

Sexting and Cyberbullying

This Act prohibits, under certain circumstances, minors from using an electronic communication device, such as a cell phone, to possess, transmit or distribute a sexual image of themselves or of another minor. The Act revises “cyber-bullying” in state law to clarify that the term includes the use of electronic communication to transmit or distribute a sexual image of a minor.

Submitted as:

Nevada

[SB277 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Sexting and
2 Cyberbullying.”

3
4 Section 2. [*Definitions.*] As used in this Act:

5 (A) “Cyber-bullying” means bullying through the use of electronic communication. The term
6 includes the use of electronic communication to transmit or distribute a sexual image of a minor.

7 (B) “Electronic communication device” means any electronic device that is capable of
8 transmitting or distributing a sexual image, including, without limitation, a cellular phone, personal
9 digital assistant, computer, computer network and computer system.

10 (C) “Minor” means a person who is under [18] years of age.

11 (D) “School official” means a principal, vice principal, school counselor or school police
12 officer.

13 (E) “Sexual conduct” has the meaning ascribed to it in [insert citation.]

14 (F) “Sexual image” means any visual depiction, including, without limitation, any
15 photograph or video, of a minor simulating or engaging in sexual conduct or of a minor as the
16 subject of a sexual portrayal.

17 (G) “Sexual portrayal” has the meaning ascribed to it in [insert citation].

18
19 Section 3. [*Prohibiting Using an Electronic Communication Device to Transmit or Distribute*
20 *a Sexual Image of a Minor.*]

21 (A) A minor shall not knowingly and willfully use an electronic communication device to
22 transmit or distribute a sexual image of himself or herself to another person.

23 (B) A minor shall not knowingly and willfully use an electronic communication device to
24 transmit or distribute a sexual image of another minor who is older than, the same age as or not more
25 than [4] years younger than the minor transmitting the sexual image.

26 (C) A minor shall not knowingly and willfully possess a sexual image that was transmitted or
27 distributed as described in subsections (A) and (B) if the minor who is the subject of the sexual
28 image is older than, the same age as or not more than [4] years younger than the minor who
29 possesses the sexual image. It is an affirmative defense to a violation charged pursuant to this
30 subsection if the minor who possesses a sexual image:

31 (1) Did not knowingly purchase, procure, solicit or request the sexual image or take
32 any other action to cause the sexual image to come into his or her possession; and

33 (2) Promptly and in good faith, and without retaining or allowing any person, other
34 than a law enforcement agency or a school official, to access any sexual image:

35 (a) Took reasonable steps to destroy each image; or

36 (b) Reported the matter to a law enforcement agency or a school official and
37 gave the law enforcement agency or school official access to each image.

38 (D) A minor who violates subsection (A):

39 (1) For the first violation:

40 (a) Is a child in need of supervision, as that term is used in [insert citation],
41 and is not a delinquent child; and

42 (b) Is not considered a sex offender or juvenile sex offender and is not subject
43 to registration or community notification as a juvenile sex offender pursuant to [insert citation], or as
44 a sex offender pursuant to [insert citation].

45 (2) For the second or a subsequent violation:

46 (a) Commits a delinquent act, and the court may order the detention of the
47 minor in the same manner as if the minor had committed an act that would have been a misdemeanor
48 if committed by an adult; and

49 (b) Is not considered a sex offender or juvenile sex offender and is not subject
50 to registration or community notification as a juvenile sex offender pursuant to [insert citation], or as
51 a sex offender pursuant to [insert citation].

52 (E) A minor who violates subsection (B):

53 (1) Commits a delinquent act, and the court may order the detention of the minor in
54 the same manner as if the minor had committed an act that would have been a [misdemeanor] if
55 committed by an adult; and

56 (2) Is not considered a sex offender or juvenile sex offender and is not subject to
57 registration or community notification as a juvenile sex offender pursuant to [insert citation], or as a
58 sex offender pursuant to [insert citation.]

59 (F) A minor who violates subsection (C):

60 (1) Is a child in need of supervision, as that term is used in [insert citation], and is not
61 a delinquent child; and

62 (2) Is not considered a sex offender or juvenile sex offender and is not subject to
63 registration or community notification as a juvenile sex offender pursuant to [insert citation] or as a
64 sex offender pursuant to [insert citation].

65 (G) To determine whether a person was a minor, the court or jury may:

66 (1) Inspect the person in question;

67 (2) View the performance;

68 (3) Consider the opinion of a witness to the performance regarding the person's age;

69 (4) Consider the opinion of a medical expert who viewed the performance; or

70 (5) Use any other method authorized by the rules of evidence at common law.

71 (H) Except as otherwise provided in [insert citation], the juvenile court has exclusive original
72 jurisdiction in proceedings concerning any child living or found within the county who is alleged or
73 adjudicated to be in need of supervision because the child uses an electronic communication device
74 to transmit or distribute a sexual image of himself or herself to another person or to possess a sexual
75 image in violation of this Act.

76 (I) A child who is subject to the jurisdiction of the juvenile court pursuant to this section
77 must not be considered a delinquent child.

78
79 Section 4. [*Severability.*] [Insert severability clause.]

80
81 Section 5. [*Repealer.*] [Insert repealer clause.]

82
83

Section 6. [*Effective Date.*] [Insert effective date.]