

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

574S0088

## SENATE BILL NO. 179

Introduced by: Senators Vehle, Cutler, Fryslie, Holien, Maher, Nygaard, Rampelberg, Rave, and Schlekeway and Representatives Hoffman, Carson, Dennert, Feickert, Hickey, Hunt, Lust, Magstadt, Nelson (Stace), Rozum, Russell, Steele, Turbiville, Van Gerpen, Vanneman, White, and Wismer

1 FOR AN ACT ENTITLED, An Act to define and prohibit the offenses of juvenile sexting and  
2 aggravated juvenile sexting and to provide for certain sanctions and remedies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No minor may, by any electronic or computerized device, intentionally and  
5 knowingly, create, produce, distribute, present, transmit, post, exchange, or possess any visual  
6 depiction of a minor involved in any sexually explicit conduct or any lewd exhibition of nudity.

7 Any violation of this section constitutes the offense of juvenile sexting.

8 Section 2. Possession alone of a visual depiction is an affirmative defense to section 1 of this  
9 Act, if a minor has not solicited the visual depiction, if the minor does not subsequently  
10 distribute, present, transmit, post, or exchange the visual depiction, and if the minor  
11 subsequently deletes or destroys the visual depiction, either volitionally or at the request of any  
12 person in authority or in loco parentis.

13 Section 3. No minor may be adjudicated as a child in need of supervision, pursuant to  
14 chapter 26-8B, or as a delinquent child, pursuant to chapter 26-8C, solely because of committing



1 the offense of juvenile sexting. Such minor may, however, at the discretion of the court, be  
2 referred to teen court, remedial educational programs, community service programs, or other  
3 juvenile diversion programs.

4 Section 4. Any violation of section 1 of this Act constitutes the offense of aggravated  
5 juvenile sexting if any of the following aggravating factors apply:

- 6 (1) The offending minor committed the offense for commercial or financial gain;
- 7 (2) The offending minor created or produced the visual depiction without the knowledge  
8 and consent of any depicted minor;
- 9 (3) The visual depiction was subsequently distributed, presented, transmitted, or posted,  
10 by the offending minor, to more than five other persons, whether adult or minor; or
- 11 (4) The offending minor has been previously referred for juvenile sexting pursuant to  
12 section 3 of this Act.

13 Section 5. Any minor, who has committed the offense of aggravated juvenile sexting may,  
14 at the discretion of the court, be adjudicated as a child in need of supervision, pursuant to  
15 chapter 26-8B, or as a delinquent child, pursuant to chapter 26-8C. Such minor may also, at the  
16 discretion of the court, be referred to teen court, remedial education programs, community  
17 service programs, or other juvenile diversion programs.

18 Section 6. No minor may be compelled to register as a sex offender, pursuant to chapter 22-  
19 24B, solely for committing the offense of juvenile sexting or aggravated juvenile sexting.

20 Section 7. It is not a defense to a violation of section 1 of this Act that the minor's visual  
21 depiction is of himself or herself alone.

22 Section 8. For the purposes of this Act, a minor is any child less than eighteen years old, but  
23 at least twelve years old.