed overbroad if it criminalizes a large amount of protected speech.[66] Again in *Washington State Grange*

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[64]North Carolina General Assembly, § 14-458.1. Cyber-bullying; penalty. http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-458.1.html (Accessed September 3, 2014).
[65]774 S.E.2d 337; 2015 N.C. App. LEXIS 522 (Accessed June 11, 2016).
[66]United States v. Stevens, 559 U.S. 460, 473 (2010).

v. Washington State Republican Party, the U.S. Supreme Court described a test for overbreadth where the statute restricts free speech as whether "a substantial number of [the statute's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep,"[67] concluding that it covers too much protected speech to be permissible.

The North Carolina Appeals Court noted that cyberbullying laws in other states have been overbroad and restricted too much speech. Specifically, a New York law prohibited "any act of communicating" by electronic means to harass "any person"—not just children—as in North Carolina's law.

Bishop, in his appeal to the state Supreme Court, insisted the state's statute "criminalizes protected speech based on its content." The court rejected that argument, saying that North Carolina's law "regulates conduct, not speech." This recent decision, handed down on June 10, 2016, by the North Carolina Supreme Court, ruled that the cyberbullying statute designed to protect children from online bullying is unconstitutional. The state Supreme Court found that the statute violated freedom of speech rights, striking down the 2009 legislation and overturning the lower courts' decision.

Justice Robin Hudson wrote, "[The law] is not narrowly tailored to the State's asserted interest in protecting children from the harms of online bullying. As such, the statute violates the First Amendment's guarantee of the freedom of speech."[68] The statute, as written, restricts speech, not merely nonexpressive conduct. According to

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[67]Chicago-Kent College of Law at Illinois Tech. "Washington State Grange v. Washington State Republican Party." Oyez. https://www.oyez.org/cases/2007/06-713 (Accessed June 16, 2016).
[68]State of North Carolina v. Robert Bishop https://appellate.nccourts.org/opinions/?c=1&pdf=34398 (Accessed June 11, 2016).

Hudson, this restriction is content based, not content neutral, and the cyberbullying statute is not narrowly tailored to the State's asserted interest in protecting children from the harms of online bullying. The law, Hudson wrote, could "criminalize behavior that a robust contemporary society must tolerate because of the First Amendment, even if we do not approve of the behavior." Hudson also ruled that the statute created a content-based restriction on protected speech. Additionally, the statute has no condition that the victim suffer injury (emotional or mental), nor does it define intimidate or torment. Lastly, the statute lacks a clear definition of "private, personal or sexual information pertaining to a minor."[69] These aspects of the cyberbullying law are overbroad and expansive. The new ruling overturned the conviction of the first-ever cyberbullying case to go to trial in North Carolina and gave merit to the question of constitutionality of future cyberbullying cases in the state and in the nation.

In another North Carolina case from 2007, *Ramsey v. Harman,*[70] the issue of cyberbullying (without sexting) was decided based with a basis of stalking and the claim of violation of the First Amendment Free Speech Clause. Linda Ramsey and Erin Knox (Ramsey's daughter) brought suit against Cindie Harman for online stalking or cyberstalking in Macon County, North Carolina. Additional allegations included Harman writing on her public blog about Knox being a "bully," harassing other students, and "the reason kids hate to go to school."[71] This public blog allegedly caused emotional distress to Erin Knox.

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[69]Ibid.
[70]Ramsey v. Harman, 661 S.E.2d 924.
[71]Ibid.

Ramsey sought a temporary civil no-contact order to protect her daughter from the alleged harassment by Harman. On August 28, 2007, the trial court granted the request and ordered Harman to stop entering comments on her website regarding Erin Knox or any members of her family.

Harman's defense argued that her blog comments were protected free speech. Harman filed a motion to dismiss and asserted the trial court's order violated her First Amendment rights to freedom of speech and the CDA found at 47 U.S.C. § 203. A hearing was held the same day; both parties testified and presented evidence. Furthermore, her defense questioned the courts' civil no-contact order. Under the civil no-contact order, the N.C.G.S. § 50C-1 defines stalking as "On more than one occasion, following or otherwise harassing, another person without legal purpose with the intent to place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates or cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress."[72] The same civil no-contact order defines unlawful conduct as "the commission of one or more of the following acts by a person 16 years of age or older upon a person, but does not include acts of self-defense or defense of others nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct or stalking."[73]

The main issue before the court was questioning the intent of the blog posts to cause substantial emotional distress to Ramsey and her daughter. The trial court found

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[72]Chapter 50C. Civil No-Contact Orders. http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_50c.html (Accessed June 13, 2016).
[73]Ibid.

there were no threats of physical harm. The only evidence of emotional distress on Erin Knox was that she was embarrassed that teachers at school read blog posts. The trial court ordered Harman to refrain from posting any comments about Knox and her family during the trial. Likewise, the trial court ruled that Harman had harassed Knox and Ramsey and granted a permanent no-contact order.

Harman appealed; the appeals court ruled that Ramsey did not provide competent evidence that the posts were intended or actually caused Knox substantial emotional distress. Without that proof, the court said, a civil no-contact order should not be granted. The North Carolina Court of Appeals reversed trial court's decision on June 17, 2008. The court did not address Harman's First Amendment claim of hindering her free speech.

While First Amendment offenses are common in cyberbullying and cyberbullying with sexting cases, other defenses, too, are used to determine fair and appropriate sentencing for offenders.

Section Two: Cyberbullying With Sexting Decided on With Child Pornography Law Cases Outside North Carolina

In March 2011, *In the Matter of J.P.*,[74] a criminal complaint was brought against a 13 year-old, charging her with disseminating matter harmful to juveniles, a violation of Ohio's R.C. 2907.31(A)(1).[75] Geauga County Court of Common Pleas, Juvenile Division, maintained jurisdiction over cases alleging a child to be delinquent, unruly, abused, or neglected. This division presided *In the Matter of J.P.* The charge of disseminating material harmful to juveniles, not cyberbullying with sexting, is a first-degree

[74]OH Ct. App., Dist. 11, Mar. 30, 2012.
[75]2006 Ohio Revised Code–2907.31. Disseminating matter harmful to juveniles. http://law.justia.com/codes/ohio/2006/orc/jd_290731-9961.html (Accessed May 15, 2016).

misdemeanor when committed by an adult. The complaint claimed that J.P. sent nude photographs of herself to a juvenile male of undisclosed age. J.P. stated that the photos were taken and transmitted with her cell phone camera and were, therefore, protected speech.

J.P. filed a motion to dismiss the charges, which was denied. She entered a no-contest plea; the courts found the claim of delinquent conduct to be true. J.P. was sentenced to detention, which was suspended. She was also ordered to complete 16 hours of community service under the supervision of her parents, to complete an educational program on "sexting," and to write an essay. She was banned from using a cell phone for 6 months. The minor, J.P., appealed the judgment of the Geauga County Court of Common Pleas, Juvenile Division, which denied her motion to dismiss one count of disseminating matter harmful to juveniles. The Court of Appeals of Ohio affirmed the judgment of the trial court not to dismiss the charges.

At issue is the absence of consideration of the age of J.P., which presents the question of whether her due process and equal protection rights were infringed upon.[76] In this case, she would be both the offender and victim. Ultimately, the appeals court ruled that the statute was not unconstitutionally vague, and the lower court's decision was affirmed. Statutes that apply cyberbullying with sexting cases under child pornography continue to be a foggy area on the legal landscape in our nation and society.

Another case from 2012 is particularly noteworthy. *United States v. Nash*[77] was decided on the issue of child pornography, not First Amendment speech. The defendant, John Bradley Nash, age 22 at the time, was charged and convicted of possession of child

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[76]Ibid.
[77]1 F. Supp. 3d 1240; 2014 U.S. Dist. LEXIS 29382. (Accessed May 15, 2016).

pornography, as a result of sexually explicit photos he received from his 16-year-old girlfriend through text messaging. Nash was a volunteer at a Madison, Alabama, middle school, under the supervision of his band director father, John. Investigators found photos of Nash's girlfriend, E.L., on his cell phone. The photos showed the girlfriend involved in lewd and sexual behavior that was deemed child pornography due to the number of images and E.L. recanting her initial statement about the photos. During an interview, E.L. admitted her consensual sexual relationship (legal in Alabama at age 16), and that she took the photos of herself and sent them to Nash. In a later interview, she claimed that Nash solicited and convinced her to take the photos; Nash denied the claim.

Nash was sentenced to 60 months of probation with special conditions. The sentencing memorandum from *United States v. Nash* sums up the continued increase and difficult legal pathways in such cases that involve cyberbullying with sexting:

> An odd day arises when a young man, who could legally have consensual sex with his sixteen-year-old girlfriend, will forever be labeled a sex offender for receiving provocative pictures of her that she sent him via text message. Such is the day of modern technology; a day when we not only combat the despicable perversion of child pornography, but also must account for the rampant proliferation of "sexting" among teenagers and young adults. This court, and other district courts across the nation, bear the burden of taking into account these realities of this age of technology, while still imposing a sentence that is "sufficient, but not greater than necessary" to meet the purposes of sentencing.[78]

It is a crime in North Carolina to disseminate to a child under the age of 18 any material that is harmful to minors. Any depiction of nudity or sexual activity could be considered harmful to a minor. Therefore, an adult who sends a sexual self-portrait to a

[78]Ibid.

child could be prosecuted under this law for disseminating obscenity to a minor or for both crimes.[79]

One very distinct legal issue arose in the Nash case in the U. S. Federal District Court. This issue is the inconsistency in sentencing guidelines and the factors influence that penalties. Cyberbullying and sexting are similar to child pornography, as exhibited in this case. Judge James L. Graham in *United States v. Childs* wrote that the guidelines for child pornography offenders are significantly flawed. The Childs case, cited in *United States v. Nash,* contains similar concerns regarding the disparity and discretion given to judges and attorneys, therefore, allowing the punishments to be unfairly delved out based on a myriad of mitigating factors.[80] This is displayed in *Nash,* where factors considered before sentencing included his level of maturity, attention deficit hyperactivity disorder, and mood disorder diagnoses.

