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# Sexting and the Law

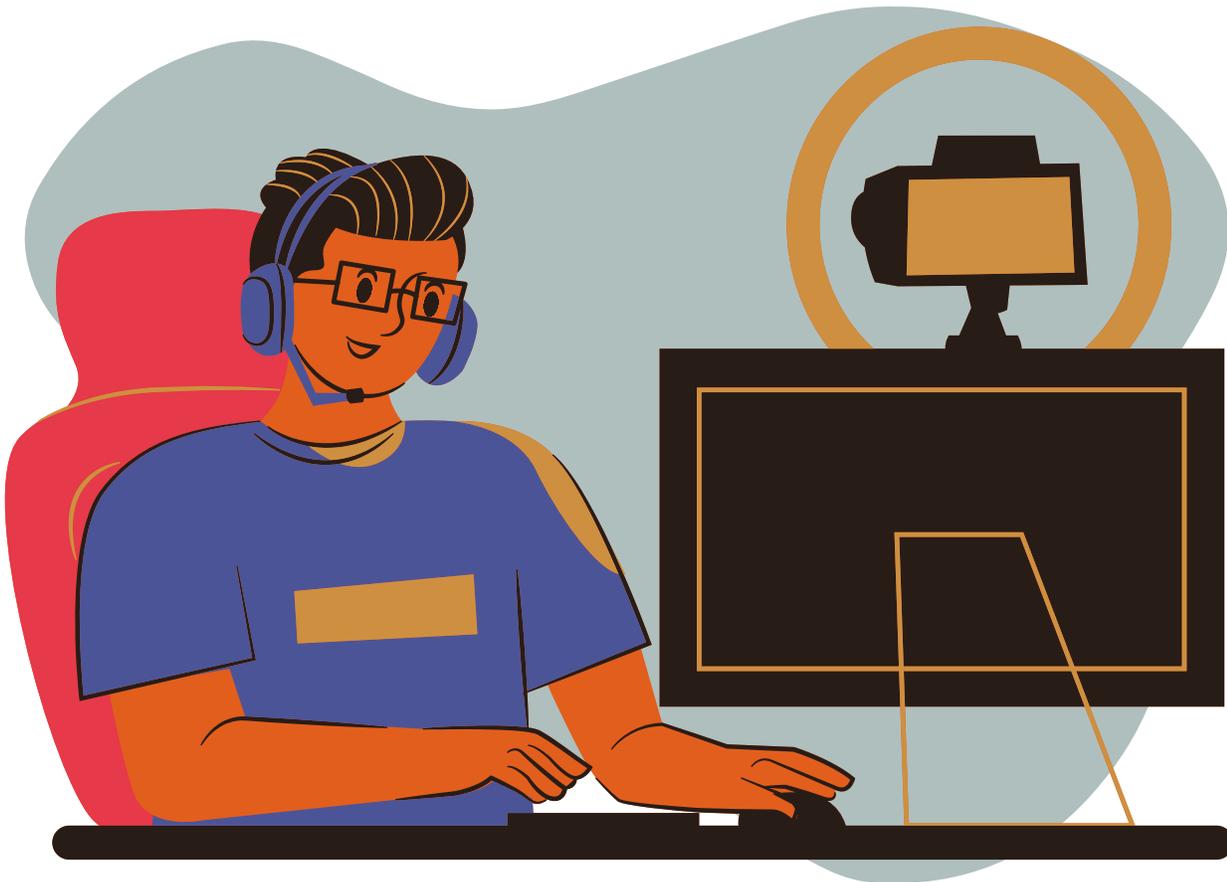


**Community Legal  
Information**  
Empowerment Through Knowledge

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# Introduction

This publication offers information about sexting and the law. Accurate information can help you make informed decisions when you are online.

This publication is not an argument for or against sexting.

This publication was made possible through the generous support of Public Safety Canada.



Public Safety  
Canada

Sécurité publique  
Canada

## About Us

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Community Legal Information provides understandable and useful information about the law and the justice system in Prince Edward Island.

