

Legal SCENE

By Ron Hocevar
Scott County Attorney



Sexting, sextortion, cyber bullying can result in criminal charges, emotional disheaval

Sexting. The title alone evokes snickers and funny looks. If you've never heard of sexting, it is the sharing of sexually explicit messages and/or nude photos of yourself or others through cell phones or online. Recent studies have found that among school-aged children, sexting is common – 62 percent of teens and young adults have received a sexually explicit image, and 41 percent have sent one. So even if you don't know about sexting, chances are your child does. And while some teens may understand that it is wrong to send or possess these sexually explicit photos, others do not. And they certainly do not understand or think about the legal and life-long consequences. Sexting may seem like harmless fun, but especially when it involves a photo someone under 18, it's *not*.

In Minnesota, as in every other state, it is unlawful to manufacture, possess, or disseminate a pornographic work involving a minor. A minor is anyone under the age of 18. Nudity is not illegal -- it is protected expression under the First Amendment. But sexting usually involves photographs that show nudity with sexual stimulation or gratification (as defined by various statutes). And that constitutes a "pornographic work" that is illegal. Whether the person in the photograph consents or not is irrelevant. If convicted of this offense, it is not only a felony conviction, but it also requires the person to register as a predatory sex offender.

In addition to legal consequences, there are very practical concerns as well. Cyberbullying and "sextortion" are significant problems. Sextortion involves the recipient of an explicit photo demanding money in exchange for not distributing the photo further. Cyberbullying is bullying over the internet. Both have led to multiple suicides. In one case, a young girl committed suicide after she sent a nude photo to her boyfriend, who then forwarded it to hundreds of teenagers in her school. Other students then continued to forward the image, harassing the girl further.¹ With today's technology, an image can make it around the world in seconds, and is available to anyone with access to the internet. So even photos that do not meet the statutory definition of pornography can have catastrophic consequences.

When a sexting case comes to my office, there are many considerations we must take into account when deciding whether to charge a juvenile with manufacturing, possession, or dissemination of child pornography. When enacting this statute, did the legislature intend to make a 16-year-old boy a sex offender for receiving a sexual picture of his 16-year-old girlfriend that he asked for and she readily agreed to provide? Is that boy the person the legislature had in mind to charge and become a registered sex offender? Should the minor girlfriend be charged with a felony for manufacturing and/or disseminating her own sexually explicit photo? Should the boyfriend be charged with dissemination of child pornography if he forwards the photograph to his friends on the football team? Should the football team be charged with possessing child pornography for a picture they never asked for? What if they save the photo to their phone and to their cloud accounts, or forward it on to their friends? Should these juveniles be held accountable under the same laws as adult child predators? By the black letter of the law, all the individuals in this paragraph could be charged. But should they be?

As prosecutors with the discretion to decide who to charge and what to charge, those are just a few of the questions we have to consider. We try to balance the societal implications of our charging decision with the conduct; we try to avoid charges that are technically proper, but lead to convictions that do not seem to be justified by the severe penalties and consequences – both direct and collateral. Cases of child pornography amongst teens, "sexting" cases, are all different, and each has to be analyzed based on its own unique facts. How old is the victim? Did the victim take the picture? Was the victim aware a picture or recording was being made? Did the victim distribute it? Why was it made? Who all was involved in taking and distributing it? Were drugs or alcohol involved? In the final analysis, child pornography laws are meant to protect children. Whatever charging decision we make as prosecutors has to have that as our ultimate goal.

Because of the extremely serious consequences, our children must be taught the legal and collateral consequences of engaging in sexting with anyone under 18:

- **Everyone involved can end up with a felony conviction** (which, in addition to prison and fines, can also affect future employment, voting rights, the ability to own a firearm, rent an apartment, receive student loans, and so on).
- If convicted, **they are subject to predatory registration requirements** for five to 10 years.

Once an image is sent, they cannot get it back and they no longer have control over who sees that image (and digital images are on the internet forever).

If an image is forwarded on by them, **they are just as responsible** for that image as the original producer and sender.

Teenagers do not necessarily enjoy talking about sexting with adults. But as parents, educators, and law enforcement officials, we have a responsibility to educate our youth about sexting. We need to offer programs that help teens realize the consequences of using – and abusing -- technology. Our programs need to be tailored to both the teen and the parent, as both parties need to be made aware of the repercussions of sexting and Internet abuse. We need to help teens stay safe. Together, we can prepare and equip our teens to make good decisions about what they post and share online.²

(Endnotes)

1. Mike Celizic, "Her Teen Committed Suicide Over Sexting"
2. Sexting Teens – A Picture with Consequences. Raychelle Cassada Lohmann MS, LPC Psychology Today

Library News

Library card provides access to arts, culture

By Jake Grussing, Library Director

The most powerful card in your wallet just keeps getting better. Your Scott County Library card now gives you access to free discounted tickets to select museums and theatres throughout the metro area. Bell Museum, Minnesota Orchestra, the Saint Paul Chamber Orchestra, the Stages Theatre Company are just a few of the many partners participating in the smART pass program.