North Carolina Cases

Attempting to reconcile sentencing guidelines and cyberbullying with sexting laws with regard to the right to free speech is another problem that can arise with the use of online media to send sexually explicit or harassing messages. *Tinker v. Des Moines*[81] provided the precedent of material and substantial "disruption to school rule" offering a First Amendment freedom of speech defense that cyberbullying with sexting cases may not. Again, some courts' have turned to use of child pornography laws in case decisions

[79]N.C. Gen. Stat. Ann. §§ 14-190.13, Definitions for certain offenses concerning minors. http://law.onecle.com/north-carolina/14-criminal-law/14-190.13.html. 14-190.15; Disseminating harmful material to minors; exhibiting harmful performances to minors, http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_14/gs_14-190.15.html
[80]Ibid.
[81]Ibid.

as an appropriate avenue of legal reasoning in convicting those accused of cyberbullying with sexting.

Similar to the Nash case in Alabama, two teens in Fayetteville, North Carolina, were accused of sexting explicit photos. Cormega Copening and Brianna Benson, ages 17 and 16, respectively, at the time of the investigation, were privately sharing nude photos with each other. In September 2015, Copening, the starting quarterback at Douglas Byrd High School, was suspended from the team after being charged with four counts of sexual exploitation of a minor—a felony offense. The charges were filed after police, investigating an unrelated matter, found sexually explicit photos of his girlfriend, Brianna Benson, on Copening's phone. Likewise, authorities found similar photos on Benson's phone. She was charged with two counts of the sexual exploitation of a minor, again, a felony offense.

While the age of majority in North Carolina is 18, juvenile jurisdiction under North Carolina criminal law ends at age 16; therefore, the two teens were charged as adults. This is where the blurred lines of felony charges for teens create concern. The sexual exploitation legislation and subsequent punishments are intended for adults. This law was enacted in 1990, long before the accessibility of cell phones with cameras and the rise of social media.

If convicted for sexual exploitation, both Copening and Benson would have had to register as sex offenders. The felony charges were later dropped under a deferred plea bargain agreement in exchange for admission of responsibility for the distribution of harmful material to minors, which is a misdemeanor. Ironically, the age of consent for sex in North Carolina is 16; one might assume that the age of consent for sexting would

also be 16, but it is not. As stated before, the major legal issue is the existing guidelines for cyberbullying with sexting as well as child pornography prosecution and punishment are flawed in that they fail to consider the age of the offender.

In another North Carolina case, sexting and child pornography offenses were present yet the case was decided in the absence of either or the cyberbullying statute. *In the matter of: L.D.W.*[82] Henderson County, North Carolina, Department of Social Services began investigating a case involving a minor female (Lilly) and her adoptive father. The 2011 investigation uncovered text messages between the adoptive father (also the biological grandfather) and a neighbor that described sex acts between himself and Lilly. The text messages invited the neighbor to watch. Upon further investigation, it was discovered that the father sent text messages detailing sex acts with Lilly and confessed to taking two photographs of her vagina.

Lilly's father was arrested and charged with two counts of indecent liberties and her adoptive mother (also the biological grandmother) was arrested for aiding and abetting his crimes. No charge for cyberbullying with sexting or possession of child pornography was brought against the father. Lilly was subsequently removed from the home and placed in the care of the Henderson County Department of Social Services.

After a hearing, the trial court adjudicated Lilly as an abused and neglected juvenile. Both adoptive parents were ordered to complete mental health and sex offender risks assessments and to follow the recommendations set forth. This case had multiple

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[82]781 S.E. 2d 717 http://www.plol.org/Pages/Secure/Document.aspx?d=M1W8Oykhut3MgjSlW762gw%3d%3d&l=Cases&rp=4 (Accessed May 14, 2016).

legal concerns, which included sexting, abuse, neglect, possessing child pornography, and termination of parental rights. The trial court terminated the parents' rights.

The case was reviewed in 2013 and the parents' rights were permanently terminated after the review produced lack of evidence showing that the parents had failed to make adequate progress in therapy. Moreover, neither parent clearly understood the severity of the sexual fantasies the father admitted were present, and both exhibited a "dismissive attitude towards sexting."[83] *In the Matter of L.D.W.* went to appeal, claiming that the trial court had erred by terminating their parent rights based on the grounds of neglect. The trial court's ruling was affirmed but has an unpublished decision—a decision that is not certified for publication in *official reports* and may not be cited or relied on by other courts or parties in other actions.[84]

The previous cases, summarized in Table 2, describe the need for federal law so that consistency and precedence would be available for future court decisions addressing cyberbullying or cyberbullying with sexting. Although legislatures in North Carolina and elsewhere are trying to control this plague, courts often are using child pornography laws in lieu of cyberbullying laws built on the First Amendment. At the same time, there is a great disparity in the consequences of child pornography and cyberbullying law. In North Carolina, possession of child pornography is a Class H felony, punishable by 4 to 25 months' incarceration; recording or distributing child pornography is a Class E felony, punishable by a sentence of 15 to 63 months in prison. Encouraging a child to make

[83]In the Matter of LDW, NC: Court of Appeals. January 19, 2016. https://scholar.google.com/scholar_case?case=12481276721710590689&hl=en&as_sdt=6,34 (Accessed June 14, 2016).
[84]Unpublished Opinions: A Convenient Means to an Unconstitutional End. http://georgetown.lawreviewnetwork.com/files/pdf/97-2/Weisgerber.PDF (Accessed June 20, 2016).

pornography is a Class C felony, punishable by 44 to 182 months in prison, while disseminating obscene material to a child under the age of 16 is a Class I felony, punishable by 3 to 12 months in prison. Less harsh penalties for disseminating material that is harmful to minors and making obscene photographs are Class 1 misdemeanors, which are punishable by up to 120 days in jail. Consequently, punishment for a cyberbullying offense is a Class 1 misdemeanor, if over age 18 and may result in a sentence of up to 120 days incarceration, whereas a Class 2 misdemeanor (if the offender is a minor) is punishable of up to 60 days imprisonment.

Section Three: Compilation of State Cyberbullying With Sexting Statutes

All 50 states in the United States currently have antibullying statutes. Of those 50 states, 23 include cyberbullying in the antibullying statutes, and 3 other states have proposed statutes that directly address cyberbullying. North Carolina has a specific statute addressing cyberbullying.[85] North Carolina laws are broadly written and offer schools and the law enforcement the power to punish students for their potentially harmful speech, even when originating on off-campus computers and networks. A comprehensive list of states that have enacted cyberbullying statutes and those with proposed cyberbullying legislation is included in Appendix F.[86]

Clearly, there is a great variance in the states that have cyberbullying statutes and the consequences for violating them. This was exhibited in the number of states that implemented criminal sanctions for the offense. Only 18 of the 50 states have enacted criminal sanctions; the sanctions vary from misdemeanor chargers, minimal fines, and imprisonment.[87] Tennessee has one of the harshest sanctions. Cyberbullying, categorized as either harassment or stalking, is a Class A misdemeanor.[88] Anyone convicted of harassment may face a jail sentence of not greater than 11 months and 29 days, a fine not to exceed $2,500, or both.[89]

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[85]North Carolina General Assembly, § 14-458.1. Cyber-bullying; penalty. http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-458.1.html (Accessed September 3, 2014).
[86]Cyberbullying Research Center. www.cyberbullying.us (Accessed March 19, 2015).
[87]Ibid.
[88]Tenn. Code Ann. §§ 39-17-308, 39-17-315.
[89]Tenn. Code Ann. § 40-35-111.

Consequently, if convicted under the stalking law in Tennessee and the victim is under 18 and the stalker was 5 or more years older than the victim, the stalker may be convicted of a Class E felony.[90] A conviction may warrant felony stalking and may face a prison sentence of not less than one year and not more than 6 years, a fine not to exceed $3,000, or both.[91] Again, this is the harshest penalty assessed in the nation.

Of critical importance was how these statutes impact school districts that encounter cyberbullying with sexting behaviors from their students. Therefore, to assess how each state and school district addresses cyberbullying with sexting, the number of public school districts in each state was also noted in Appendix F. This information showed the number of school districts that could potentially face the issue of cyberbullying with sexting and consequences by state.

In addition to the cyberbullying statutes currently in place in the nation, 20 states have statutes restricting the sending and receiving of photos or sexually explicit language and nine states specifically include sexting.[92] These state statutes, as shown in Table 3, exhibited the response to the increase in cyberbullying with sexting across our nation. Of these 20 states, 11 have misdemeanor penalties and 4 states have felony penalties.