### Contact

#### Telephone

902-892-0853  
1-800-240-9798

#### Social Media

Community Legal Information  
@legalinfopei

#### E-mail Address

info@legalinfopei.ca

#### Website

www.legalinfopei.ca



**The information in this publication is not legal advice, and it does not replace guidance from a lawyer.**

# What is Cyberbullying?

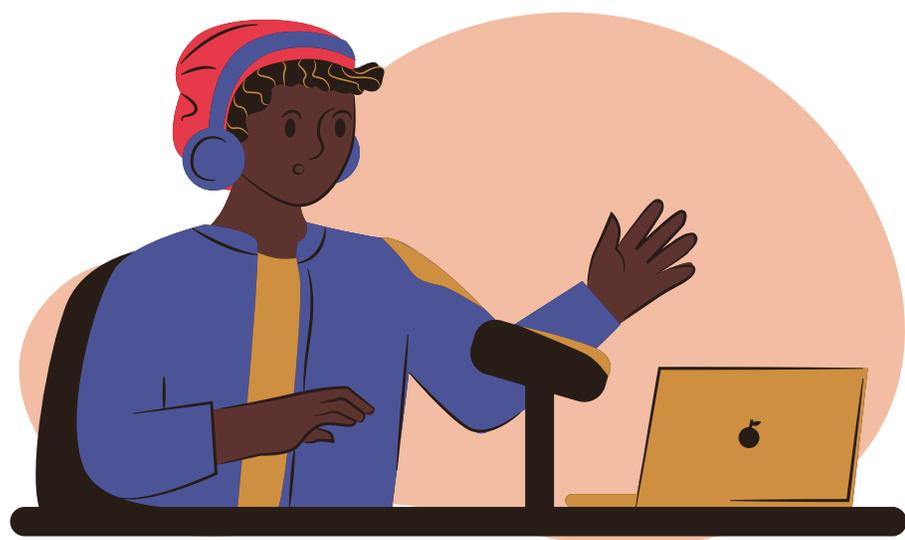
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**Cyberviolence** is online behaviours that hurt someone's physical, psychological, or emotional well-being.

**Cyberbullying** is using technology to harm, shame, intimidate, mock or threaten someone.

Cyberbullying can include:

- Threatening physical or psychological harm.
- Spreading rumours.
- Insulting someone on a social media post.
- Posting on social media to hurt someone.
- Creating a fake account to hurt someone.
- Pretending to be someone else online.



# When Cyberbullying is a Crime

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Cyberbullying can sometimes be a crime. Here are examples of criminal cyberbullying:

## **Criminal harassment**

Criminal harassment is saying or doing something that makes a person fear for their safety, or for the safety of others.

**For example:** Someone sends you mean texts and messages multiple times a day even though you told them to stop. You are afraid for your safety.

## **Defamatory libel**

Defamatory libel is publishing, without lawful reason, something likely to hurt someone's reputation by exposing them to hatred or ridicule.

**For example:** Making a public post with negative gossip about someone.

## **Encouraging a person to commit suicide**

**For example:** Sending someone an email telling them to end their life.

Cyberbullying is not always a crime. It is not always a crime for someone to say something mean or petty about you. Someone could hurt you without it being a crime.

# What is Sexting?

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**Sexting** is sharing sexually explicit online messages, photos, and videos.

A sext could be:

- Text or audio describing in-person sexual activity.
- A photo of yourself or someone else without clothing on the chest, buttocks, or genitals.
- A video of sexual touching.



Sexts can be sent by text, email, or social media.

Sexually explicit photos and videos are also called **intimate images**.

Sexting can be a way to develop intimacy in a relationship. In some situations, sexting can be a crime.

When it comes to sexting and the law, it is important to know if there is consent or not.

# Consent and Sexting

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**Consent** is voluntary and informed agreement to participate in a sexual act. Voluntary means you make the decision for yourself. Informed means you know you are giving consent and understand the consequences and risks of your actions.

Consent is important both for in-person and virtual sexual activity. In Canada, there is no implied consent. Consent must be verbal and expressive.

Consent may be withdrawn. Withdraw consent by expressing that you want to stop a sexual act.

Consenting to one sexual act does not mean that you consent to another. Consenting to a sexual act now does not mean you consent to the same sexual act later.

Sexual violence includes:

- Sexual touching without consent.
- Creating or sharing a sexual image of someone without consent.



**The law has different rules about consent for people under the age of 18. See page 9 for more information.**

# When Sexting is a Crime

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Sexting can sometimes be a crime. Here are examples of criminal sexting:

## **Publication of an intimate image without consent**

Publication of an intimate image without consent is showing, sending, or posting an intimate image of a person without their consent or knowledge.

