

Article - Courts and Judicial Proceedings

§3-8A-35.

(a) (1) In this section, “sexting” means:

(i) The sending of a photograph, image, or video that depicts sexual conduct, as defined in § 11-101 of the Criminal Law Article, or sexual excitement, as defined in § 11-101 of the Criminal Law Article, of oneself to another or of oneself and the recipient by mobile telephone, computer, or other electronic or digital device; or

(ii) The receipt and retention of a photograph, image, or video described in subparagraph (i) of this paragraph.

(2) “Sexting” does not include conduct described in paragraph (1) of this subsection if:

(i) The sender is more than 4 years older than the recipient;

(ii) The recipient is more than 4 years older than the sender;

(iii) The child did not consent to committing the conduct constituting the violation; or

(iv) The child was coerced, threatened, or intimidated into committing the conduct constituting the violation.

(b) It is a mitigating factor in a proceeding against a child under this subtitle for a violation of § 11-203, § 11-207, or § 11-208 of the Criminal Law Article that the violation involved or arose out of sexting.

(c) In making a disposition under § 3-8A-19 of this subtitle on a finding that the child committed a violation of § 11-203, § 11-207, or § 11-208 of the Criminal Law Article, the court:

(1) Shall take into consideration whether the mitigating factor described in subsection (b) of this section applies to the case;

(2) May not make a disposition of community detention under § 3-8A-19(d)(1)(i) of this subtitle or a disposition under § 3-8A-19(d)(1)(ii) of this subtitle if the violation involved or arose out of sexting, unless the court finds and explains on the record, verbally and in writing, that extraordinary circumstances exist to warrant the disposition; and

(3) May order a child whose violation involved or arose out of sexting to participate in an age-appropriate educational program on the risks and consequences of possessing, sending, displaying, and publishing photographs, images, and videos described in subsection (a) of this section.

(d) A child who is found by the court to have violated a provision of Title 11, Subtitle 2 of the Criminal Law Article is not subject to sex offender registration under Title 11, Subtitle 7 of the Criminal Procedure Article.