

## Sexting

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The News and Observer has had several interesting criminal justice articles over the past few days -- including one about the great potted plant caper, available here: <http://www.newsobserver.com/2932/story/1394388.html> -- but the one that struck me the most was this one, about "sexting": <http://www.newsobserver.com/1595/story/1393616.html>.

Apparently, posting naked pictures of oneself on Myspace is soooooooo 2008. Kids who are really up-to-date simply snap pornographic pictures of themselves using their cell phones' cameras, and then send the pictures out via text message, hence, "sexting." (Former Detroit mayor Kwame Kilpatrick would be proud.) According to the article, sometimes "sexting" is meant to be flirtatious, and sometimes it is meant to harrass, but either way it is getting increasing attention from the police. One boy in Indiana has been charged with distributing obscenity for sending a photograph of his genitals to several female classmates, and another boy has been charged with a child pornography offense based on similar conduct. In Pennsylvania, three girls who sent racy pictures of themselves, and four boys who received them, were charged with child pornography offenses, though most have pled guilty to lesser charges. As you might imagine, there is a heated debate about whether criminal prosecutions are an appropriate response to "sexting," with some arguing that a strong message needs to be sent to children, and others arguing that this type of conduct is best addressed by the kids, their parents, and perhaps their schools.

I am sure that if kids in Indiana and Pennsylvania are doing this, then kids in North Carolina are, too. Does anyone know of any cases like this? If so, what were the charges? There seem to be several possibilities, including dissemination of obscenity, G.S. 14-190.1, and preparation of obscene photographs, G.S. 14-190.5. Perhaps one could even charge first-degree sexual exploitation of a minor, G.S. 14-190.16, a Class C felony that takes place when one "[u]ses, employs, induces . . . or facilitates a minor to engage in . . . sexual activity for . . . the purpose of producing material that contains a visual representation depicting this activity." "Sexual activity" includes the lascivious exhibition of genitals, so at least some "sexting" would be covered *if* the statute allows one to be prosecuted for "using" *oneself* to produce the prohibited material.

We live in a world where just about anything can be distributed to just about anyone instantaneously. This blog is one piece of that world, and "sexting" is another. Presumably, the criminal justice issues surrounding digital distribution will continue to get thornier, and more frequent, as the relentless march of technology continues.