**For example:**

- Someone takes a photo of you showering in the locker room and posts it on a fake social media account without your consent.
- An ex-partner distributes intimate photos of you knowing that you expected the photos to be private.
- You share an intimate image of someone without knowing or caring if they consent.

When an intimate image is shared without consent by an ex-partner in order to harm them, it is often called “revenge porn.”

## **Child pornography**

Child Pornography is creating, possessing, accessing, or distributing sexual images or written material representing persons under the age of 18.

**For example:** Someone of any age has explicit images of a 15-year-old person on their phone.

# Consent, Sexting and Youth

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For youth, consent is different for sexual activity in-person and online.

## **What is consent for in-person sexual activity?**

In Canada, the legal age of consent for most in-person sexual activity is 16 years. People under the age of 12 can't consent at all.

People who are 12, 13, 14 or 15 years old can consent to in-person sexual activity in some situations.

- A 14 or 15-year-old can consent to sexual activity with someone less than 5 years older.
  - A 14-year-old can consent to sexual activity with someone under the age of 19.
  - A 15-year-old can consent to sexual activity with someone under the age of 20.
- A 12 or 13-year-old person can consent to sexual activity with someone less than 2 years older.
  - A 12-year-old can consent to sexual activity with someone under the age of 14.
  - A 13-year-old can consent to sexual activity with someone under the age of 15.

A person under the age of 18 can't consent to sexual activity with a person in a position of trust or authority over them. A person in a position of trust or authority may be a coach, teacher, guardian/parent or employer.



**Even if you are under the age of 18, it is illegal to share intimate images of yourself or another person under the age of 18.**

## **What about online sexual activity?**

If you are under the age of 18, you can't consent to your images being published. This means that you could consent to in-person sexual activity but not to virtual sexual activity.

The Criminal Code says anyone who publishes or shares an intimate image of someone under 18 years old may be charged with possession or distribution of child pornography. Even if you are under the age of 18, it is illegal to share intimate images of yourself or another person under the age of 18. Police may get involved.

No one under the age of 12 can be convicted of a crime. Anyone 12 years of age and older can be arrested, charged with a crime, and must go to court. The Youth Criminal Justice Act:

- Applies to youth aged 12 to 17 who are charged with a crime.
- Holds youth accountable for their actions.



# What if I've caused harm?

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If you caused harm, or if you are accused of a crime, you can get support.

## **Legal Aid**

- 902-368-6043 (Charlottetown)
- 902-888-8219 (Summerside)

This program provides free legal advice and representation to youth and adults who live on a low income. Call Legal Aid to see if you are eligible or not.

## **Sexual Deviance Assessment/Treatment Program**

- 902-569-7684

This program is for adults and adolescents who are involved in the criminal justice system because they committed a sexual offence. People are referred by correctional facilities, Probation Services, Youth Justice Services, and other organizations. A person may also self-refer to the program. People charged with a sexual offence are assessed after the court process is done.

## **Mi'kmaq Confederacy of PEI Indigenous Justice Program**

- 902-367-3681

This program works to create an environment that allows Indigenous people to self-administer justice by building a traditional justice system based on holistic community values.

# Safer Sexting

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You can take steps to make sure that sexting is safer for you and others.

Here are some safer sexting tips:

- Before you send a sext, make sure the person wants to receive it. Do not assume the person wants to see it. Even if you have a sexual relationship, that person may not consent to receiving a sext from you.
- If a person says, “No,” accept their answer.
- Crop your face or other identifying parts of your body or background out of intimate photos.

Remember:

- If somebody asks you to share something you are not comfortable with, you have the right to say no.
- You also have the right to change your mind. If you no longer want someone to have an image, ask them to delete it.



**If somebody asks you to share something you are not comfortable with, you have the right to say no.**

**You also have the right to change your mind. If you no longer want someone to have an image, ask them to delete it.**

# Addressing Online Harm

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You can decide how to respond when you have been harmed online. Here are some options:

- 1. If it is safe, ask the person who is harming you to stop.** If someone is sharing a photo or video of you without your consent, tell them directly that you do not consent. If someone posted something mean, tell them that you want them to delete the post.
- 2. Report cyberbullying to your internet, phone or social media provider.** Your internet or phone provider may be able to block the person who is harming you.
- 3. Ask the administrator of the website that was used to share bullying messages or revenge porn to take it down.**
- 4. Report cyberbullying to a school official, caregiver, employer, sports team official, or other person of authority.**
- 5. Report cyberbullying to the police.** The police may get involved if the cyberbullying is criminal.

