CRIMINAL LAW — CHILD PORNOGRAPHY — MARYLAND COURT OF APPEALS HOLDS MINOR CRIMINALLY LIABLE AS DISTRIBUTOR OF CHILD PORNOGRAPHY FOR SEXTING. — *In re: S.K.*, 215 A.3d 300 (Md. 2019).

Today's teenagers have never known life without smartphones.[1] Ninety-five percent of teenagers own or have access to one,[2] and the average age for owning one's first smartphone has dropped to just over ten years old.[3] With the prevalence of smartphones has come the rise of sexting, the electronic transmission of sexually explicit and intimate messages, photos, and videos.[4] One in seven teenagers has sent a sext; one in four has received one.[5] Recently, in *In re: S.K.*,[6] the Maryland Court of Appeals held sixteen-year-old S.K. criminally liable for distributing child pornography and for displaying an obscene item to a minor when she sent a sext to her friends as a joke, even though one of those "friends" was allegedly responsible for circulating the video publicly in an apparent act of revenge.[7] Purportedly relying on the Maryland General Assembly's legislative intent, the court applied statutes usually levied against the multimillion-dollar pornography industry to teenage sexting.[8] To form a complete picture of the legislature's intent, however, the court of appeals should have taken Maryland's revenge porn statute into account. By failing to do so, the court missed an opportunity to harmonize Maryland's criminal code, thereby weakening the revenge porn statute and creating a strange outcome in which minors whose sexual images are nonconsensually disseminated are criminalized, while adults subject to the same conduct are treated as victims.

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[1] Jacqueline Detwiler, *The Generation that Doesn't Remember Life Before Smartphones*, POPULAR MECHANICS (Nov. 19, 2015), https://www.popularmechanics.com/technology/a17931/technology-american-teenager [https://perma.cc/R9U8-K82P]; *see also In re*: S.K., 215 A.3d 300, 306 (Md. 2019).

[2] *S.K.*, 215 A.3d at 307 (citing Monica Anderson & Jingjing Jiang, *Teens' Social Media Habits and Experiences*, PEW RES. CTR. (Nov. 28, 2018), https://www.pewresearch.org/internet/2018/11/28/teens-social-media-habits-and-experiences [https://perma.cc/YLR3-JG6A]).

[3] *Kids & Tech: The Evolution of Today's Digital Natives*, INFLUENCE CENT., http://influence-central.com/kids-tech-the-evolution-of-todays-digital-natives [https://perma.cc/5X9Y-6KWJ].

[4] Though *Black's Law Dictionary* defines "sext" as "sexually explicit images," *Sext*, BLACK'S LAW DICTIONARY (11th ed. 2019), the Maryland Court of Appeals described a sexual video sent via text message as a sext, *S.K.*, 215 A.3d at 306.

[5] *See* Sheri Madigan et al., *Prevalence of Multiple Forms of Sexting Behavior Among Youth: A Systematic Review and Meta-analysis*, 172 JAMA PEDIATRICS 327, 332 (2018). Given that eighty-eight percent of adults sext, Press Release, Am. Psychological Ass'n, *How Common Is Sexting?* (Aug. 8, 2015), https://www.apa.org/news/press/releases/2015/08/common-sexting [https://perma.cc/QM9C-6KFA], it is unsurprising that teenage sexting is on the rise.

[6] 215 A.3d 300.

[7] *Id.* at 303–04, 306.

[8] *See id.* at 314–15, 318–19; *see also id.* at 324 (Hotten, J., dissenting).

Like many teenagers, sixteen-year-old S.K. maintained a text group chat with her two best friends, sixteen-year-old female A.T. and seventeen-year-old male K.S.[9] The three friends often sent videos to the chat in an effort to "one-up" each other, with the assumption that their messages would be kept private.[10] As part of this friendly competition, S.K. sent a one-minute video of herself performing fellatio on a male to her friends.[11] Two months later, the three teenagers' friendship fell apart.[12] In apparent retaliation,[13] K.S. sent the video of S.K. around the school and reported it to the school resource officer, Eugene Caballero.[14]

