

ATTORNEYS AT LAW
644 Cesery Boulevard, Suite 250
Jacksonville, FL 32211
(904) 680-1234 Fax (904) 680-1238

NEW LAWS – SEXTING

By Jay Howell

The recently completed 2011 session of the Florida legislature resulted in the passage of a far reaching new law which prohibits minors from texting certain images.

Nationwide surveys suggest that 20% of teens admit to participating in "sexting." The practice of "sexting" – sending nude or sexually suggestive pictures via text message – is apparently a common practice, especially for teens. So the question becomes – What are we going to do to children who engage in this practice? The Florida legislature just passed a new law which attempts to regulate this practice. The new law is very broad in scope and may generate a significant amount of controversy.

The Florida legislature created the new crime of "sexting." It is specifically directed at individuals under 18 years of age. The crime is committed if a child uses a computer or other device capable of electronic data transmission **to distribute** to another child any photograph or video of any person which depicts nudity and is harmful to minors. The crime is also committed if a child simply **possesses** a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to children.

As described above, the crime covers not only the transmission or distribution of such photographs or videos, but also the mere possession of them. A child does not violate the section concerning mere possession of the photograph or video as long as the child did not solicit the photograph or video, the minor took reasonable steps to **report the photograph or video** to their legal guardian or to a school or law enforcement official, and the minor did not transmit or distribute the photograph or video to anyone else.

What about the issue of multiple photographs or videos being distributed? The new law states that the transmission or distribution of multiple photographs or videos is a single offense as long as the photographs or videos were transmitted or distributed within the same 24 hour period. In addition, the possession of multiple photographs or videos is a single offense as long as the photographs or videos were transmitted or distributed in the same 24 hour period.

Remember, this crime only applies if a minor – a person under 18 years of age – distributed the photographs or videos to another person under 18 years of age or if a minor possesses photographs or videos that were distributed by another minor. Probably realizing that this new law covers quite a bit of uncharted territory, the legislature provided a somewhat unusual schedule of punishments for the prohibited activity. A child who violates this law commits what is called a “noncriminal violation” if he or she is a first time offender. The “noncriminal violation” is punishable by 8 hours of community service, or, if ordered by the court instead of the community service, a \$60 fine. The court may also order the minor to participate in suitable training or

instruction instead of, or in addition to, the community service or the \$60 fine.

If a child commits a second violation, after having previously been found by a court to have committed an act of sexting, the crime becomes a misdemeanor of the first degree. After having been found guilty of the misdemeanor, if the child gets a third conviction for "sexting," the crime is a felony.

The new law also provides that it does not prohibit the prosecution of a minor for the violation of any other laws in the state if the photograph or video that depicts nudity also includes the depiction of sexual conduct or sexual excitement. Further, it doesn't prohibit the prosecution of a minor for the crime of stalking. Apparently, this means that if the photographs depict sexual conduct or excitement, then the child could be charged with a different crime – for example, the transmission or distribution of child pornography. It also apparently means that a child who forwards nude photos to another child in the course of stalking the child, could be charged with the crime of stalking in addition to the crime of "sexting."

Parents should be aware of this new law that will likely come as a surprise to most of our citizens. The new law takes effect October 1, 2011. The bill is identified as HB75 and can be found on the websites for the Florida House and Senate.