Section Four: Summary of Strengths, Weaknesses and Implications of State Statutes, and Court Decisions on Cyberbullying With Sexting

Decisions around the nation, and, more specifically, North Carolina courts discussed in Chapter 4, highlighted cases that could have had decisions based solely on

[90]Tenn. Code Ann. § 39-17-315.
[91]Tenn. Code Ann. § 40-35-111.
[92]Ibid.

cyberbullying with sexting statutes. Instead, each was decided on the basis of other state and federal statutes. There is strength in the precedence already set in prior cases based

TABLE 3: Sexting statutes by state, 2016

State	Sexting statute	Includes "sexting" between minors
Alabama	No	No
Alaska	No	No
Arizona	Yes	No
Arkansas	Yes	Yes
California	No	No
Colorado	No	No
Connecticut	Yes	Yes
Delaware	No	No
Florida	Yes	Yes
Georgia	Yes	No
Hawaii	Yes	No
Idaho	No	No
Illinois	Yes	No
Indiana	No	No
Iowa	No	No
Kansas	No	No
Kentucky	No	No
Louisiana	Yes	Yes
Maine	No	No
Maryland	No	No
Massachusetts	No	No
Michigan	No	No
Minnesota	No	No
Mississippi	No	No
Missouri	No	No
Montana	No	No
Nebraska	Yes	No
Nevada	Yes	No
New Hampshire	No	No
New Jersey	Yes	Yes
New Mexico	No	No
New York	Yes	No
North Carolina	No	No
North Dakota	Yes	No
Ohio	No	No
Oklahoma	No	No
Oregon	No	No
Pennsylvania	Yes	No
Rhode Island	Yes	Yes
South Carolina	No	No
South Dakota	Yes	Yes

TABLE 3: Sexting statutes by state, 2016 *(continued)*

State	Sexting statute	Includes "sexting" between minors
Tennessee	No	No
Texas	Yes	No
Utah	Yes	No
Vermont	Yes	Yes
Virginia	No	No
Washington	No	No
West Virginia	Yes	Yes
Wisconsin	No	No
Wyoming	No	No
Federal	No	No

Notes. "Includes sexting" = includes "sexting" in the statute. All states have some variation of a law that prohibits sending explicit or obscene material to—or depicting—minors that might apply (child pornography). See actual laws for more details. Adapted with permission from Cyberbullying Research Center. www.cyberbullying.us (Accessed April 13, 2016).

on First Amendment defenses and child pornography laws. However, the inconsistency in sentencing guidelines and the applicability of other state and federal statutes creates a plethora of additional questions regarding conviction and punishments. The absence of a Supreme Court decision on cyberbullying with sexting continues to offer states flexibility but inconsistency in decisions in our country. This exhibits the profound weakness for cases being tried on cyberbullying or cyberbullying with sexting statutes.

The legal standing in cyberbullying or cyberbullying with sexting cases may not be fully understood by minors involved or the parents of these minors, but all 50 states have some type of legal enforcement. This cultivates a population of unknowing offenders. Many parents of children in the cases discussed seemed to understand that the child caught with sexually explicit photos on their phone was guilty of a criminal act. However, the harshness of the charges that could be brought against the child can be devastating and may not be fully understood.

Prosecutors can be reluctant to pursue aggressive sentences for teens caught sexting with a boyfriend or girlfriend. However, if the sexting photos are distributed to more than one minor, there is additional pressure to make an example out of the minors and impose heavier penalties and consequences. Nonetheless, if a teen gets caught with a sexually explicit photo of a minor on his or her cell phone, that teen is subject to the criminal process. These incidents can follow minors for the rest of their lives, as is the case if they are convicted of possessing, distributing, or creating child pornography.

CHAPTER 5: FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The legal analysis presented in the preceding chapters examined how cyberbullying with sexting decisions by the state and federal courts address students' First Amendment free speech rights, as well as child pornography law. Specifically, the research analysis was limited to cases of cyberbullying where sexting was an element. Because federal constitutional protections for online speech have not been clearly delineated by the courts, the cases in this study were primarily limited to cases of cyberbullying with sexting at the state level.

This legal research focused on the question, "when cyberbullying with sexting occurs between minors in the school setting, what federal and state constitutional and statutory rights are at issue?" The supporting questions for this study were as follows:

1. When are First Amendment and child pornography laws included to decide cyberbullying with sexting cases?
2. How do state and federal laws addressing cyberbullying with sexting compare?

Given the lack of case law and a Supreme Court decision on cyberbullying with sexting cases, many decisions are predicated on other legal precedent. The results of this study help to clarify the murky legal status of cyberbullying as a state and federal

constitutional issue, interpret the First Amendment free speech clause as a defense, and clarify child pornography laws as they relate to cyberbullying with sexting.

The growing problem of cyberbullying with sexting paralleled the growth in personal electronic communication and access to devices. According to the Cyberbullying Research Center, more than 80% of teens use a cell phone, making it the most popular form of technology and the prevalent method for cyberbullying with sexting.[93] As evidenced in the state statutes cited earlier in this legal analysis (Table 3), some states do not specifically address sexting. It is very possible that a state will defer to its child pornography laws to address the actions of the involved parties. Perhaps the increase in cyberbullying with sexting in the forefront of the media will compel the creation of federal law to offer direction to states that already have or have proposed cyberbullying with sexting legislation. This legal action would reduce the need for deciding cases on the First Amendment or child pornography statutes.

When Are First Amendment and Child Pornography Laws Included to Decide Cyberbullying With Sexting Cases?

Findings

Cyberbullying with sexting has the potential to reach an enormous population in the blink of an eye. In the absence of a U.S. Supreme Court ruling on cyberbullying or cyberbullying with sexting, court decisions rely on legal precedent such as First Amendment and child pornography law. The lines often become blurred in free speech cases, because a common precedent mandating the action, and not necessarily the content, of the speech is lacking. Herein lies the legal inconsistency. The U.S. Supreme

[93]Cyberbullying Research Center. "Cyberbullying Facts." http://cyberbullying.org/facts/ (accessed June 23, 2016).

Court has addressed student speech cases that occur within the school setting but has not directly addressed what protections the Constitution gives students' online speech and sharing of photos. Thus, the absence of legal precedent at the Supreme Court level results in a murky area, leaving states to create their own legislation.

The first ever cyberbullying with sexting case brought in North Carolina, *Bishop*[94], was overturned. The cyberbullying state statute, as well as the charge and conviction, was overturned because it regulates speech and was deemed unconstitutional. The free speech clause in the First Amendment was the basis for overturning the lower court's decisions and deeming the statute unconstitutional. In the future, this case may be decisive in determining whether those states that currently having cyberbullying and sexting statutes will withstand the same scrutiny as North Carolina's statute.

The *Ramsey v. Harman* case, also analyzed in Chapter 4, skirts the cyberbullying charge and conviction as well. The trial court's order forcing Harman to stop posting on her public blogs infringed on the defendant's constitutional free speech rights. Although the higher court did not address the free speech concern, the lower court's decision was reversed. This decision was valid but, again, it was decided not on the North Carolina cyberbullying statute but with other constitutional precedent.

The previous analysis of cases in which child pornography law provided the precedent created an additional approach in cyberbullying with sexting cases. Although legislatures in North Carolina and elsewhere are trying to control this plague, courts frequently use child pornography laws in lieu of cyberbullying laws built on the First Amendment. At the same time, there is a great disparity in the consequences of child

[94]775 S.E.2d 834; 2015 N.C. LEXIS 729. (Accessed May 26, 2016).

pornography convictions when they are applied to cyberbullying cases. Likewise, child pornography laws were created to prevent the possession, production, and distribution of images and videos; these laws were never intended to be used against adolescents and teens taking pictures of themselves to share with one or more friends. The law applies, nonetheless, and many adolescents and teens in the United States have been charged under existing child pornography laws for taking and sharing their own voluntarily self-images.

As shown in the *Bishop* decision by the North Carolina Supreme Court, legislation that would totally prevent cyberbullying with sexting is complicated. Local, state, and federal lawmakers face huge obstacles when it comes to crafting laws that curb cyberbullying with sexting that also meet the legal standards set forth by the U.S. Supreme Court as well as various lower-level courts.

Landmark precedent in the *Tinker* case exhibited the U.S. Supreme Court's description to the extent that students may express themselves on school grounds without suffering school sanctions. The standards established by this case, and others discussed in Chapter 2, explored the majority of the forms student speech may take, which was before the use of online outlets and technology. These standards from *Tinker* (1969), *Fraser* (1986), and *Hazelwood* (1988) are currently being used for the lower courts to apply to cyberbullying and cyberbullying with sexting cases, with the *Tinker* (1969) standard being applied most frequently. The lower courts will likely struggle to apply the legal precedent these cases provide, again in the absence of federal cyberbullying legislation.

Lower courts—at both the state and district level—continue to apply the rulings from these three cases to fit the current issues of cyberbullying and cyberbullying with

sexting. It will be interesting to see how long the U.S. Supreme Court waits before it takes on such a case even though Megan Meier[95] legislation was proposed 7 years ago. Clearly, the court system is unprepared to rule on cases involving cyberbullying and cyberbullying with sexting.

Conclusions

The First Amendment free speech clause and child pornography statutes play a critical role in many of the cyberbullying and cyberbullying with sexting statutes adopted in each state; however, federal legislation will have the greatest impact on student free speech rights and protection. Because the U.S. Supreme Court has yet to rule specifically on a cyberbullying or cyberbullying with sexting case, the test of constitutionality continues to lie with the lower courts.

A ruling by the U.S. Supreme Court that focuses on First Amendment criteria as the *Bishop* case in North Carolina did would drastically change current state statutes. State lawmakers would be compelled to develop new laws to reflect the new federal ruling. State statutes and local policies would need to be revised to ensure their constitutionality as well. Until that time, state lawmakers and local policymakers must use current lower court rulings as a guide.

How Do State and Federal Laws Compare?

Findings

Chapter 4 provided an analysis of current state statutes to examine the inconsistencies among statutes and consequences as each state attempted to address

[95]United States v. Drew, 2009 WL 2872855 (C.D. Cal Aug. 28, 2009).

cyberbullying and cyberbullying with sexting incidents. No statutes at the federal level directly deal with cyberbullying with sexting. Table 3 shows that there is also a great disparity in the state statutes or lack of statutes addressing cyberbullying and cyberbullying with sexting. Penalties for cyberbullying are wide ranging. Depending on the state's statute, consequences and sanctions could be anywhere from civil penalties, such as school intervention through suspensions or expulsions, to monetary fines or jail time for criminal misdemeanors and even felonies. Even those states that have already enacted statutes are inconsistent in the severity of the punishments doled out by the courts.

