

## ***The Legal Pulse – Issue 3 – April 2025***

### **Issues Regarding Sexting Among Minors**

#### **And Mandatory Reporting of Abuse**

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#### **Question**

What should schools, church groups, youth organizations, and other organizations serving teenagers be aware of regarding the sending and receiving of sexual or explicit digital images by, between, or among minors on their smart phones, computers, or other devices (more commonly known as “sexting”)?

#### **General Overview**

What is “sexting”? Sexting is generally understood as creating, sending, receiving or showing sexually oriented content, including images and words, via cell phone, email, social media, or other online communications. Whenever sexting involves a minor (someone under the age of 18), it is a crime. This is the case even when sexting takes place between two consenting minors. For all intents and purposes, the images are considered child pornography.

The State of Ohio holds that a crime has been committed when a minor accepts, sends, forwards, receives and keeps, posts, or shows someone else a “sext”. Ohio Revised Code, Sections 2907.322 and R.C. 2907.323 are key statutes in Ohio under which this behavior is prosecuted. Section 2907.322 prohibits the pandering of sexually oriented material involving a minor and Section 2907.323 prohibits the illegal depiction of a minor in nudity-oriented material. A minor can be charged as a sex offender for sending a “sext” of himself or herself to another minor. The minor may even be forced to register as a sex offender on the Ohio Sex Offender registry. The minor may become ineligible for college financial aid and may face criminal action.

According to Revised Code 2907.324, no minor, by use of a telecommunications device, shall recklessly create, receive, exchange, send, or possess a photograph or video, or other material that shows a minor in a state of nudity. It is no defense to a charge under this section that the minor creates, receives, exchanges, sends, or possesses a photograph, video, or other material that shows himself or herself in a state of nudity. It is no defense that both the sender and receiver consent to sending and/or receiving the material.

## **Does Sexting Constitute “Abuse” That Needs to be Reported**

Generally, the answer is yes. An “abused child” means any child who is “the victim of disseminating, obtaining, or displaying “materials” or “performances” that are “harmful to juveniles” as defined in Chapter 2907 of the Ohio Revised Code. A court need not find that any person be convicted of the offense in order to find that the child is an abused child.

With regard to reporting child abuse or neglect, Revised Code 2151.421 states that no person who is acting in an official or professional capacity and knows, or has reasonable cause to suspect, based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years or age, (or a person under twenty-one years of age with a developmental disability) has suffered or faces a threat of suffering any physical or mental wound, injury disability, or condition of nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division.<sup>1</sup>

## **Who is Required to Report**

A person required to report evidence of abuse or neglect is known as a mandatory reporter. A mandatory reporter includes an individual “acting in an official or professional capacity,” who has knowledge or a reasonable suspicion of abuse. Mandatory reporters include but are not limited to; nurses, employees of a day care center, employees of a residential camp/child day camp/private wilderness camp, teachers, school employees, foster care givers, persons acting as an assessor, host families, and persons other than clerics (i.e. pastor, priest, deacon, etc. rendering spiritual treatment through prayer), attorneys or physicians.<sup>2</sup>

Although Ohio statutes do not specifically define “acting in an official or professional capacity,” thereby leaving the phrase to be interpreted in its plain meaning, Courts have held that a mandatory reporter who is **not** acting in his or her professional capacity when learning of allegations of abuse, but rather learned of the allegations from personal friends or family as a private citizen, is not legally obligated to report the allegations. However, he or she **may** report the abuse as a permissive reporter. Whether a mandatory or permissive reporter, a report of child abuse is confidential. The name of the reporter and any information provided

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<sup>1</sup> On the other hand, any other person who has knowledge or a suspicion of child abuse may also report or cause to report the abuse – and is considered a “permissive reporter.”

<sup>2</sup> The importance of a pastor’s responsibility to maintain the confidentiality of information he receives when rendering spiritual care is well-recognized in the Lutheran Church-Missouri Synod. (For a further understanding of this issue, see, Report of the CTCR -[\*The Pastor-Penitent Relationship – Privileged Communications\*](#).) Ohio recognizes the pastor-penitent privilege. Therefore, in instances where circumstances arise that raise the question of whether a pastor should report an instance of sexting, he is advised to consult with the Ohio District’s legal counsel and his ecclesiastical supervisor for guidance and direction.

in the report cannot be released for use or used as evidence in any civil action or proceeding brought against the reporter.

### **When Should an Individual Report**

A report is required when actual knowledge of abuse or neglect, or reasonable cause to suspect abuse or neglect, based on facts that would cause a reasonable person in a similar position to suspect, that a child under 18 years of age or a person under 21 years of age with a developmental disability has suffered or faces a threat of suffering physical or mental wound, injury, disability, or condition of a nature that reasonably indicated abuse or neglect.

