

# Having sex? misdemeanor, no registration; asking for sex? felony, registration for life

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By [Todd Feathers](#) . . . When he was 18 years old, Bailey Serpa propositioned a 15-year-old he knew for sex.

Had the two teenagers actually engaged in consensual sex, Serpa's crime would have been a Class A misdemeanor with no requirement that he register as a sex offender. They didn't have sex, but because Serpa, of Nottingham, used a computer or the internet to make the request, he was charged and ultimately found guilty of a felony that will ensure he is on the registry for life.

On May 24, the state Supreme Court upheld Serpa's sentence, rejecting his lawyer's argument that the sentence was an unconstitutional and "grossly disproportional result" because it imposed a harsher punishment for the attempted crime than the actual crime.

The ruling is the latest chapter in a series of cases that

have highlighted New Hampshire's computer-facilitated sex law, which critics say is outdated and wielded too freely in cases involving teenagers.

"The laws were enacted to prevent young people from becoming close with old people because there was concern they were using their age to become close, groom them, and convince them they were in love," said Wendy Walsh, a professor and researcher at the University of New Hampshire's Crimes against Children Research Center. "You need to have something on the books, but these cases are so complex and are so individual and have so much variation that ideally there would be more context behind some of the laws."

Youth internet surveys show that most online solicitors of sex with minors are not the shadowy, serial predators of many people's imaginations. The vast majority of the solicitations were made by other youth and many were casual, Walsh and her colleagues found in a 2014 study.

When New Hampshire legislators sat down in 2008 to fortify the state's internet sex crimes bill, which included the provision making computer-facilitated solicitation a felony, their focus was on child pornography and not situations like the Serpa case.

More than a dozen people – including then-Gov. John Lynch, then-Attorney General Kelly Ayotte, prosecutors and a representative from the New Hampshire chapter of the American Civil Liberties Union – testified about legislation. None of them raised the issue of how it would be applied in cases of teenagers propositioning each other for sex using computers or smartphones, according to transcripts.

Lawmakers "probably weren't thinking about the fact that kids communicate by text messaging and other things," said Joseph Foster, who was the Senate majority leader at the time and lead sponsor of the bill. "I'm not sure that was in the

Legislature's mind at the time.”

The way teenagers communicate has certainly changed since 2008.

Popular messaging and picture-sharing applications like WhatsApp and Snapchat didn't even exist at the time. And in a review of previous studies, published in the Journal of the American Medical Association's pediatrics issue earlier this year, researchers reported that 27 percent of teens had received “sexts” – sexual images or messages – and 15 percent of teens had sent them. Both of those rates had risen significantly since the first study, a 2009 Pew survey, found that 4 percent of teens had sent or received a sext.

[Read the remainder of the article at the Union Leader](#)