Officer Caballero met with S.K., who was visibly distraught.[15] Assuming that Officer Caballero intended to help stop the video from spreading, S.K. drafted a written statement, admitting that she was in the video and that she had sent it to A.T. and K.S.[16] The State charged S.K. criminally as a juvenile on three counts: (1) "filming a minor engaging in sexual conduct," (2) "distributing child pornography," and (3) "displaying an obscene item to a minor."[17] Sitting as a juvenile court, the Circuit Court for Charles County dismissed count one, found S.K. to be delinquent with respect to counts two and three, and placed her on probation subject to several conditions, including electronic monitoring and mandated psychiatric evaluation.[18]

Relying on "standard tools of statutory construction,"[19] the Court of Special Appeals of Maryland affirmed count two and vacated count three.[20] In a panel opinion by Judge Fader,[21] the court held that S.K. distributed child pornography in violation of section 11-207.[22] It

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[9] *Id.* at 303 (majority opinion). Maryland defines a minor as an individual below the age of eighteen. MD. CODE ANN., GEN. PROVISIONS § 1-401(a)(1) (LexisNexis 2019).

[10] *S.K.*, 215 A.3d at 303.

[11] *Id.* Both S.K. and the male were nude, and the video was apparently filmed by the male. *Id.* Because Maryland's age of consent for sexual acts is sixteen, S.K. could legally consent to the sex act at issue. *See id.* at 313.

[12] *In re*: S.K., 186 A.3d 181, 184 (Md. Ct. Spec. App. 2018).

[13] A.T. testified that K.S. had "a strong hate" toward S.K. and bragged that she would go to jail if he reported her video. *S.K.*, 215 A.3d at 303.

[14] *S.K.*, 186 A.3d at 184.

[15] *S.K.*, 215 A.3d at 304. As a result of the video's wide dissemination, S.K. "suffered immense distress" and missed school for an entire month. *Id.* at 325 (Hotten, J., dissenting).

[16] *Id.* at 304 (majority opinion). "At no point . . . did Officer Caballero inform S.K. that she was considered a suspect for criminal activity." *Id.*

[17] *Id.* (citing MD. CODE ANN., CRIM. LAW §§ 11-203(b), 207(a) (LexisNexis 2012)).

[18] *Id.* at 304 & n.5. Though S.K. was not required to register as a sex offender, she was subject to similar probation requirements, including but not limited to reporting to a probation officer, random home visits, informing the state whenever she changed addresses or left the state, mandatory drug and substance abuse testing, and anger management training. *Id.* at 304–05.

[19] *S.K.*, 186 A.3d at 185.

[20] *Id.* at 195, 198.

[21] Judge Fader was joined by Judges Thieme and Arthur.

[22] MD. CODE ANN., CRIM. LAW § 11-207(a)(4)(i). In relevant part, section 11-207 states: "A person may not . . . knowingly promote, advertise, solicit, distribute, or possess with the intent to

rejected that the statute contained an exception for cases where the minor subject was also the distributor,[23] and reasoned that because S.K. was under eighteen, she had knowingly disseminated a video in which a minor appeared.[24] However, the court vacated the juvenile court's determination that S.K. displayed an obscene item to a minor, explaining that the digital file S.K. sent was not an "item" as defined by section 11-203.[25] S.K. appealed.

On appeal, the Maryland Court of Appeals affirmed count two and reversed count three.[26] Writing for the court, Judge Getty[27] found S.K. guilty of both distributing child pornography and displaying it to a minor.[28] The court explained that section 11-207 was unambiguous, affirmed that "a person" and "minor" could be the same person, and reiterated that section 11-207 does not contain an exception for "minors who distribute their own matter."[29] In other words, a minor could be "her own pornographer."[30] In the court's view, the statute's legislative history, which established the Maryland General Assembly's "overwhelming interest" in "eradicat[ing] the production and distribution of child pornography," supported its interpretation.[31] Every time the General Assembly had amended its child pornography statutes, it expanded the scope of liability.[32] The court thus reasoned that "the statute in its plain meaning is all encompassing": "*[A]ny form* of child pornography" must be eradicated.[33] Finally, the court recognized that there are meaningful differences between sexting and child pornography: the subject of a sext is harmed when the image is viewed by individuals other than the direct

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distribute any matter, visual representation, or performance . . . that depicts a minor *engaged as a subject* in sadomasochistic abuse or sexual conduct." *Id.* (emphasis added).

[23] *S.K.*, 186 A.3d at 188. The court also rejected that an individual "engaged as a subject" had to be nonconsenting, *id.* at 187, and S.K.'s First Amendment defense, *id.* at 190.

[24] *See id.* at 185.