## **6. Take legal action.** Under the new Intimate Images Protection Act, the Court can:

- Declare the distribution unlawful.
- Order the person to make every reasonable effort to remove the image.
- Order the payment of damages.
- Order internet service providers, social media companies, or search engines to make every reasonable effort to remove or de-index the image.
- Make any other just order.

## **7. Access supportive programs and services.**

- **Kids Help Phone** is a no judgement, private helpline. 1-800-668-6868. Or text, 686868.
- **Cybertip.ca** reports online sexual exploitation of people under the age of 18. 1-866-658-9022.
- **NeedHelpNow.ca** can help you to stop the spread of an intimate image.
- **Cybersafecarepei.ca** is a public education campaign for parents, caregivers, and educators to learn how to help keep kids safe online.

# How Bystanders Can Help

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A **bystander** is someone who witnesses another person being bullied in-person or online. You may be a bystander if someone tells you that they are being bullied, or if you see that someone is being bullied.

Bystanders can help people who are being bullied or cyberbullied. Reach out privately to the person being bullied. Offer them your support or concern. Ask them:

- If it is okay for you to reach out privately to the bully and tell them to stop (only do this if it is safe).
- If it is okay for you to report the bullying to a trusted authority figure, such as a parent, teacher, employer, or school administrator.

Remember that your response to the incident should be to support the person who was harmed. The person who was harmed may not want you to reach out privately to the bully. The person who was harmed may not want you to report the bullying, either.



# Glossary

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**Child pornography:** Creating, possessing, accessing, or distributing sexual images or written material depicting persons under the age of 18.

**Consent:** Voluntary and informed agreement to participate in a sexual activity.

**Criminal harassment:** When something a person says or does makes someone fear for their safety, or for the safety of others.

**Cyberviolence:** Online behaviours that hurt a person's physical, psychological, or emotional well-being.

**Cyberbullying:** Using technology to harm, shame, intimidate, mock or threaten another person. Cyberbullying is meant to cause harm to someone.

**Defamatory libel:** Anything published without lawful reason that is likely to hurt someone's reputation by exposing them to hatred or ridicule.

**Intimate images:** Sexually explicit photos and videos

**Publication of an intimate image without consent:** When someone shows, sends, or posts an intimate image of a person without their consent or knowledge.

**Sexting:** Sharing sexually explicit online messages, photos, and videos.

# Support Services

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**Mi'kmaq Confederacy of PEI  
Indigenous Justice Program**  
902-367-3681

**Community Legal Information  
and Lawyer Referral Service**  
902-892-0853  
1-800-240-9798 (toll free)  
info@legalinfopei.ca

**Kids Help Phone**  
1-800-668-6868  
686868 (text)

**Legal Aid**  
902-368-6043 (Charlottetown)  
902-888-8219 (Summerside)

**Sexual Deviance Assessment/Treatment Program**  
902-569-7684

**Victim Services Queens and Kings County**  
902-368-4582  
victimservicescharlottetown@gov.pe.ca

**Victim Services Prince County**  
902-888-8218  
victimservicessummerside@gov.pe.ca





Community Legal Information is a registered charity that receives funding from Justice Canada, the Law Foundation of PEI, the Law Society of PEI, PEI Department of Justice and Public Safety, and other sources. Community Legal Information provides understandable and useful information about the law and the justice system in Prince Edward Island.

For more information on other legal topics, visit our website at [www.legalinfopei.ca](http://www.legalinfopei.ca), email us at [info@legalinfopei.ca](mailto:info@legalinfopei.ca), or call us at **902-892-0853** or **1-800-240-9798**. You can also find us on social media.

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Charitable registration number: 118870757RR0001

ISBN 978-1-989140-00-0

Published September 2021.

This publication was developed in 2021 with the support of Public Safety Canada. The views expressed do not necessarily represent the perspective of Public Safety Canada.



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