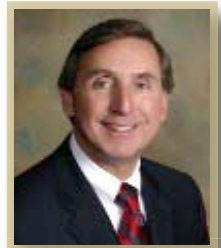


## Highlights

# *Sexting and Charging Juveniles— Balancing the Law and Bad Choices*

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**KATELYN WAS 15 YEARS OLD** and in love with her 16-year-old boyfriend, Dillon. So, when he asked her to take a naked picture of herself with her cell phone and send it to him, she did. She thought this would be something just the two of them could share and that doing so would show him how much she loved him. But when Dillon broke up with her three weeks later, she started noticing kids at her school giggling behind her back. She soon realized why this was happening when her two best friends came to her and showed her their cell phones, which contained the picture she had sent to Dillon. Her friends told her that the picture had been forwarded to them from their boyfriends and that almost everyone in school had seen the photo or now had it on their phone. For months after that, Katelyn was teased and ridiculed by the other students. She was called printable names like slut, whore, and easy, as well as other names not as printable. Katelyn was devastated. Her grades dropped and she no longer wanted to go to school or socialize with other kids like she used to. Her parents were baffled.

Fourteen-year-old Heather was dating John, her 16-year-old boyfriend. She asked him to take a picture, with her cell phone, of her performing oral sex on him. Heather sent a copy of the picture only to John and he was discrete enough not to share that picture with anyone else, but he did not delete it from his cell phone. John took the cell phone to school and was caught text messaging during class in violation of school policy. The cell phone was confiscated and school personnel believed it to be necessary to look through the phone and found the picture. School authorities decided to report the matter to the police and to contact John's parents. His parents wanted the police to also investigate whether charges should be filed against Heather as the picture was taken at her request with her cell phone.

Such fact patterns have become very common scenarios over the last year, and the practice seems to have no geographic boundaries. Reports from police and educators are so common that this activity has been given its own name—sexting. Sexting is the term given to the act of juveniles sharing sexually explicit or nude cell phone photos of themselves or others. Criminal charges have been filed against teens for sexting in Pennsylvania, Ohio, Michigan, Alabama, Wisconsin, Florida, New York, New Jersey, Connecticut, Texas, Utah and other states.

This relatively new practice among our teen population is a widespread problem—one recent study reports that one in five teens say they have sent or posted online nude photos of themselves.<sup>1</sup> Twenty-two percent of teen girls report doing this, of which half were aged 13-16. In the same report, 31 percent report having received a nude or semi-nude photo from someone else. Approximately two-thirds of these photos are to or from a boyfriend or girlfriend. Shockingly, 15 percent of teens say they have sent nude or semi-nude photos of themselves to someone they only knew online.

The problem that many prosecutors are encountering with these types of cases is that the juveniles engaging in this conduct are completely unaware that what they are doing is illegal, and in many states they could potentially face registration requirements as a sexual offender for committing these acts. In all of the states listed above, prosecutors have charged those sending the photos and those receiving the photos with child pornography offenses.

Under Ohio law, which makes no distinction concerning the age of the “offender” or circumstance, sending such erotic photos of underage minors is typically a felony crime: Pandering Obscenity Involving a Minor, Pandering Sexually Oriented Matter Involving a Minor or Illegal Use of a Minor

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in Nudity-Oriented Material or Performance. A conviction under one of these felony statutes, which range from a fifth degree felony up to a second degree felony, depending on the circumstances, could also include designation as a Tier I or Tier II sex offender requiring registration for 10 or 20 years.

A unique circumstance that arises in these types of cases is the involvement of the "victim." While in many situations, the person depicted in a state of nudity, the "victim," only intended for the picture to be viewed by a boyfriend or girlfriend, the fact that the picture was transmitted by him or her makes it a crime for which they can also be charged. The victim's charge would be no different than and carry the same penalties as the charge for the person or persons who then forwarded the picture on to their friends.

Recognizing the unique characteristics and possible long term affects that could result from the prosecution of cases similar to those outlined at the beginning of this article, I felt it was important to organize and implement a diversion program for teens accused of sexting.

The act of sexting appears to be, in at least some cases, a result of our teens not understanding appropriate sexual boundaries and not thinking of the consequences of their actions. That is why on March 4, 2009, the Montgomery County Juvenile Court and I, announced the implementation of the Prosecutor's Juvenile Diversion Program. Under this program, juveniles in Montgomery County, Ohio, who are charged with sexting will be screened by a diversion officer of the Montgomery County Prosecutor's Office to determine if diversion from traditional juvenile court proceedings is appropriate. Some of the factors that will be considered when making that determination are:

- whether the juvenile has any prior sexual offenses,
- whether any type of force or illicit substances were used to secure the photos,
- whether the juvenile has been involved in this particular diversionary program previously, or
- if there is strong opposition by the victim or law enforcement to the juvenile being involved in a diversionary program. If any of the previous factors are present, it is likely that the juvenile will not be eligible for diversion and will be referred for official action. The purpose behind developing this diversion program is to address first time offenders who engage in this behavior, but are unlikely to re-offend after being educated on the legal ramifications and the possible long term affects on the victim.

The core of the Montgomery County Prosecutor's Juvenile Diversion Program focuses on education but also contains a supervision piece and a community service requirement. If accepted into the diversion program, the juvenile will be under supervision for a minimum of six months, agree to

relinquish their cell phone for a period of time, perform community service and attend at least four hours of appropriate and specific education. The educational component will focus on the legal ramifications, the effects on the victim, establishing age appropriate sexual boundaries, and responsible use of the Internet, cell phones and other communication devices. If the program is successfully completed, the charges pending against the juvenile will not be filed or will be dismissed. If it is determined that the juvenile does not meet the criteria to be considered for the diversion program or the juvenile refuses to participate and cooperate, then charges will be filed with the juvenile court.

Certainly, we all want to keep our teens safe from sexual predators and we will not tolerate child pornography being disseminated in our community. However, in some cases, charging a juvenile with a felony and labeling them a sexual offender when their actions were clearly a result of poor judgment and ignorance of the law seems harsh for first-time offenders. It is my belief that this type of activity must be addressed and stopped, and in many cases is best addressed by education and parental involvement.

<sup>1</sup> Sex and Tech, Results From A Survey Of Teens And Young Adults, The National Campaign to Prevent Teen And Unplanned Pregnancy, October 2008.

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