Just a few weeks ago, my family and I tested the program for ourselves. It is a remarkably easy process. I visited the smARTpass website (www.smartpass.melsa.org), typed in my library card number, and within a few minutes reserved a pair of free admission tickets for the Minnesota Children's Museum. Because there are four people in our house, my wife entered her library card number and reserved another pair of tickets. When we arrived at the museum, staff scanned the tickets that had

been emailed to us and we were ready to explore. Our library cards saved us \$40 in admissions fees (which we promptly spent on burgers and malts at Mickey's Diner).

Participating partners generously provide free admissions for smARTpass. Instead of being reimbursed for their participation, partners expect smARTpass to expand accessibility to those who might not be able to afford tickets or who simply want to try something out. Best of all, because smARTpass is web-based, you can access the site whenever it works for you -- your access isn't limited by library open hours.

As always, the library wants every part of your experience with our services and staff to be exceptional. smARTpass is no different. I hope you take the time to try out this new service and let me know how it worked. I look forward to hearing from you.

Drug Court

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programs across the state and country. In addition, it is designed to help addicts become productive, responsible members of their families and community.

"I'm an old school prosecutor," said Scott County Attorney Ron Hocevar, a member of the steering committee. "If a person commits the crime, throw them in jail. But we see that isn't working with the non-violent offenders with mental health and addiction issues that this program targets."

Too often, these types of offenders end up right back in the system.

"We're a Band-Aid on a societal problem," said Mark Elliott, Prior Lake Chief of Police and a steering committee member. "The underlying factors (addictions and mental health) aren't being addressed in the traditional system. If we can get them into a program that addresses those issues, it should lead to far fewer police interactions in the future."

Drug Court is an intensive 14 to 24 month sentencing alternative focusing on treatment of those who commit substance-related crime. The team has been working on its development since January. They've submitted state and federal grant applications and attended national drug court training, completed a participant handbook and program brochure, agreed on target populations and eligibility requirements, and visited the Dakota and Ramsey Adult Drug Court programs. They've also received approval for the new Problem Solving Court in Minnesota through the State Judicial Council. In addition, the Scott County Board has made a three-year commitment of \$900,000 from the County's fund balance for the pilot program.

"We believe we've designed a program that will be very effective because it will address multiple issues faced by this group of offenders," said Tim Cleveland, Scott County Director of Community Corrections and a lead member of the Drug Court Steering Committee.

Nationally, 35 to 40 percent of offenders on probation or parole have a substance use disorder, abuse, and/or dependency. Of those with a diagnosed substance use disorder, 21 percent have a co-occurring serious mental health disorder. Many of these offenders also have problems retaining jobs, housing, and relationships.

Drug Court will provide a specialized court docket to provide the support, structure, and accountability addicts in the criminal justice system need to find

lasting recovery. Participants will have frequent court hearings, probation contacts, drug testing, curfews, long-term chemical dependency treatment, cognitive skills programming, screening and services for mental health, recovery support group involvement, and referrals for assistance with housing, education, job placement or training and other services as deemed necessary. The program also implements the use of swift and certain sanctions and incentives to promote behavior change. If participants repeatedly fail to comply, they can be dismissed from the program and put into the traditional criminal justice system to face charges.

With current resources, Drug Court is expected to serve about 25 participants a year. The County Board will review the outcomes of the program each year to determine if it will be extended beyond the three year pilot. The Steering Committee hopes to show comparisons between criminals who chose to participate in the program and those who did not in areas such as recidivism rates, whether they continued their education when it was needed, use of public services, job retention, and payment of child support.

Sandy Mader, a chemical dependency case manager for Scott County, said the steering committee is also seeking other partners to help make the program a success, such as businesses in the community who will provide jobs, educational facilities that will help participants continue with their education and training, landlords with rental housing available, and a support network in the community. "We need another major support system around them," she said.

It was clear to everyone involved that something needed to be done. In 2015, there were 399 controlled substance criminal filings in Scott County. This represents an 85 percent increase from the 216 controlled substance criminal filings in 2011.

"Change is hard, but I believe all of us on the steering committee believe that what we are doing now is not working," said Judge Wilton. He added that the new Drug Court will add to the case-loads of many of the people involved. "But never underestimate the value of this on even one person's life. It will affect them, their kids, their kids' kids, and numerous people around them."

**Identifying characteristics have been fictionalized*