

The Legal Ramifications of Sexting

As the advances in technology continue to outpace those in the law, state legislators, prosecutors, defense attorneys and judges are left to sort out the best way to apply existing law to issues raised by new technology.

This is certainly true in cases of sexting, where sexually explicit photographs or videos are sent via text message to others' cell phones. This practice has been prevalent in schools across the country as teenagers send photos of themselves and forward sexual images of others to friends and strangers alike. Sexting may involve teenagers sending racy photos to their boyfriends or girlfriends. At times, however, images may be taken without the person's knowledge or forwarded to others without their consent, leading to humiliation and shame once the material is viewed by friends, classmates and family.

The problem with sending this type of material over cell phones is that an image or video can be difficult to contain after it has been sent. Once one person receives it, he or she is free to forward the material to others. The images can be download to home computers and sent over email or posted on Internet sites, like MySpace and Facebook. Even if a teenager intended to send a sexually suggestive picture only to her boyfriend, it could quickly be disseminated to half of the school or thousands more, with a click of a mouse.

To make matters worse, once these images get out, there may be no way to destroy them. Even simply erasing the photos from a cell phone or computer does not guarantee the images are gone forever.

Sexting & Massachusetts Pornography Laws

Currently, there are no laws in Massachusetts explicitly punishing sexting. If the sexually explicit material that is sent via text message is of a child under 18 years old, the behavior may be prosecuted under the state's child pornography laws. Below is a brief summary of these laws:

MGLA 272 28 - Matter harmful to minors, dissemination; possession

- Cannot send materials considered "harmful" to minors or have these materials in possession with intent to send them to minors
- Up to 5 years in prison or 2.5 years in jail
- \$1000-\$10,000 fine for first offense

MGLA 272 §29A - Posing or exhibiting a child in a state of nudity or sexual conduct

- Cannot knowingly hire, coerce, solicit, entice, procure, use, cause, encourage or permit someone under 18 years old to be photographed naked, partially naked or in a sex act
- 10-20 years in prison
- \$10,000-50,000 fine

MGLA 272 §29B - Dissemination of visual material of child in state of nudity or sexual conduct

- Cannot knowingly share, send, provide or otherwise disseminate photos, videos or other images that show a person under 18 years old naked, partially naked or engaged in other sexual conduct
- Cannot knowingly possess these materials with the intent to share them with others
- 10-20 years in prison
- \$10,000-50,000 fine

MGLA 272 §29C - Knowing purchase or possession of visual material of child depicted in sexual conduct

- Cannot knowingly purchase or possess photo, video or other reproduction (including images stored on a computer) of someone under 18 years old naked, partially naked, in a sexual context or engaged in any type of sexual conduct or "lewd exhibition"
- Up to 5 years in prison or 2.5 years in jail
- \$1000-10,000 fine for first offense

Under state law, conviction for any one of these crimes is a felony. There are no misdemeanor charges for child pornography. Additionally, child pornography crimes are sex crimes, so anyone convicted of a child pornography charge also must **register as a sex offender** for 20 years following the conviction.

Other potential consequences include:

- Punishment by school, including suspension and expulsion
- Denial of college admission
- Ineligibility for student financial aid
- Restrictions on employment
- Restrictions on where you live

Consent by the minor is not a valid defense to these charges. This means that even though the teenager knowingly took the picture of him or herself, sent the picture or agreed to allow the photo to be taken does not protect the person who took and/or received the photo from criminal prosecution. Massachusetts law specifically states that minors are considered unable to consent to having sexually explicit photographs taken of themselves.

The state's pornography laws were not written to punish the type of behavior teenagers engage in when sexting. While local prosecutors can decide whether or not to bring child pornography charges for sexting, they may feel pressured by the victims' parents to bring criminal charges. Parents also have the option of seeking remedies from the school board, but some may feel this is not sufficient punishment.

Until the law catches up with technology and an appropriate legal punishment is defined under state law for sexting, it is necessary that teenagers fully understand and

appreciate the severity of the consequences for participating in sexting. A conviction for a child pornography crime and the stigma society attaches to such a conviction can negatively impact a teenager's life well into adulthood.