

3 **ORDINANCE: Adopt Section 9.40 of the General Code of Winnebago County: Prohibit Sexting**
4 **Among Minors**

7 **TO THE WINNEBAGO COUNTY BOARD OF SUPERVISORS:**

8 **WHEREAS**, it is a crime under Wisconsin Statutes to electronically transmit nude photographs from one
9 minor to another for predominantly prurient, shameful, or morbid interests which would be considered offensive to
10 prevailing standards in the adult community as a whole, and such images are without serious literary, artistic,
11 political, or scientific value to minors; and

12 **WHEREAS**, many minors are involved in transmitting such images among themselves without realizing that
13 by doing so they are in violation of criminal statutes; and

14 **WHEREAS**, the Winnebago County Board of Supervisors desires to prohibit such activity among minors
15 without causing minors to acquire a criminal record that might inhibit future academic success or employment.

16 **NOW, THEREFORE, BE IT ORDAINED** by the Winnebago County Board of Supervisors as follows:
17 That Section 9.40 of the General Code of Winnebago County, is hereby adopted and shall read as follows:

18 **9.40 PROHIBIT SEXTING BY MINORS IN WINNEBAGO COUNTY**

19 (1) **AUTHORITY:** This Section of the General Code for Winnebago County is adopted under the
20 authority granted by §§ 59.03 and 59.54(6), Wis Stats.

21 (2) **DEFINITIONS:** Words or terms as used in this Section shall have the following meanings:

22 (a) **Sexting:** To send or receive sexually explicit digitally-transmitted images, videos, text
23 messages, or emails, usually be cellular telephone.

24 (b) **Minor:** Any person under the age of 18 years.

25 (c) **Nudity:** The showing of the human male or female genitals, pubic area, or buttocks with less
26 than a fully opaque covering; showing of the female breast with less than a fully opaque covering of any part, or
27 portion thereof, below the top of the nipple; or the depiction of covered male genitals in a discernably turgid state. A
28 mother breastfeeding her baby does not under any circumstance constitute "nudity," irrespective of whether or not
29 the nipple is covered during or incidental to feeding for the purpose of this Ordinance.

30 (d) **Harmful to Minors:** Any reproduction, imitation, characterization, or representation, whatever
31 kind or form, depicting nudity, sexual conduct, or sexual excitement when it: 1) predominantly appeals to prurient,
32 shameful, or morbid interest; 2) is patently offensive to prevailing standards in the adult community as a whole with
33 respect to what is suitable material or conduct for minors; and 3) when taken as a whole without serious literary,
34 artistic, political, or scientific value for minors.

35 (3) **COMMISSION OF THE OFFENSE OF SEXTING:** A minor commits the offense of sexting by
36 knowingly:

37 (a) using any device capable of electronically transmitting data to another minor any image or
38 recording of nudity that is harmful to minors;

39 (b) possessing an image or recording those images transmitted or distributed by another minor that
40 depicts nudity that is harmful to minors;
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42 (c) soliciting the transmission or distribution of any image or recording that would itself be prohibited
43 by this Ordinance.

44 (4) EXCEPTIONS: A minor does not violate this Ordinance if any of the following apply:

45 (a) The minor did not solicit the photograph or video.

46 (b) The minor took reasonable steps to report the photograph or video to school or law
47 enforcement officials.

48 (c) The minor did not retransmit the image or recording to a third party other than to a law
49 enforcement or school official.

50 (5) APPLICATION OF ORDINANCE TO FIRST OFFENSES ONLY: No person shall be cited under the
51 provisions of this Section who has been previously cited under this Ordinance or has been previously charged under
52 a State Statute prohibiting the same or similar conduct.

53 (6) PENALTY: Any person who shall violate this Section shall pay forfeiture of \$200 plus costs.

54 (7) EFFECTIVE DATE: This Ordinance shall become effective as of the date following the date of its
55 publication.

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57 Respectfully submitted by:

58 **JUDICIARY AND PUBLIC SAFETY COMMITTEE**

59 Committee Vote: **5-0**

60 Vote Required for Passage: **Majority of Those Present**

61
62 Approved by the Winnebago County Executive this ____ day of _____, 2018.

63
64
65 _____
66 Mark L Harris
67 Winnebago County Executive