The federal government has attempted to regulate content that minors can access or receive from other minors or adults through the CDA of 1996, the COPA of 1998, and the CIPA of 2000, as discussed at length in Chapter 2. The update to CIPA, the Protecting Children in the 21st Century Act of 2011, requires schools to provide education about appropriate online behavior (including interaction with others on social media sites and in chat rooms) and to provide cyberbullying awareness and responses.[96] The update lacks guidance in how to define cyberbullying or how to determine which social media sites are classified as harmful.

Conclusions

The state statutes that are currently in place or that have been proposed will continue to lack viable and consistent legal grounds where no federal law is in place. The continued absence of federal law exhibits, in this researcher's opinion, a need to regulate access to social media and online devices. This, too, would infringe on Constitutional

[96]Protecting Children in the 21st Century Act of 2007. S. 49, 110th Cong. (2007–2008).

rights. Therefore, the proposed federal legislation resulting from the death of Megan Meier should be enacted.

Recommendations

Clearly, the most feasible and fair manner to decide cyberbullying and cyberbullying with sexting cases would be for the U. S. Supreme Court to hear a case that would provide legal precedent or for congress to enactment federal law. The use of the First Amendment free speech clause offers offenders a defense that is ruled on in a variety of ways and leaves too much bias and interpretation to judges and attorneys. Furthermore, punishing teens who have been sending sexually explicit photos of themselves in a consensual manner does not warrant the often harsh consequences they received when punished under child pornography law.

Furthermore, I recommend that this topic be studied often, because it is evolving rapidly as a result of increased access to technology and the Internet. My recommendation is to revisit every year with a more extensive study to be done in 2 to 3 years. This would provide parents, educators, researchers, and legal experts continued and current data.

Final Thoughts

Because separate legislation exists for online student speech cases such as cyberbullying and cyberbullying with sexting, lower courts have varied on which standard or legal precedent to apply in online speech cases. Therefore, the U.S. Supreme Court has provided limited guidance. Attorneys, judges, and law enforcement wait with

anticipation for the United States Supreme Court to take on a cyberbullying with sexting cases and establish a precedent for all to follow.

Given the cases making their way through state courts, the U.S. Supreme Court should finally hear a case with cyberbullying with sexting. With the continued increase of access to online sites and devices, a precedent must be established. Until the United States Supreme Court establishes such a precedent, state and local statutes will continue to be unpredictable. With the recent overturning of the North Carolina *Bishop* case being so new, redrafting of the North Carolina state statute is imminent.

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ACLU v. Mukasey, 534 F.3d 181 (2008)

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State of North Carolina v. Robert Bishop

Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969)

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United States v. Drew, 2009 WL 2872855 (C.D. Cal Aug. 28, 2009)

United States v. Nash, 1 F. Supp. 3d 1240, (2012)

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APPENDIX B: DEFINITIONS

Child pornography. Child pornography is a federal crime (18 U.S. Code §2256) defined as "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where—

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct."[97] Legal cases of sexting may also be addressed and punishable under the federal child pornography law.

Cyberbullying. Cyberbullying is speech that is disseminated via electronic or digital means and is intended to embarrass, hurt, or harass another person. The most common conduits of cyberbullying include text messages, instant messages, social networking sites such as Facebook or Myspace, and microblogging sites such as Twitter.[98] Each of these definitions proposed is to some degree in relevant in determining what constitutes cyberbullying and what technology is used by the offender.

For the conduct of this study, the definition incorporated into N.C.G.S. §14-458.1, (2009)

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[97]18 U.S.C. § 2251 — Sexual exploitation of children.

[98]*See* Belnap, Allison. 2011. "Tinker at a Breaking Point: Why the Specter of Cyberbullying Cannot Excuse Impermissible Public School Regulation of Off-Campus Student Speech." *Brigham Young University Law Review.* 2011 (2).

> Subsection (a) sets out the elements of the offense. A person is guilty of cyberbullying when he or she uses a computer or computer network to do any one of the following six things:
> (1) with the intent to intimidate or torment a minor
> (a) builds a fake profile or Web site;
> (b) poses as a minor in an Internet chat room or electronic mail or instant message;
> (c) follows a minor online or into an Internet chat room; or
> (d) posts or encourages others to post on the Internet private, personal, or sexual information pertaining to a minor; or
> (2) with the intent to intimidate or torment a minor or the minor's parent or guardian
> (a) posts a real or doctored image of a minor on the Internet;
> (b) accesses, alters, or erases any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords; or
> (c) uses a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a minor; or
> (3) plants any statement, whether true or false, tending to provoke or that actually provokes any third party to stalk or harass a minor; or
> (4) copies and disseminates, or causes to be made, an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network), or
> (5) signs up a minor for a pornographic Internet site, or
> (6) without authorization of the minor or the minor's parent or guardian signs up a minor for electronic mailing lists or to receive junk electronic messages and instant messages, resulting in intimidation or torment of the minor.[99]

Defamation. Any statement, written or oral, that injures a third party's reputation.

Offender. Offender, as defined by Black's Law Dictionary online, is the name that is used for a person who is guilty of an offense according to law.

Victim. A victim is the person harmed by criminal acts or an attack target. Victims are those who are feel they have been wronged in some manner.

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[99]North Carolina General Statutes, § 14.458.1 Cyber-bullying; penalty http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=14-458.1

APPENDIX C: PERMISSION TO USE YRBS SURVEY: CENTERS FOR DISEASE CONTROL

Kinchen, Steve (CDC/OID/NCHHSTP) <sak1@cdc.gov>
Thu 10/9/2014 3:46 PM
To:
Ayers, Dana;
Hello,

Thank you for your question about the YRBS. As stated in the FAQs on our web site, the YRBS questionnaire is a public domain document. You may use it or parts of it for your needs as you like. No specific permission is needed.

I hope that this is helpful. Please let me know if you have any other questions about the YRBS.

Sincerely -
Steve Kinchen

---------- Original Email ----------
From : null

To :cdcinfo@cdc.gov

Date :2014-10-05 16:40:51

Subject :CDC-INFO: Inquiry

Subject: Youth Risk Behavior Surveillance System

From: Educator

Email Address: dayers@lincoln.k12.nc.us

Your Question: My name is Dana Ayers and I am a middle school principal in North Carolina. I am currently working on my doctorate degree in educational leadership at UNCC. I am writing my dissertation about cyberbullying laws and would like to include a portion of the Youth Risk Behavior Surveillance System survey in my dissertation.

Please email me to grant permission. The CDC will be cited in my completed dissertation.

Thank you.

Dana L. Ayers

APPENDIX D: PERMISSION FROM CYBERBULLYING RESEARCH CENTER TO ADAPT TABLES

RE: Cyberbullying Contact Form
Sameer Hinduja hinduja@fau.edu
10/05/14

Hi Dana,

You have our permission. I'd check back as you get closer to finishing because we will update the document every few months.

Best wishes and good luck!
Regards,
Sameer

Sameer Hinduja, Ph.D.
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Professor of Criminology and Criminal Justice
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Sent: Sunday, October 5, 2014 7:13 PM
Subject: Cyberbullying Contact Form

From: Dana Ayers

Subject: Cyberbullying.us Main Contact Form

I am asking permission to edit and include the cyberbullying table on this site in my dissertation. I am a doctoral student at the University of North Carolina at Charlotte. I have completed my coursework and am writing my dissertation about cyberbullying, specifically sexting laws and intend to interview judges in my state who have handed down decisions in sexting cases.

I would like to include the cyberbullying chart as a table in my dissertation. Please respond to grant me permission. The website and author will be cited.

Thank you.

Dana L. Ayers

APPENDIX E: TABLE OF STATE SEXTING STATUTES AND PENALTIES

State	Statute Number	Statute Description	Penalty
Arizona	AZ 8-309	Unlawful use of an electronic communication device by a minor; classification; definitions A. It is unlawful for a juvenile to intentionally or knowingly use an electronic communication device to transmit or display a visual depiction of a minor that depicts explicit sexual material. B. It is unlawful for a juvenile to intentionally or knowingly possess a visual depiction of a minor that depicts explicit sexual material and that was transmitted to the juvenile through the use of an electronic communication device. C. It is not a violation of subsection B of this section if all of the following apply: 1. The juvenile did not solicit the visual depiction. 2. The juvenile took reasonable steps to destroy or eliminate the visual depiction or report the visual depiction to the juvenile's parent, guardian, school official or law enforcement official. D. A violation of subsection A of this section is a petty offense if the juvenile transmits or displays the visual depiction to one other person. A violation of subsection A of this section is a class 3 misdemeanor if the juvenile transmits or displays the visual depiction to more than one other person. E. A violation of subsection B of this section is a petty offense. F. Any violation of this section that occurs after adjudication for a prior violation of this section or after completion of a diversion program as a result of a referral or petition charging a violation of this section is a class 2 misdemeanor. G. For the purposes of this section: 1. "Electronic communication device" has the same meaning prescribed in section 13-3560. 2. "Explicit sexual material" means material that depicts human genitalia or that depicts nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse as defined in section 13-3501. 3. "Visual depiction" has the same meaning prescribed in section 13-3551.	Those who distribute the image to only one person are subject to a fine, as it is a petty offense. Those who distribute the image to more than one person are committing a misdemeanor. Sexting in Arizona is considered a misdemeanor for the juvenile that sends the picture and also the juvenile that receives the picture. If the juvenile that received the picture did not request it and either deleted it or reported it to an authority figure, they did not violate the law.
Arkansas	SB 829	Senate Bill 829, a juvenile commits the crime of possession of sexually explicit digital material by intentionally creating, producing, distributing, presenting, transmitting, posting, exchanging, disseminating, or possessing via computer, cell phone, or digital media any sexually explicit digital media. A juvenile is a person younger than 18. The possession of sexually explicit digital material is a Class A misdemeanor. A juvenile convicted of the offense may be sentenced to eight hours of community service if the juvenile has no prior convictions for the crime. This includes juveniles who plead nolo contendre (no contest) or guilty. Otherwise, a Class A misdemeanor can be punished by a fine up to $2,500 and a maximum period of one year of confinement. A juvenile under 16 will be committed to the custody of the state's Youth Services Division, while a defendant 16 or older will be committed to the Arkansas' Department of Corrections.	A juvenile who pleads guilty or nolo contendere to or is found guilty of violating this section may be ordered to eight (8) hours of 30 community service if it is the first offense for the juvenile. Juvenile (under 18) must show that they did not solicit the images, that they did not subsequently distribute the images, and that they deleted the images upon receipt. Adults who induce explicit content from a child could be found guilty of a felony.
Connecticut	HB 5533	Section 1. (1) No person who is thirteen years of age or older but under eighteen years of age may knowingly possess any visual depiction of child pornography that the subject of such visual depiction knowingly and voluntarily transmitted by means of an electronic communication device to such person and in which the subject of such visual depiction is a person thirteen years of age or older but under sixteen years of age.	It is a misdemeanor for people between ages thirteen and seventeen to possess a picture of some-one between the ages of thirteen and fifteen. It is a misdemeanor for people between the ages of thirteen and fifteen to send a picture portraying child pornography. Possessing child pornography in the first degree is a class B felony and any person found guilty under this

