

Sexting in Oregon

I. Oregon Statutes Applicable to 'Sexting':

163.670

Using a child in display of sexually explicit conduct
person
employs, authorizes, permits compels or induces
child
to participate/engage in
sexually explicit conduct
for any to observe OR
record (photo, motion picture,
video or other visual recording)

Note that "sexually explicit conduct" includes "lewd exhibition of sexual or other intimate parts". ORS 163.665(3)(f).

Caselaw defines "lewd exhibition" as: "exhibition with *intent of* stimulating lust or sexual desires of person who views it". *State v. Meyer*, 120 Or. App. 319, 852 P.2d 879 (1993), cited with approval in *State v. Evans*, 178 Or. App. 439, 37 P.3d 227 (2001), *review denied* 334 Or. 76, 45 P.3d 450 .

163.684-687 Encouraging Child Sexual Abuse

First Degree: 163.684 (Class B felony)
knowingly
develops, duplicates, publishes, prints, disseminates, exchanges,
displays, finances, attempts to finance or sells
any photograph, motion picture, videotape
or other visual recording of sexually explicit conduct
involving a child
OR

possesses such matter
with the intent
to develop, duplicate, publish, print, disseminate, exchange,
display or sell it;

....

AND

knows or is aware of
and consciously disregards the fact
that such creation
of the visual recording of sexually explicit conduct
involved child abuse

Second Degree: 163.686 (Class C felony)

knowingly
possesses or controls
any photograph, motion picture, videotape or other visual
recording of
sexually explicit conduct involving a child
for the purpose of
arousing or satisfying the
the sexual desires of the person or another;

....

AND knows or is aware of
and consciously disregards the fact
that the conduct constitutes child abuse

Third Degree: 163.687 (Class A misdemeanor)

knowingly
possesses or controls
any photograph, motion picture, videotape or other visual
recording of

sexually explicit conduct involving a child
for the purpose of
arousing or satisfying the
the sexual desires of the person or another

....

AND

knows or fails to be aware of
substantial and unjustifiable risk
that the creation of the visual recording
of sexually explicit conduct involved child abuse

II. Newport, Oregon Case: A bit more involved: 30-year-old with two 16 year olds; one teen passes out; 30 year old decides it would be fun to watch the drunk girl have some sort of “oral relations” with a dog; the second one films, with her cell phone, the dog/drunk girl encounter and shares it with people. The videographer and the 30 year old are facing charges of sexual abuse and using a child in a display of sexually explicit conduct.

III. Pennsylvania case: *Miller, et al, vs. Skumanick* (Middle District PA, 2009): ACLU/ three girls accused of “sexual abuse of a minor” based on provocative cell phone photos are suing the Wyoming County, PA, District Attorney for violating various civil rights and also seeking a T.R.O., restraining the D.A. from proceeding with a criminal complaint against the girls. The federal court has granted the TRO and a hearing on an injunction is scheduled for June 2, 2009.

IV. Search/Seizure and related issues: such as the issue of a school principal or other person’s culpability in “possessing” the images (NOTE in Oregon, law enforcement personnel enjoy the protection of the exception set out in 163.682(2)).