[25] *Id.* at 195. In relevant part, section 11-203 states: "A person may not willfully or knowingly display or exhibit to a minor *an item* . . . [that] is principally made up of an obscene description or depiction of illicit sex." § 11-203(b)(1)(i) (emphasis added). An "item" includes a "videodisc, videotape, video game, film, or computer disc." § 11-203(a)(4)(iii). Though the State argued that the digital file at issue was a "motion picture" and thus a "film," the court limited the definition of "film" to a specific type of "physical medium." *S.K.*, 186 A.3d at 196–97.

[26] *S.K.*, 215 A.3d at 306.

[27] Judge Getty was joined by Chief Judge Barbera and Judges Greene, McDonald, Watts, and Harrell.

[28] *S.K.*, 215 A.3d at 306.

[29] *Id.* at 313–14. The Maryland Court of Appeals also rejected S.K.'s argument that a "subject" had to be nonconsenting. *Id.* at 313.

[30] *Id.* at 303.

[31] *Id.* at 315.

[32] *Id.* at 314–15.

[33] *Id.* at 315 (emphasis added).

receiver, while the victim of child pornography is exploited when the image is taken, for example.[34] However, it determined that this difference should be codified by the legislature, not the court.[35] Under contemporaneous law, S.K.'s conduct violated section 11-207.[36]

Similarly relying on section 11-203's plain meaning and legislative history, the court determined that S.K.'s video was both "obscene" and an "item."[37] It was obscene because in showing S.K.'s nude upper body, an erect penis, and the act of fellatio, the video depicted "illicit sex."[38] And it was an "item" — specifically, a "film" — because the digital video file in question was a movie.[39] The court thus reasoned that in distributing a video of illicit sex, S.K. had violated section 11-203.[40]

Judge Hotten dissented.[41] To her, sections 11-207 and 11-203 were ambiguous, and S.K. should not have been criminally liable under either.[42] According to traditional grammatical conventions, she argued, a "person" and "minor" could not be the same individual under section 11-207.[43] Further, she explained that child pornography statutes were enacted specifically to target a "highly organized multimillion dollar industry that operates on a national scale," not consensual sexual activity.[44] They were meant to shield children from "sexual exploitation and abuse" by others.[45] Thus, it would be "counterintuitive" to use these laws to prosecute the very individuals they were meant to protect[46] — "the most vulnerable participant[s]," who may have been compelled to sext due to "personal pressures or personal struggles."[47] As to count three, relying on the statutory interpretation tools of *noscitur a sociis*

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[34] *Id.* at 315–16, 316 n.23 (citing JoAnne Sweeny, *Sexting and Freedom of Expression: A Comparative Approach*, 102 KY. L.J. 103, 120 (2014)).

[35] *See id.* at 316.

[36] *Id.* at 315.

[37] *Id.* at 318, 320.

[38] *Id.* at 318.

[39] *Id.* Like the court below, the Maryland Court of Appeals recognized that "film" could have two definitions: medium or movie. *Id.* But it explained that "to effectuate the intent of the General Assembly," it had to read section 11-203 broadly and understand film to mean movie. *Id.* at 320.

[40] *Id.* at 320.

[41] *Id.* (Hotten, J., dissenting).

[42] *Id.* at 321, 327.

[43] *See id.* at 321–22.

[44] *Id.* at 324 (alteration in original) (quoting New York v. Ferber, 458 U.S. 747, 749 n. 1 (1982)).

[45] *Id.* at 322.

[46] *Id.* at 325 ("For more than 80 years, the United States Supreme Court . . . ha[s] held that when the legislature enacts a statute designed for the protection of one class[,] . . . it shows the legislature's intent to protect members of that class from criminal liability." (quoting State v. Gray, 402 P.3d 254, 262 (Wash. 2017) (McCloud, J., dissenting))); *cf.* Gebardi v. United States, 287 U.S. 112, 123 (1932) ("It is not to be supposed . . . that the acquiescence of a woman under the age of consent would make her a co-conspirator with the man to commit statutory rape upon herself.").