State	Statute Number	Statute Description	Penalty
		(2) No person who is thirteen years of age or older but under sixteen years of age may knowingly and voluntarily transmit by means of an electronic communication device a visual depiction of child pornography in which such person is the subject of such visual depiction to another person who is thirteen years of age or older but under eighteen years of age. (b) As used in this section, "child pornography" and "visual depiction" have the same meanings as provided in section 53a-193 of the general statutes, and "electronic communication device" means any electronic device that is capable of transmitting a visual depiction, including a computer, computer network and computer system, as those terms are defined in section 53a-250 of the general statutes, and a cellular or wireless telephone. (c) Any person who violates the provisions of this section shall be guilty of a class A misdemeanor. Sec. 2. Section 53a-196d of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2010): (a) A person is guilty of possessing child pornography in the first degree when such person knowingly possesses fifty or more visual depictions of child pornography. (b) In any prosecution for an offense under this section, it shall be an affirmative defense that the acts of the defendant, if proven, would constitute a violation of section 1 of this act. Sec. 3. Section 53a-196e of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2010): (a) A person is guilty of possessing child pornography in the second degree when such person knowingly possesses twenty or more but fewer than fifty visual depictions of child pornography. (b) In any prosecution for an offense under this section, it shall be an affirmative defense that the acts of the defendant, if proven, would constitute a violation of section 1 of this act. Sec. 4. Section 53a-196f of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2010): (a) A person is guilty of possessing child pornography in the third degree when such person knowingly possesses fewer than twenty visual depictions of child pornography. (b) In any prosecution for an offense under this section, it shall be an affirmative defense that the acts of the defendant, if proven, would constitute a violation of section 1 of this act.	section shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court. Possessing child pornography in the second degree is a class C felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which two years of the sentence imposed may not be suspended or reduced by the court. Possessing child pornography in the third degree is a class D felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which one year of the sentence imposed may not be suspended or reduced by the court.
Florida	HB 75	Section 1. Sexting; prohibited acts; penalties.— (1) A minor commits the offense of sexting if he or she knowingly: (a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined in s. 847.001(9), Florida Statutes, and is harmful to minors, as defined in s. 847.001(6), Florida Statutes. (b) Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity, as defined in s. 847.001(9), Florida Statutes, and is harmful to minors, as defined in s. 847.001(6), Florida Statutes. A minor does not violate paragraph this paragraph if all of the following apply: 1. The minor did not solicit the photograph or video. 2. The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official. 3. The minor did not transmit or distribute the photograph	Punishment for the first violation of receiving or sending a text containing nudity and is harmful to minors may be either eight hours of community service or instead of community service, a $60 fine. The minor can also be ordered to participate in a training class on sexting instead of, or in addition to, the community service or fine. The second offense is a misdemeanor, and a third offense is a felony. In cases where multiple images were sent, all those sent within twenty-four hours are considered as a single offense. If the minor who received the images did not ask for them, reported the incident to an authority figure, and did not distribute the received image, the will not be charged with a sexting offense.

State	Statute Number	Statute Description	Penalty
		or video to a third party. (2)(a) The transmission or distribution of multiple photographs or videos prohibited by paragraph (1) (a) is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period. (b) The possession of multiple photographs or videos that were transmitted or distributed by a minor prohibited by paragraph (1)(b) is a single offense if the photographs or videos were transmitted or distributed by a minor in the same 24-hour period. (3) A minor who violates subsection (1): (a) Commits a noncriminal violation for a first violation, punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a $60 fine. The court may also order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine. (b) Commits a misdemeanor of the first degree for a violation that occurs after being found to have committed a noncriminal violation for sexting, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes. (c) Commits a felony of the third degree for a violation that occurs after being found to have committed a misdemeanor of the first degree for sexting, punishable as provided in s. 775.082, s.775.083, or s. 775.084, Florida Statutes. (4) This section does not prohibit the prosecution of a minor for a violation of any law of this state if the photograph or video that depicts nudity also includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, Florida Statutes. (5) As used in this section, the term "found to have committed" means a determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or an adjudicatory hearing, regardless of whether adjudication is withheld.	
Georgia	HB 156	Part 2 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against minors generally, is amended by revising subsections (d) and (g) of Code Section 16-12-100, relating to sexual exploitation of children, as follows: "(d) The provisions of subsection (b) of this Code section shall not apply to: (1) The activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses; (2) Legitimate or to legitimate medical, scientific, or educational activities; (3) Any person who creates or possesses a visual medium depicting only himself or herself engaged in sexually explicit conduct." "(g) (1) Except as otherwise provided in paragraph paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than $100,000.00. In the event; provided, however, that if the person so convicted is a member of the immediate family of the victim, no fine shall be imposed. (2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor. (3) Any person who violates paragraph (1), (5), (7), or (8) of subsection (b) of this Code section shall be guilty of a misdemeanor if: (A) The minor depicted was at least 14 years of age at the time the visual medium was created; (B) The visual medium was created with the permission of the minor depicted; and	Penalty could be felony or misdemeanor, depending on facts of the case. Would be a misdemeanor if, for example, in the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation of such paragraphs involved the distribution of such visual medium to another person but such distribution was not for the purpose of: (I) Harassing, intimidating, or embarrassing the minor depicted; or (II) For any commercial purpose.

State	Statute Number	Statute Description	Penalty
		(C) The defendant was 18 years of age or younger at the time of the offense (i) The defendant's violation of such paragraphs did not involve the distribution of such visual medium to another person; or (ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation of such paragraphs involved the distribution of such visual medium to another person but such distribution was not for the purpose of: (I) Harassing, intimidating, or embarrassing the minor depicted; or (II) For any commercial purpose." SECTION 2. Said part is further amended in Code Section 16-12-100.1, relating to electronically furnishing obscene materials to minors, by revising paragraphs (1) and (3) of subsection (a) and subsection (c) and by adding a new subsection to read as follows: (1) 'Bulletin board system' means a computer data and file service that is accessed wirelessly or by telephone line physical connection to store and transmit information." (3) 'Electronically furnishes' means: (A) To make available by electronic storage device, including floppy disks and other magnetic storage devices, or by CD-ROM; (B) To make available by allowing access to information stored in a computer, 53 including making material available by operating a computer bulletin board system." (c) Except as provided in subsection (d) of this Code section, any person who violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature. (d) Any person who violates this Code section shall be guilty of a misdemeanor if: (1) At the time of the offense, the minor receiving the obscene materials was at least 14 years of age; (2) The receipt of the materials was with the permission of the minor; and (3) The defendant was 18 years of age or younger."	
Hawaii	SB 2222	SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows: "§712- Promoting minor-produced sexual images in the first degree. (1) A person, eighteen years of age or older, commits the offense of promoting minor-produced sexual images in the first degree if the person intentionally or knowingly commands, requests, or encourages a minor to use a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit to any person a nude photograph or video of a minor. (2) For purposes of this section, a "minor" means any person under18 years of age. (3) Promoting minor-produced sexual images in the first degree is a misdemeanor. §712- Promoting minor-produced sexual images in the second degree. (1) A minor commits the offense of promoting minor-produced sexual images in the second degree if the minor: (a) Knowingly uses a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person a nude photograph or video of a minor or the minor's self; or (b) Intentionally or knowingly commands, requests, or encourages another minor to use a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit to any person a nude photograph or video of a minor or the minor's self.	It is a misdemeanor to both send and receive sexual images of a minor, which is anyone under the age of eighteen. It is an affirmative defense if the person who receives the image takes steps to delete the message.

