

SEXTING

Using the internet or your mobile to take, send or even receive a 'nude' or a 'sexy pic' of yourself is known as 'sexting'. In this factsheet, we look at how sexting can get young people into trouble with the law.

What is 'sexting'?

- Taking naked or partly naked photos or videos of yourself (posing in a sexual way) and sharing the photos or videos with others online or through your mobile phones.
- Receiving, forwarding or posting these photos or videos online or through mobile phones.

Is sexting a crime?

Sexting can be a crime, depending on the age of the people sexting and whether the pictures would be considered 'offensive' or 'indecent' by a court.

It is a crime if you make, send out, or have an 'offensive' picture of someone under the age of 18 (including yourself) who is:

- showing their private parts, which includes a person's genital area, anal area or female breasts;
- posing or acting in a sexual way;

- in the presence of another person involved in a sexual activity or pose; or
- involved in a sexual activity. For example:
 - › A 16 year old boy who takes a photo of his private parts and sends it to someone on his phone is committing a crime. It does not matter whether you can see his face or any other identifying feature.
 - › A 15 year old girl who takes a video of herself doing a 'sexy' dance in her bra and underwear and posts it online may be committing a crime. It does not matter whether you can see her private parts.
 - › A 17 year old boy and girl who take photos of themselves having oral sex and email the photos to themselves are committing a crime. It does not matter that they are old enough to have sex.

The law calls these images 'child abuse material', or more commonly, child pornography. Child abuse material can include films, images and videos sent by text, email, in chat rooms or published on blogs. **It can even include pictures that have been photoshopped to make a young person look naked, or cartoons of young people having sex!** The maximum penalty for making, sending or having child abuse material is 15 years in jail.

NSW child pornography laws only apply to images of young people under the age of 16, but the Commonwealth laws are broader.

These laws even apply to images of young people who look like they are under the age of 18.

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Anyone who sends, receives or asks for a naked or sexual image of a person who is or appears to be under the age of 18 is at risk of committing a crime and of being charged.

If someone under 18 takes a 'sexy pic' of themselves then they could be charged with making child pornography – even if they don't send it to anyone else. If that photo stays on their phone they could also be charged with possession of child pornography – even if the photo isn't sent to anyone.

What if the young person gives their permission to take the photo?

The law says that while you are under 18, you aren't allowed to consent or give permission to ask for, take, send or keep sexy pics.

The age of consent of sex in NSW is 16 but the age of consent when it comes to sexting is 18.

As a result, even if the young person in the image says it's okay to be filmed or photographed, it's still a crime.

If there is no permission, it's never okay—no matter how old they are!

It is a crime to take a sexual, nude or partly nude picture or video of anyone— regardless of their age— without their permission.

If you take or share, or threaten to take or share, a nude or sexy pic without someone's consent, the maximum penalty is 3 years in jail.

If you ask someone else to send you a sexy pic/video...

It is a crime to use the internet or a mobile phone to ask anyone who is or appears to be under the age of 18 to send you a sexy pic. Asking

someone to make and send child pornography carries a maximum penalty of up to 15 years in jail.

You could also be charged with asking someone to commit a sexual act.

Example

Ted is 15 and his 15 year old girlfriend sent him a nude. Her dad found the picture on her phone as well as other photos she sent Ted of herself posing in a sexual way. Her dad is now saying he will report Ted to the police. Ted is worried about what might happen, even though the photos were only for him and no one else saw them.

If Ted was reported to the police, he could be charged. It's against the law to have a nude of someone under the age of 18 on their phone. The law says these photos are child pornography.

Ted's girlfriend could also be charged with a crime because she took a nude of herself and sent it to Ted.

What's the Child Protection Register?

The Child Protection Register is a police database for people found guilty of child sexual abuse type crimes. If you are found guilty of taking, sending, keeping or asking for sexy pics of someone under 18 you may end up on the Register.

Once you are on the register you have to tell the police where you live, if you move, if you want to travel, your usernames online and internet provider.

You will also never be able to work or volunteer with kids in the future.

What if someone sends me a pic I didn't ask for?

It is important to protect yourself by deleting any pictures you are unsure

of or uncomfortable about straight away. Don't send it on and don't keep it, otherwise you can get in trouble as well.

You may also want to block the sender of these images.

If you want to report a pic to a trusted adult, make sure you do this as quickly as possible and then delete it.

The police want to talk to me

If you are questioned or arrested by the police, you should give your correct name, age and address. You have the right to remain silent for any other questions.

Police have to let you call the Legal Aid NSW Youth Hotline on 1800 10 18 10. You can speak to a lawyer who will give you advice about whether to speak to the police or not.

Useful links and contacts

Call the **Youth Hotline** on: **1800 10 18 10**.

The Youth Hotline gives legal advice and information to young people under 18. You can call the Hotline from 9am to midnight on weekdays, with a 24-hour service from Friday 9am to Sunday midnight and also on public holidays.

If you want to talk to someone, you can call the **Kids Helpline** on: **1800 55 18 00** or visit their website at <http://www.kidshelp.com.au>.

You can find more information on this topic or other legal topics for young people at: [Youth Law Australia \(yla.org.au\)](http://www.youthlawaustralia.org.au)

This factsheet provides information about the law in NSW. It does not provide legal advice.