[47] *S.K.*, 215 A.3d at 325 (Hotten, J., dissenting) (quoting *Gray*, 402 P.3d at 262 (McCloud, J., dissenting)). Judge Hotten also emphasized that juvenile proceedings should be rehabilitative. *Id.* at 324–25.

and the presumption against superfluity, Judge Hotten agreed with the lower court's understanding of "film" as a medium and reasoned that S.K. therefore did not display an obscene "item" to a minor.[48]

In re: S.K. was the first time Maryland's highest court confronted the question of how the state's criminal laws should apply to the nonconsensual distribution of a minor's sext.[49] To determine whether Maryland's child pornography laws covered S.K.'s conduct, the court of appeals relied heavily on the General Assembly's intent. However, to fully comprehend the legislature's intent, the court should have taken Maryland's revenge porn statute — section 3-809 of its criminal code[50] — into account. Not doing so undermines the revenge porn statute when both the subject and the nonconsensual distributor of a sext are minors and creates a confusing legal regime where minor subjects of revenge porn are treated as child pornographers, while adult subjects are recognized as victims.

When interpreting statutes, the Maryland Court of Appeals looks not only at a statute's plain meaning but also at "extrinsic sources of legislative intent."[51] Such sources include "the context of a statute, the overall statutory scheme, and archival legislative history of relevant enactments."[52] The court has recognized that looking at other relevant statutes, even those enacted at different times by different legislatures, is an appropriate way to harmonize Maryland's code and to better understand the General Assembly's intent.[53] Statutes addressing the same subject should not be read "to render the other, or any portion of it, meaningless, surplusage, superfluous or nugatory."[54]

As *In re: S.K.* represents the prototypical revenge porn case, Maryland's revenge porn statute is a "relevant enactment" that could have applied here. Maryland's revenge porn and child pornography statutes both bear, in part, on similar legislative goals. Revenge porn involves the distribution of individuals' sexual images without their consent.[55]

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[48] *Id.* at 327–28.

[49] *Id.* at 306 (majority opinion).

[50] MD. CODE ANN., CRIM. LAW § 3-809 (LexisNexis 2019).

[51] *S.K.*, 215 A.3d at 311 (quoting Brown v. State, 165 A.3d 398, 401 (Md. 2017)).

[52] *Id.* (quoting *Brown*, 165 A.3d at 401).

[53] *See, e.g.*, Pete v. State, 862 A.2d 419, 429 (Md. 2004) (interpreting section 6-221 of Maryland's criminal code with "full awareness" of section 11-603 to harmonize statutes governing a court's power to order restitution (quoting State v. Bricker, 581 A.2d 9, 12 (Md. 1990))). The U.S. Supreme Court has also embraced this approach. *See, e.g.*, Bennett v. Spear, 520 U.S. 154, 164–65 (1997); *see also* Hillel Y. Levin, *Contemporary Meaning and Expectations in Statutory Interpretation*, 2012 U. ILL. L. REV. 1103, 1126–27. For criticism, see William W. Buzbee, *The One-Congress Fiction in Statutory Interpretation*, 149 U. PA. L. REV. 171 (2000).

[54] GEICO v. Ins. Comm'r, 630 A.2d 713, 717 (Md. 1993).

[55] Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345, 346 (2014). The term "revenge porn" is often used interchangeably with "nonconsensual pornography." *Id.* Unlike child pornography, revenge porn is not limited to minor subjects. *See, e.g.*, § 3-809.

Maryland is one of forty-six states that has enacted legislation to combat revenge porn.[56] Specifically, Maryland makes it a misdemeanor — punishable by up to two years in prison and a $5000 fine — to "knowingly distribute a visual representation of another identifiable person" engaged in "sexual activity" with the intent to harm or without the subject's consent.[57] The legislature enacted child pornography and revenge porn statutes with the recognition that both actions exploited their subjects, causing them reputational, psychological, and emotional harms.[58] Because such harms are further exacerbated when the images are circulated,[59] child pornography and revenge porn statutes specifically target the nonconsensual distribution of sexual images.[60] Thus, though the court interpreted S.K.'s sext to meet the statutory definition of child pornography, it also could have understood its subsequent dissemination by K.S. as revenge porn. *In re: S.K.* represents the exact situation that section 3-809 was enacted to address: S.K. sent a video of herself performing a sex act to K.S., who, in turn, allegedly sent the video around school without her permission when they got into a fight.[61]