State	Statute Number	Statute Description	Penalty
		(2) A person, of any age, commits the offense of promoting minor-produced sexual images in the second degree if the person knowingly possesses a nude photograph or video of a minor transmitted or distributed in violation of subsection (1) It is an affirmative defense under this subsection that the person took reasonable steps to destroy or eliminate the nude photograph or video of a minor. (3) For purposes of this section, a "minor" means any person under18 years of age. (4) Promoting minor-produced sexual images in the second degree is a petty misdemeanor.	
Illinois	HB 4583	Sec. 3-1. Jurisdictional facts. Proceedings may be instituted under this Article concerning boys and girls who require authoritative intervention as defined in Section 3-3, or who are truant minors in need of supervision as defined in Section 3-33.5, or who are minors involved in electronic dissemination of indecent visual depictions in need of supervision as defined in Section 3-40. Sec. 3-40. Minors involved in electronic dissemination of indecent visual depictions in need of supervision. (a) For the purposes of this Section: "Computer" has the meaning ascribed to it in Section 16D-2 of the Criminal Code of 1961. "Electronic communication device" means an electronic device, including but not limited to a wireless telephone, personal digital assistant, or a portable or mobile computer, that is capable of transmitting images or pictures. "Indecent visual depiction" means a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the person. "Minor" means a person under18 years of age. (b) A minor shall not distribute or disseminate an indecent visual depiction of another minor through the use of a computer or electronic communication device. (c) Adjudication. A minor who violates subsection (b) of this Section may be subject to a petition for adjudication and adjudged a minor in need of supervision. (d) Kinds of dispositional orders. A minor found to be in need of supervision under this Section may be: (1) ordered to obtain counseling or other supportive services to address the acts that led to the need for supervision; or (2) ordered to perform community service. (e) Nothing in this Section shall be construed to prohibit a prosecution for disorderly conduct, public indecency, child pornography, a violation of the Harassing and Obscene Communications Act, or any other applicable provision of law.	A minor shall not distribute or disseminate an indecent visual depiction of another minor through the use of a computer or electronic communication device. Minors that are caught exchanging sexually explicit images may be sentenced to supervision and required to receive counseling or perform community service.
Louisiana	§81.1.1	"Sexting"; prohibited acts; penalties A.(1) No person under the age of seventeen years shall knowingly and voluntarily use a computer or telecommunication device to transmit an indecent visual depiction of himself to another person. (2) No person under the age of seventeen years shall knowingly possess or transmit an indecent visual depiction that was transmitted by another under the age of seventeen years in violation of the provisions of Paragraph (1) of this Subsection. B. For purposes of this Section: (1) "Indecent visual depiction" means any photograph, videotape, film, or other reproduction of a person under the age of seventeen years engaging in sexually explicit conduct, and includes data stored on any computer, telecommunication device, or other electronic storage media which is capable of conversion into a visual image.	For a first offense of possessing or transmitting indecent visual depictions of a minor, the offender will receive a minimum fine of $100 to a maximum of $250, incarcerated for up to ten days, or both. An exception to this provision is if they offender is placed on probation and performs two eight-hour days of community service. For a second offense, the offender will receive a minimum fine of $250 to a maximum of $500, incarcerated for a minimum of ten days to a maximum of thirty days. An exception to this provision is being placed on probation and performs five eight-hour days of community service. For a third offense, the offender will receive a minimum fine of $500 to a maximum of $700, incarcerated for a minimum of thirty days to a maximum of six months, or both. An exception to this provision is that the offender performs ten eight-hour days of community service.

State	Statute Number	Statute Description	Penalty
		(2) “Sexually explicit conduct” means masturbation or lewd exhibition of the genitals, pubic hair, anus, vulva, or female breast nipples of a person under the age of seventeen years. (3) “Telecommunication device” means an analog or digital electronic device which processes data, telephonic, video, or sound transmission as part of any system involved in the sending or receiving of voice, sound, data, or video transmissions. (4) “Transmit” means to give, distribute, transfer, transmute, circulate, or disseminate by use of a computer or telecommunication device. C. Any offense committed by use of a computer or telecommunication device as set forth in this Section shall be deemed to have been committed at either the place from which the indecent visual depiction was transmitted or at the place where the indecent visual depiction was received. (c) For a third or any subsequent offense in violation of Paragraph (A)(2) of this Section, the offender shall be fined not less than five hundred dollars nor more than seven hundred fifty dollars, imprisoned for not less than thirty days nor more than six months, or both. Imposition or execution of the sentence shall not be suspended unless the offender is placed on probation with a minimum condition that he perform 10 eight-hour days of court-approved community service.	
Nebraska	Le Bill 97	28-1463.03. Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense. (1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. (2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. (3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. (4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. (5) It shall be an affirmative defense to a charge brought pursuant to subsection (1) of this section if the defendant was less than eighteen years of age at the time the visual depiction was created and the visual depiction of sexually explicit conduct includes no person other than the defendant. (6) It shall be an affirmative defense to a charge brought pursuant to subsection (2) of this section if (a) the defendant was less than eighteen years of age, (b) the visual depiction of sexually explicit conduct includes no person other than the defendant, (c) the defendant had a reasonable belief at the time the visual depiction was sent to another that it was being sent to a willing recipient, and (d) the recipient was at least fifteen years of age at the time the visual depiction was sent.	It is a felony to either possess or distribute sexually explicit images of a child. For those charged with possession, individuals that are eighteen and younger shall have an affirmative defense if they received a sexually explicit image of a minor, that is at least at fifteen years old, that was voluntary and knowingly created and provided by the minor, the image only depicts the one child, the defendant did not distribute the image to another person, and the defendant did not pressure the child to transmit or generate the image.
Nevada	LB 277	Section 1. Chapter 200 of NRS is hereby amended by adding thereto a new section to read as follows: 1. A minor shall not knowingly and willfully use an electronic communication device to transmit or distribute a	Minors who send sexually explicit images of themselves to others are considered a child in need of supervision for the first violation. For further violations, they can be subject to the same penalties if they had been an adult

State	Statute Number	Statute Description	Penalty
		sexual image of himself or herself to another person. 2. A minor shall not knowingly and willfully use an electronic communication device to transmit or distribute a sexual image of another minor who is older than, the same age as or not more than 4 years younger than the minor transmitting the sexual image. 3. A minor shall not knowingly and willfully possess a sexual image that was transmitted or distributed as described in subsection 1 or 2 if the minor who is the subject of the sexual image is older than, the same age as or not more than 4 years younger than the minor who possesses the sexual image. It is an affirmative defense to a violation charged pursuant to this subsection if the minor who possesses a sexual image: (a) Did not knowingly purchase, procure, solicit or request the sexual image or take any other action to cause the sexual image to come into his or her possession; and (b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency or a school official, to access any sexual image: (1) Took reasonable steps to destroy each image; or (2) Reported the matter to a law enforcement agency or a school official and gave the law enforcement agency or school official access to each image. 4. A minor who violates subsection 1: (a) For the first violation: (1) Is a child in need of supervision, as that term is used in title 5 of NRS, and is not a delinquent child; and (2) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive. (b) For the second or a subsequent violation: (1) Commits a delinquent act, and the court may order the detention of the minor in the same manner as if the minor had committed an act that would have been a misdemeanor if committed by an adult; (2) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive. 5. A minor who violates subsection 2: (a) Commits a delinquent act, and the court may order the detention of the minor in the same manner as if the minor had committed an act that would have been a misdemeanor if committed by an adult; (b) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive. 6. A minor who violates subsection 3: (a) Is a child in need of supervision, as that term is used in title 5 of NRS, and is not a delinquent child; and (b) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive. 7. As used in this section: (a) “Electronic communication device” means any electronic device that is capable of transmitting or distributing a sexual image, including, without limitation, a cellular phone, personal digital assistant, computer, computer network and computer system. (b) “Minor” means a person who is under 18 years of age.	committing a misdemeanor. They are not considered sex offenders and are not subject to registration. For those who distribute sexually explicit images of other minors, they can be subject to the same penalties if they had been an adult committing a misdemeanor. They are not considered sex offenders and are not subject to registration. For those who receive the images, they are considered a child in need of supervision. They are not considered sex offenders and are not subject to registration. It is an affirmative defense if the defendant did not coerce or ask for the sexual image, deleted the image, and reported and gave the proper authorities access to the image.

State	Statute Number	Statute Description	Penalty
		(c) "School official" means a principal, vice principal, school counselor or school police officer. (d) "Sexual conduct" has the meaning ascribed to it in NRS 200.700. (e) "Sexual image" means any visual depiction, including, without limitation, any photograph or video, of a minor simulating or engaging in sexual conduct or of a minor as the subject of a sexual portrayal. (f) "Sexual portrayal" has the meaning ascribed to it in NRS 200.700.	
New Jersey	P.L.1982	Where a complaint against a juvenile pursuant to section 11 of P.L.1982, c.77 (C.2A:4A-30) alleges that the juvenile has committed an eligible offense as defined in subsection c. of this section and the court has approved diversion of the complaint pursuant to section 4 of P.L.1982, c.81 (C.2A:4A-73), the resolution of the complaint shall include the juvenile's participation in a remedial education or counseling program. The parents or guardian of the juvenile shall bear the cost of participation in the program, except that the court shall take into consideration the ability of the juvenile's parents or guardian to pay and the availability of such a program in the area in which the juvenile resides and, where appropriate, may permit the juvenile to participate in a self-guided awareness program in lieu of a remedial education or counseling program provided that it satisfies the requirements of subsection b. of this section. b. A remedial education or counseling program satisfies the requirements of this act if the program is designed to increase the juvenile's awareness of: (1) the legal consequences and penalties for sharing sexually suggestive or explicit materials, including applicable federal and State statutes; (2) the non-legal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities; (3) the potential, based upon the unique characteristics of cyberspace and the Internet, of long-term and unforeseen consequences for sharing sexually suggestive or explicit materials; (4) the possible connection between bullying and cyber-bullying and juveniles sharing sexually suggestive or explicit materials. c. As used in this act, "eligible offense" means an offense in which: (1) the facts of the case involve the creation, exhibition or distribution of a photograph depicting nudity as defined in N.J.S.2C:24-4 through the use of an electronic communication device, an interactive wireless communications device, or a computer; and (2) the creator and subject of the photograph are juveniles or were juveniles at the time of its making.	Every complaint is reviewed for recommendations to be dismissed, diverted, or referred for court action based on several criteria. If they are diverted, they will participate in a remedial education or counseling program paid for by the juvenile's parent or guardian. This program is designed to educate the teen on the potential consequences associated with sexting.
New York	8170--B	This act shall be known and may be cited as "the cyber-crime youth rescue act." S 2. Article 6 of the social services law is amended by adding a new title 11 to read as follows: 458-l. education reform program. 1. as used in this section: (a) "eligible person" means an individual who is the subject of a pending petition in family court alleging he or she has committed an eligible offense or a person who has been charged, in criminal court, with an eligible offense as that term is defined in paragraph (b) of this subdivision. (b) "eligible offense" means a crime or offense committed by an eligible person that involved cyberbullying or the sending or receipt of obscenity, as defined in subdivision one of section 235.00 of the penal law, or nudity, as	The two persons involved in sending and receiving the message must both be under twenty and must be within five years of age from each other. They will have to participate in an education reform program that involves a maximum of eight hours of instruction that provides information regarding the legal consequences and non-legal consequences of sexting, and the problems associated with technology and bullying. Provides that a court may, as a condition of an adjournment in contemplation of a dismissal order, in cases where the record indicates that cyberbullying or sexting was the basis of the petition, require an eligible person to complete an education reform program in accordance with section 458 of the social services law.

