

LAW

The Perils of Sexting

Take Steps Now to Prevent Your Teen from Crossing a Major Legal Line

By KEVIN V. MALTBY, Esq.

Each generation of parents raising children faces challenges that prior generations did not. Today, one of the biggest challenges for parents revolves around use of the Internet and mobile phone.

Recent statistics published by Pew Internet claim that 54% of teens text daily, and half of them send 100 or more texts per day. It is apparent that texting is their primary means of communicating with their friends. However, a cell phone in the hands of a teenager represents a prime example of something with both potentially favorable and dangerous consequences.

Imagine the following scenario. A mother receives a call from the local police department. The police officer indicates he has confiscated her 10th-grade son's mobile phone because he received a report that the teen engaged in sexting. Bewildered, the mother inquires as to what the officer means and hears him explain that sexting is the act of sending or receiving sexually explicit messages or photographs between mobile phones.

The officer further explains that the son's girlfriend had sent him nude photographs, and her son had saved them on his phone. When the two got into a fight, her son threatened to send the nude photographs to everyone via text message. Scared, the girlfriend told her parents, who called the police to stop the distribution of the material. The police officer advises the mother that the son will be charged with the crime of possession of child pornography. Shocked, the mother hangs up the phone and waits for her son to come home from school, while wondering how her son could be charged with such a crime.

Several weeks later, the son receives a summons to appear in court for possession of child pornography for receiving and saving the photographs. Furthermore, the police department also charged his girlfriend with "distribution of child pornography" for sending the photos.

This scenario is very alarming and becoming increasingly common. Police departments struggle with how to handle the conduct, because Massachusetts does not have laws that deal specifically with sexting. The Commonwealth is one of many states across



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the county that have been struggling to develop legislation that keeps up with technology and the manner in which it is used.

Under Massachusetts law, possession of child pornography is defined as the unlawful purchase or possession of "a negative, slide, book, magazine, film, videotape, photograph, or other similar visual reproduction, or depiction by computer, of any child — under the age of 18 — where such child is depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child; with knowledge of the nature or content thereof."

The punishment for violating this law includes possible imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than \$1,000 nor more than \$10,000, or by both. There are additional penalties for individuals who have previously been convicted of the violating the measure. Massachusetts law also expressly prohibits the distribution or dissemination of the above described material and carries with it similar penalties.

As alarming as the penalties are under Massachusetts law, the collateral consequences associated with a conviction for the possession and distribution of child pornography can be also be very serious. For example, any individual convicted of the offense

will be required to engage the sex offender registry board and possibly be classified as a sex offender. In addition, there could also be employment issues associated with the charge including disqualification from certain types of jobs.

Other consequences are not necessarily law-related but may include personal shame and embarrassment. Once a photograph is posted to a social networking site or sexted to another person, who then forwards it to another person, and so on, the photo is essentially gone. It can never be retrieved and destroyed. Everything that is done in the digital age leaves a footprint or trail that can be saved and discovered. Teenagers with a cell phone may not be thinking about their future when a photograph is taken and sent to others, but they should.

Here are four points that parents should consider when they are deciding whether to give their young teenager a mobile phone:

The mobile phone plan: Most mobile-phone carriers have plans in place that may restrict the use of the phone. Parents should check with the carrier to learn more about parental options and the right plan for their teen. It may be possible to remove certain features such as texting or photo sharing, which may prevent a sexting scenario. Parents should also inquire about location-based services that may allow them to track the location of the phone and, therefore, their child.

The mobile phone: The right phone may also help prevent misuse. For example, some phones do not even have a camera or internet access. Parents should remain involved with the selection of the phone as well as the plan.

Education: Parents should take affirmative steps to educate their children about the perils of the mobile phone. This includes stressing that, if something has happened, they should let them know immediately. Depending on the nature of what has occurred, parents can take proactive steps and work with the mobile-phone providers and local law enforcement.

Create a contract: Possessing a mobile

phone is a privilege, not a right. Parents should consider creating a contract for the use of the phone with their teenager as a way to curb any potential misuse.

Cellular phones provide instant access to the Internet, e-mail, photographs, videos, and social-networking sites, and as such have become the primary source of communication for teens — no longer a luxury but rather a necessity. So, as a parent, it seems wise to consider the possibility that you are killing a fly with a hammer if you deny your child this form of communication.

The more prudent choice seems to be education. Many parents and teens fail to realize

the potential long-term damage that sexting can create. This may not be the easiest conversation to have, but it is indeed a very important one. ■

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