Though the majority believed that section 11-207, when interpreted by itself, unambiguously applied to sexting,[62] it is less clear when interpreted alongside section 3-809. Section 3-809 is the General Assembly's commitment to protect subjects of revenge porn by holding those who nonconsensually disseminated their images liable.[63] In other words, the General Assembly would have seen S.K. as the individual harmed, not the wrongdoer.[64] But the court's application of section 11-207 inverted this dynamic. It treated S.K. as both the victim and the perpetrator of child pornography and as both the harmed and the wrongdoer, which general

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[56] *See* Ruobing Su, Tom Porter & Michelle Mark, *Here's a Map Showing Which U.S. States Have Passed Laws Against Revenge Porn — And Those Where It's Still Legal*, BUS. INSIDER (Oct. 30, 2019, 9:40 AM), https://www.businessinsider.com/map-states-where-revenge-porn-banned-2019-10 [https://perma.cc/T9W2-ZSPC].

[57] § 3-809(c)–(d).

[58] S.B. 769, 2018 Leg., 438th Sess. (Md. 2018); *see also* New York v. Ferber, 458 U.S. 747, 758 n.9 (1982) (summarizing the harms to children).

[59] *See* Erica Souza, *"For His Eyes Only": Why Federal Legislation Is Needed to Combat Revenge Porn*, 23 UCLA WOMEN'S L.J. 101, 107 (2016); Stacey Steinberg, *Changing Faces: Morphed Child Pornography Images and the First Amendment*, 68 EMORY L.J. 909, 931–32 (2019); *see also Ferber*, 458 U.S. at 759.

[60] While Maryland's revenge porn statute bans only the nonconsensual distribution of images, § 3-809(c), its child pornography statute also criminalizes the solicitation, production, and possession of them, MD. CODE ANN., CRIM. LAW § 11-207(a)(4)(i) (LexisNexis 2012).

[61] *S.K.*, 215 A.3d at 303–04.

[62] *Id.* at 318. *But cf. id.* at 321 (Hotten, J., dissenting).

[63] § 3-809.

[64] *Cf.* Derek E. Bambauer, *Exposed*, 98 MINN. L. REV. 2025, 2038–44 (2014); Citron & Franks, *supra* note 55, at 350–54.

rules of statutory interpretation caution against.[65] It understood section 11-207 to criminalize both the private sharing[66] and the public distribution of such images, blurring the idea of who is at fault when sexually explicit photos are nonconsensually distributed. In doing so, it implicitly took an individual's consent to share images with a friend or partner as consent to distribute these images widely, the very assumption that revenge porn statutes push back against.[67] Section 3-809 thus adds ambiguity to section 11-207 by suggesting that S.K. is not the type of person that the General Assembly intended to punish. In such a circumstance, to preempt this inconsistency and synchronize the two provisions of Maryland's criminal code, the court should have taken section 3-809 into account when considering the General Assembly's legislative intent.

The court, by ignoring section 3-809, further disincentivized minors from reporting revenge porn.[68] *In re: S.K.* criminalizes sending any sext with a minor subject to another minor. Thus, minor subjects can never hold responsible those who obtain their sexual images with consent, but then distribute them without consent, without also exposing themselves to criminal liability. As a result, once a minor has sexted, the recipient will forever have a state-sanctioned chip to dangle over the sender's head in the form of proof of criminal liability. Few cases have been successfully adjudicated under Maryland's revenge porn statute,[69] and for minors, *In re: S.K.* ensures that it stays this way.

When taken together, sections 3-809 and 11-207 are now conflicting. *In re: S.K.* creates a reality where minors can be penalized under child pornography statutes — punishable on the first offense by up to ten years in prison and a $25,000 fine[70] — while adults involved in exactly

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[65] *See* State v. Gray, 402 P.3d 254, 263 (Wash. 2017) (McCloud, J., dissenting) (cataloguing cases). Statutory rape when both parties are minors may serve as a useful analogy. *See, e.g.*, Anna High, *Good, Bad and Wrongful Juvenile Sex: Rethinking the Use of Statutory Rape Laws Against the Protected Class*, 69 ARK. L. REV. 787, 810–15 (2016).

[66] Of course, law enforcement can prosecute only a sext it knows about, which is usually limited to a message that has been made intentionally public without the consent of the message's subject. *See, e.g.*, Miller v. Mitchell, 598 F.3d 139, 143 (3d Cir. 2010). *But see, e.g.*, People *ex rel.* T.B., 445 P.3d 1049, 1052 (Colo. 2019) (prosecuting possession after police discovered sexts from minors in the course of an unrelated arrest).