### **Attorney, Cleric, Physician Exception to Reporting can be Waived in Certain Circumstances**

Even religious leaders that are normally protected by confidential privilege may become mandatory reporters. Typically, an attorney, physician or cleric is not required to make a report concerning a communication regarding abuse when they receive the information from a client, patient or penitent in a professional relationship. However, there are circumstances where a client/patient/penitent is deemed to have waived the privilege with their communications to an attorney, physician or cleric which would result in them becoming a mandatory reporter.

The attorney, physician, or cleric shall make a report with respect to a communication if:

- (i) The client, patient or penitent at the time of the communication, is either a child under the age of 18, or a mentally retarded, developmentally disabled, or physically impaired person under the age of 21;
- (ii) The attorney, physician or cleric knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, as a result of the communication or any observations made during that communication, that the client, patient, or penitent has suffered or faces a threat of suffering a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the person;
- (iii) The abuse or neglect does not arise out of the person's attempt to have an abortion without the notification of her parents, guardian or custodian in accordance with Revised Code Section 2151.85.

A reporter is not required to provide their name in the report, but if they want to receive information on the outcome of the investigation, they must provide their name, address, and telephone number to the person that receives the report. Again, the name of the person who made the report shall not be released for use and shall not be used as evidence in any civil action or proceeding brought against the person who made the report.

A mandatory reporter may not delegate or surrender personal responsibility to report allegations. Once the abuse is reported, it is the responsibility of a child services agency or law enforcement agency to investigate, not the mandatory reporter.

It is important to understand that a reporter need not have actual knowledge of abuse or neglect; rather, a reasonable cause to suspect abuse or neglect is enough to trigger the reporting requirement.

### **Where Should Abuse or Neglect be Reported**

According to the Ohio Department of Education, report of the incident should be made in the county where the child resides, not the location of the school, church, or youth group where the abuse or neglect (in this case the “sexting”) occurred. Reports should be made to the child services agency in the county where the child resides or to the local law enforcement agency.

### **What Should the Report Contain**

A report should contain all of the following:

- (i) the names and addresses of the child and the child’s parents;
- (ii) the child’s age and nature and extent of the child’s injuries, abuse or neglect that is known or reasonably suspected or believed, as applicable to have occurred or of the that of injury, abuse or neglect that is known or reasonably suspect or believed, including any evidence of previous injuries or abuse or neglect;
- (iii) any other information, including, but not limited to, results and reports of any medical examination, tests, or procedures under division (D) of RC 2151.421 that might be helpful in establishing the cause of the injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed.

### **Educating Minors About Sexting and its Consequences**

Making minors aware of the potential consequences of sexting activities could act as a strong deterrent.<sup>3</sup> The seriousness of the consequences include potential registry as a sex offender, potential loss of financial aid, legal issues with local law enforcement, expulsion

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<sup>3</sup> It is recommended that a school’s student handbook or code of conduct (especially a middle or high school) include provisions regarding sexting and the possession of nude pictures on school property.

or suspension from school or other group, and other negative actions. Knowledge of these consequences should serve as strong warnings against engaging in this behavior.

Minors should be informed that consent is not a defense. As previously stated, even if both parties are minors and both consent to the sending and/or receiving of a “sex”, it is still a crime in the State of Ohio that could lead to serious adverse consequences. For all intents and purposes, even a minor taking a nude picture of himself or herself is considered child pornography in the State of Ohio.

A guarantee of privacy is almost non-existent in the current digital age. Smart phone applications, such as Snap-Chat, that purport to destroy images shortly after being sent, do not guarantee that sexually explicit images, in fact, are destroyed.

With regard to who should report instances of sexting in church settings, it is highly recommended that a Director of Youth Ministry, Director of Christian Education, and other persons holding similar positions report such instances. They are considered to be acting in an official or professional capacity. In addition, an adult volunteer, such as a Sunday School teacher, youth group leader, coach, or other similar individual working with youth, even though unpaid and not considered a mandatory reporter, should, in the least, report such activity to his or her supervisor, principal, or pastor, thereby calling on them to report the suspected abuse as a mandatory reporter. In addition and as noted above, persons who are not considered mandatory reporters may also report such instances, in which event they are also entitled to the same protections of confidentiality that are provided to mandatory reporters.

Should anyone receiving this article have additional questions over this issue, including the mandatory reporting of such forms of child abuse, please contact Peter A. Hessler, Legal Counsel to the Ohio District, at [pahessler@wegmanlaw.com](mailto:pahessler@wegmanlaw.com) or at 216-642-3342.