State	Statute Number	Statute Description	Penalty
		defined in subdivision two of section 235.20 of the penal law, when the sender and the receiver thereof were both under the age of twenty at the time of such communication, but not more than five years apart in age. (c) "program" means the education reform program developed pursuant to subdivision two of this section. 4. the program shall involve up to eight hours of instruction and shall provide, at a minimum, information concerning: (a) the legal consequences of and potential penalties for sharing sexually suggestive materials, explicit materials or abusive materials, including sanctions imposed under applicable federal and state statutes; (b) the non-legal consequences of sharing sexually suggestive materials, explicit materials or abusive materials, including, but not limited to, the possible effect on relationships, loss of educational and employment opportunities, and the potential for being barred or removed from school programs and extracurricular activities; (c) how the unique characteristics of cyberspace and the internet, including the potential ability of an infinite audience to utilize the internet to search for and replicate materials, can produce long-term and unforeseen consequences for sharing sexually suggestive materials, explicit materials or abusive materials; and (d) the potential connection between bullying and cyber-bullying and juveniles sharing sexually suggestive materials, explicit materials or abusive materials. 5. upon receipt of the court order, pursuant to the family court act or section 60.37 of the penal law, directing an eligible person to attend the program, the office, after consultation with the eligible person and the attorney for such person, shall schedule the eligible person to attend the next available session of the program and shall send written notice of the scheduling, along with the date, time and location of the session or sessions, to the eligible person, the attorney for such person and the clerk of the referring court. 6. within twenty days of the date upon which the eligible person completes the program, the office shall provide such person with a certification that he or she has successfully completed the program. the court may, as a condition of an adjournment in contemplation of dismissal order, in cases where the record indicates that the respondent is an eligible person as defined in section four hundred fifty-eight-l of the social services law and has allegedly committed an eligible offense as defined in such section, direct the respondent to attend and complete an education reform program established pursuant to section four hundred fifty-eight-l of the social services law.	
North Dakota	HB 1371	SECTION 1. Subsection 1 of section 12.1-27.1-03.3 of the North Dakota Century Code is amended and reenacted as follows: 1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person: a. Without written consent from each individual who has a reasonable expectation of privacy in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image who has a reasonable expectation of privacy in the image, or after being given notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to	It is a misdemeanor to create or possess a sexually expressive image without written consent of the individual. It is a misdemeanor to send sexually expressive images with the intent to harm the individual in the image who has a reasonable expectation of privacy; or after being told by the individual, parent or guardian does not consent to distribute the image.

State	Statute Number	Statute Description	Penalty
		the distribution or publication of the sexually expressive image.	
Pennsylvania	§ 6321	§ 6321. SexuaSSexually Sexually explicit images by minor. Except as providSection 3312 (relating to sexual abuse of children), a minor commits a summary offense when the minor: (1) Knowingly transmits, distributes, publishes or disseminates an electronic communication containing a sexually explicit image of himself. (2) Knowingly possesses or knowingly views a sexually explicit image of a minor who is 12 years of age or older. (b) Misdemeanor of the third degree.--Except as provided in section 6312, a minor commits a misdemeanor of the third degree when the minor knowingly transmits, distributes, publishes or disseminates an electronic communication containing a sexually explicit image of another minor who is 12 years of age or older. (c) Misdemeanor of the second degree.--Except as provided in section 6312, a minor commits a misdemeanor of the second degree when, with the intent to coerce, intimidate, torment, harass or otherwise cause emotional distress to another minor, the minor: (1) makes a visual depiction of any minor in a state of nudity without the knowledge and consent of the depicted minor; or (2) transmits, distributes, publishes or disseminates a visual depiction of any minor in a state of nudity without the knowledge and consent of the depicted minor. (d) Application of section.--This section shall not apply to the following: (1) Conduct that involves images that depict sexual intercourse, deviate sexual intercourse or penetration, however slight, of the genitals or anus of a minor, masturbation, sadism, masochism or bestiality. (2) Conduct that involves a sexually explicit image of a minor if the image was taken, made, used or intended to be used for or in furtherance of a commercial purpose. (e) Forfeiture.--Any electronic communication device used in violation of this section shall be subject to forfeiture to the Commonwealth, and no property right shall exist in it. (f) Diversionary program.--The magisterial district judge or any judicial authority with jurisdiction over the violation shall give first consideration to referring a person charged with a violation of subsection (a) to a diversionary program under 42 Pa.C.S. § 1520 (relating to adjudication alternative program) and the Pennsylvania Rules of Criminal Procedure. As part of the diversionary program, the magisterial district judge or any judicial authority with jurisdiction over the violation may order the person to participate in an educational program which includes the legal and non-legal consequences of sharing sexually explicit images. If the person successfully completes the diversionary program, the person's records of the charge of violating subsection (a) shall be expunged.	It is a summary offense for a minor to send or possess a sexually explicit image of a minor. It is a misdemeanor to transmit a sexually explicit image of a minor, other than themselves. Judges must first consider referring the minor to a diversionary program, and may order them to participate and complete an educational program. Upon successful completion, the minor's record for this crime shall be expunged.
Rhode Island	HB 5094	SECTION 1. Chapter 11-9 of the General Laws entitled "Children" is hereby amended by adding thereto the following section: 11-9-1.4. Minor electronically disseminating indecent material to another person. "Sexting" Prohibited. - (a) Definitions as used in this section: (1) "Minor" means any person not having reached eighteen (18) years of age; (2) "Computer" has the meaning given to that term in section 11-52-1; (3) "Telecommunication device" means an analog or digital electronic device which processes data, telephony, video, or sound transmission as part of any system involved in the sending and/or receiving at a distance of voice, sound,	A minor transmitting a sexually indecent image of themself to another person will be considered a status offense and referred to the family court. They will not be required to be a part of the sex offender registry.

State	Statute Number	Statute Description	Penalty
		data, and/or video transmissions; (4) "Indecent visual depiction" means any digital image or digital video of the minor engaging in sexually explicit conduct, and includes data stored or any computer, telecommunication device, or other electronic storage media which is capable of conversion into a visual image; (5) "Sexually explicit conduct" means actual masturbation or graphic focus on or lascivious exhibition of the nude genitals or pubic area of the minor or the nude breasts of the minor, if the minor is a female. (b) No minor shall knowingly and voluntarily and without threat or coercion use a computer or telecommunication device to transmit an indecent visual depiction of himself or herself to another person.2 (c) A violation of this section shall be a status offense and referred to the family court. (d) Any minor adjudicated under subsection (b) shall not be charged under section and, further, shall not be subject to sex offender registration requirements set forth in section 11-37.1-1 et seq., entitled "Sexual Offender Registration and Community Notification Act."	
South Dakota	SB 183	Section 1. No minor, as defined in subdivision 26-7A-1(21), may intentionally create, produce, distribute, present, transmit, post, exchange, disseminate, or possess, through any computer or digital media, any photograph or digitized image or any visual depiction of a minor in any condition of nudity, as defined in subdivision 22-24A-2(9), or involved in any prohibited sexual act, as defined in subdivision 22-24A-2(16). Any violation of this section constitutes the offense of juvenile sexting, which is a Class 1 misdemeanor. Section 2. It is an affirmative defense to the offense of juvenile sexting that the minor has not solicited the visual depiction, that the minor does not subsequently distribute, present, transmit, post, print, disseminate, or exchange the visual depiction, and that the minor deletes or destroys the visual depiction upon receipt. It is an affirmative defense to the offense of juvenile sexting that the visual depiction is of a single minor, created by that minor, who does not subsequently distribute, present, transmit, post, print, disseminate, or exchange the visual depiction. Section 3. It is not a defense to the offense of juvenile sexting that the visual depiction is of the person charged.	It is a misdemeanor for a minor to possess or send sexually indecent images of a minor. It is an affirmative defense if the minor has not solicited the image, did not distribute the image, and deleted the image.
Texas	SB 407	SECTION 3. Subchapter B, Chapter 43, Sec. 43.261. Electronic Transmission Of Certain Visual Material Depicting Minor. (a) In this section: (1) "Dating relationship" has the meaning assigned by Section 71.0021, Family Code. (2) "Minor" means a person younger than 18 years of age. (3) "Produce" with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material. (4) "Promote" has the meaning assigned by Section 43.25. (5) "Sexual conduct" has the meaning assigned by Section 43.25. (6) "Visual material" has the meaning assigned by Section 43.26. (b) person who is a minor commits an offense if the person intentionally or knowingly: (1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or (2) possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced S.B.ANo.A407 2the visual material. (c) An offense under Subsection (b)(1) is a Class C misdemeanor, except that the offense is:	Sexting is a misdemeanor for the first offense, while subsequent offenses are also misdemeanors, but with greater penalties. The minor may be sentenced to community supervision with a condition of fulfilling an educational program that is paid for by the defendant's parents. The educational program instructs minors on the issues associated with sexting. The minor can apply to have the conviction expunged on or after their seventeenth birthday. It is an affirmative defense if the minor has not solicited the image, obtained the image only after receiving it from another minor, and deleted the image.