[67] *See* Citron & Franks, *supra* note 55, at 348.

[68] As with many gender-based crimes, nonconsensual pornography is already underreported. ESTIMATING THE INCIDENCE OF RAPE AND SEXUAL ASSAULT 36–38 (Candace Kruttschnitt et al. eds., 2014); Citron & Franks, *supra* note 55, at 347. For an example of how revenge porn dynamics play out in gay and bisexual communities, see Ari Ezra Waldman, *Law, Privacy, and Online Dating: "Revenge Porn" in Gay Online Communities*, 44 LAW & SOC. INQUIRY 987, 994–96 (2019).

[69] A Westlaw search for convictions under Maryland's revenge porn statute yielded no results.

[70] MD. CODE ANN., CRIM. LAW § 11-207(b) (LexisNexis 2012). In some jurisdictions, minors convicted under child pornography statutes may have to register as sex offenders. For a description of some of the life-changing consequences of juvenile sex-offender registration, see Sarah Stillman,

the same conduct are treated as victims who deserve to be vindicated.[71] It is unclear what minors do differently that makes them more deserving of blame. Sexting is increasingly seen as a normal part of sexual development and exploration, a natural consequence of the emergence of smartphones and the proliferation of technology.[72] When minors choose to take sexual photos of themselves without coercion, there is not, and should not be, a "victim." But minor subjects of revenge porn should arguably be given more protection.[73] Wooed by "affection and discretion" or threatened with "persistent requests, anger displays, harassment and threats,"[74] minors are particularly susceptible to the pressure to take sexual images.[75] If the court had taken section 3-809 into account, it could have interpreted section 11-207 in a way that did not punish minor victims of revenge porn twice and did not create inconsistent consequences for minors and adults engaged in the same conduct.

In refusing to recognize that the question of whether a minor can be her own pornographer is not one that the child pornography statute can resolve on its own, the court stigmatized a popular form of consensual teenage sexual exploration. It created a legal reality where if S.K. were a mere two years older, she would have been protected for the same act she was ultimately held criminally liable for — an incoherent result.[76] Though the majority suggested a discomfort with this outcome, it did nothing to remedy its discomfort, choosing to defer and wait for the General Assembly to act instead.[77] Consequently, *In re: S.K.* leaves subjects of revenge porn to the whims of the police[78] and potentially brands one in seven teenagers a child pornographer.[79]

The List, NEW YORKER (Mar. 7, 2016), https://www.newyorker.com/magazine/2016/03/14/when-kids-are-accused-of-sex-crimes [https://perma.cc/9WTR-CUQN].

[71] Additionally, adults may be able to halt the dissemination of intimate photos they took of themselves by raising a copyright claim. For insight on the debate over whether they should be able to, compare Bambauer, *supra* note 64, with Rebecca Tushnet, Response, *How Many Wrongs Make a Copyright?*, 98 MINN. L. REV. 2346 (2014).

[72] *See* Sweeny, *supra* note 34, at 107–08.

[73] *See* Julia Halloran McLaughlin, *Crime and Punishment: Teen Sexting in Context*, 115 PENN ST. L. REV. 135, 143 (2010) (noting the irony of branding children as "felons and pornographers" when they "recreate or model the sexualized conduct" perhaps inadvertently encouraged by adults).

[74] Lisa Damour, *Teenagers, Stop Asking for Nude Photos*, N.Y. TIMES (Jan. 2, 2018), https://nyti.ms/2DLyuyo [https://perma.cc/4EJ6-4557] (quoting Sara E. Thomas, *"What Should I Do?": Young Women's Reported Dilemmas with Nude Photographs*, 15 SEXUALITY RES. & SOC. POL'Y 192, 193 (2018)).

[75] *See* Thomas, *supra* note 74, at 199.

[76] *Cf.* Blake v. State, 909 A.2d 1020, 1026 (Md. 2006) ("We avoid a construction of the statute that is unreasonable, illogical, or inconsistent with common sense.").

[77] *S.K.*, 215 A.3d at 315–16.

[78] When faced with consensual sexting between minors, the police have made arrests eighteen percent of the time. Janis Wolak, David Finkelhor & Kimberly J. Mitchell, *How Often Are Teens Arrested for Sexting? Data from a National Sample of Police Cases*, 129 PEDIATRICS 4, 7 (2012).

[79] *See* Madigan et al., *supra* note 5, at 332.