State	Statute Number	Statute Description	Penalty
		(1) a Class B misdemeanor if it is shown on the trial of the offense that the actor: (A) promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or (B) except as provided by Subdivision (2)(A), has previously been convicted one time of any offense under this section; or (2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been: (A) convicted one or more times of an offense punishable under Subdivision (1) (A); or (B) convicted two or more times of any offense under this section. (d) An offense under Subsection (b)(2) is a Class C misdemeanor, except that the offense is: (1) a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted one time of any offense under this section; or (2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of any offense under this section. (e) It is an affirmative defense to prosecution under this section that the visual material: S.B.ANo.A407 (1) depicted only the actor or another minor: (A) who is not more than two years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense; or (B) who was the spouse of the actor at the time of the offense; and (2) was promoted or received only to or from the actor and the other minor. (f) It is a defense to prosecution under Subsection (b)(2) that the actor: (1) did not produce or solicit the visual material; (2) possessed the visual material only after receiving the material from another minor; and (3) destroyed the visual material within a reasonable amount of time after receiving the material from another minor. (g) If conduct that constitutes an offense under this section also constitutes an offense under another law, the defendant may be prosecuted under this section, the other law, or both.	
Utah	HB 14	Section 1. Section 76-10-1204 is amended to read: Distributing pornographic material -- Penalties -- Exemptions for Internet service providers and hosting companies. (1) A person is guilty of distributing pornographic material when [he] the person knowingly: (a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others; (b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others; (c) distributes or offers to distribute, or exhibits or offers to exhibit, any pornographic material to others; (d) writes, creates, or solicits the publication or advertising of pornographic material; (e) promotes the distribution or exhibition of material [he] the person represents to be pornographic; or (f) presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic. (2) Each distributing of pornographic material as defined in Subsection (1) is a separate offense. (3) It is a separate offense under this section for:	The penalty for minors engaging in sexting is a misdemeanor for the first offense. Subsequent offenses are felonies.

State	Statute Number	Statute Description	Penalty
		(a) each day's exhibition of any pornographic motion picture film; a (b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others. (4) (a) An offense under this section committed by a person 18 years of age or older is a third degree felony punishable by: (i) a minimum mandatory fine of not less than $1,000, plus $10 for each article exhibited up to the maximum allowed by law; and (ii) incarceration, without suspension of sentence in any way, for a term of not less 64 than 30 days. (b) An offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor. (c) An offense under this section committed by a person younger than 16 years of age is a class B misdemeanor. (5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct prohibited under Subsection (1), (2), or (3) is guilty of a third degree felony and is subject to the penalties under Subsection (4)(a). (6) (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if: (i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of: (A) transmitting or routing data from one person to another person; (B) providing a connection between one person and another person; (ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and (iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material. (b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if: (i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person; (ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and (iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.	
Vermont	VT LEG 247571.1	Sec. 4. 13 V.S.A. § 2802b. Minor Electronically Disseminating Indecent Material To Another Person: (a)(1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of himself or herself to another person. (2) No person shall possess a visual depiction transmitted to the person in violation of subdivision (1) of this subsection. It shall not be a violation of this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction. (b) Penalties; minors. (1) Except as provided in subdivision (3) of this subsection, a minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to chapter 52 of Title 33, and may be referred to the juvenile diversion program of the	Minors engaging in sexting will be adjudicated delinquent and may be referred to the juvenile diversion program for the first offense. For subsequent offenses, they may be prosecuted for sexual exploitation of children, but do not have to be a part of the sex offender registry. All records will be expunged on the minor turning eighteen. It is not a violation if the person that received the text deleted the image.

State	Statute Number	Statute Description	Penalty
		district in which the action is filed. (2) A minor who violates subsection (a) of this section and who has not previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children), and shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration). (3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (b)(1) of this section or prosecuted in district court under chapter 64 of this title (sexual exploitation of children), but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration). (4) Notwithstanding any other provision of law, the records of a minor who is adjudicated delinquent under this section shall be expunged when the minor reaches 18 years of age. (c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than $300.00 or imprisoned for not more than six months or both. (d) This section shall not be construed to prohibit a prosecution under section 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or 2632 (prohibited acts) of this title, or any other applicable provision of law.	
West Virginia	HB 2357	Article 8a. Preparation, distribution or exhibition of obscene matter to minors; sexting by minors. §61-8A-6. Sexting educational diversion program. (a) A minor who uses telecommunications device to knowingly transmit or distribute to another minor a photograph, text message with a photo attachment, or other transmitted material of any kind depicting himself or herself, or another minor in a state of sexual activity or a state of sexually explicit nudity may not be prosecuted under the provisions of this article, if the minor successfully completes the program provided by this section. (b) Instead of pursuing a conviction for a violation of this article for activity described in subsection (a) of this section, a prosecuting attorney shall allow an eligible minor to participate in the program developed by the Attorney General under this section. (c) (1) The Attorney General, in consultation with the Administrative Office of the West Virginia Supreme Court of Appeals shall develop an educational diversion program for minors who may be accused of activity described in subsection (a) of this section. (2) The program shall provide information concerning: (A) The legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable federal and state statutes; (B) The non-legal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities; (C) How the unique characteristics of cyberspace and the Internet, including searchability, replicability and an infinite audience, can produce long-term and unforeseen consequences for sharing sexually suggestive or explicit materials; and (D) The connection between bullying and cyber-bullying and minors sharing sexually suggestive or explicit materials. (e) Admission to the program is limited to eligible minors	Any minor who intentionally possesses, creates, produces, distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of another minor posing in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual manner shall be guilty of an act of delinquency and upon adjudication disposition may be made by the circuit court pursuant to the provisions of article five, chapter forty-nine of this code.

State	Statute Number	Statute Description	Penalty
		who the prosecuting attorney finds: (1) Have not previously been adjudicated delinquent for or convicted of a criminal offense under this code, federal law or a law of another state; (2) Were not aware that their actions could constitute and did not have the intent to commit a criminal offense; (3) May be harmed by the imposition of criminal sanctions; and (4) Would likely be deterred from engaging in similar conduct in the future by completing the program.	

APPENDIX F: BULLYING AND CYBERBULLYING STATUTES BY STATE (2016)

State	Bullying statute	Includes "cyberbullying"	Includes electronic harassment	Criminal sanctions	Number of school districts*
Alabama	Yes	No	Yes	No	132
Alaska	Yes	No	No	Yes	55
Arizona	Yes	No	Yes	No	565
Arkansas	Yes	Yes	Yes	Yes	315
California	Yes	Yes	Yes	No	1,059
Colorado	Yes	No	Yes	Proposed	181
Connecticut	Yes	Yes	Yes	No	190
Delaware	Yes	No	Yes	No	32
Florida	Yes	Yes	Yes	No	74
Georgia	Yes	Proposed	Yes	No	181
Hawaii	Yes	Yes	Yes	Proposed	1
Idaho	Yes	No	Yes	Yes	115
Illinois	Yes	No	Yes	No	970
Indiana	Yes	No	Yes	No	314
Iowa	Yes	No	Yes	Yes	369
Kansas	Yes	Yes	Yes	No	308
Kentucky	Yes	Proposed	Yes	Yes	176
Louisiana	Yes	Yes	Yes	Yes	85
Maine	Yes	Yes	Yes	No	227
Maryland	Yes	No	Yes	no	24
Massachusetts	Yes	Yes	Yes	No	380
Michigan	Yes	No	Yes	Proposed	801
Minnesota	Yes	Yes	Yes	No	465
Mississippi	Yes	No	Yes	Yes	163
Missouri	Yes	Yes	Yes	Yes	527
Montana	No	No	No	Yes	440
Nebraska	Yes	Proposed	Yes	No	508
Nevada	Yes	Yes	Yes	Yes	17
New Hampshire	Yes	Yes	Yes	No	164
New Jersey	Yes	No	Yes	No	639
New Mexico	Yes	No	Yes	No	89
New York	Yes	Yes	Yes	Proposed	811
North Carolina	Yes	Yes	Yes	Yes	212
North Dakota	Yes	No	Yes	Yes	213
Ohio	Yes	No	Yes	No	778
Oklahoma	Yes	No	Yes	No	544
Oregon	Yes	Yes	Yes	No	204
Pennsylvania	Yes	No	Yes	No	631
Rhode Island	Yes	No	Yes	No	47

State	Bullying statute	Includes "cyberbullying"	Includes electronic harassment	Criminal sanctions	Number of school districts*
South Carolina	Yes	No	Yes	No	89
South Dakota	Yes	No	Yes	No	176
Tennessee	Yes	Yes	Yes	Yes	136
Texas	Yes	No	Yes	No	1,241
Utah	Yes	Yes	Yes	No	60
Vermont	Yes	No	Yes	No	285
Virginia	Yes	Yes	Yes	No	135
Washington	Yes	Yes	Yes	Yes	301
West Virginia	Yes	No	Yes	No	57
Wisconsin	Yes	No	No	Yes	442
Wyoming	Yes	No	Yes	No	59
FEDERAL	No	Proposed-2009	Proposed	Proposed	–

*National Center for Educational Statistics.
http://nces.ed.gov/surveys/ruraled/TablesHTML/5localedistricts.asp (accessed October 5, 2014).
Note. Only laws that actually include the terms "cyberbullying" or "cyber-bullying" were marked "yes" in this table. This is compared to states that simply refer to electronic harassment or bullying using electronic means. See actual laws for more details. Adapted with permission from Cyberbullying Research Center.[100]

[100]Cyberbullying Research Center. www.cyberbullying.us (accessed on January 2, 2015).