

November 1, 2012

As part of our commitment to provide you with a legal resource that can offer cogent day-to-day advice and clear strategies for a secure future, we offer our pledge to also be your partner in information. We recognize the need for you to be immediately responsive to the changing requirements of the law, government regulations, and community needs. As such, our office will prepare *Action Papers* in response to the ever-changing laws and regulations affecting public education. Receipt of an Action Paper is an indication that your School District may want to consider changing a practice or policy. It also may indicate that your District is required by law to initiate or discontinue a practice or policy.

IN RE: ACT 198 of 2012 - SEXTING

On October 25, 2012, Governor Corbett signed a law addressing an issue that schools face on an all too frequent basis - sexting. Act 198 of 2012 provides penalties for teens, between the ages of 12 through 17 who transmit sexually explicit pictures of other teens. The penalties vary depending upon who is in the picture, whether the person knows they are being photographed and the purpose for the transmission. The intent of the Act is to remove "sexting" between teens from the definition of and the more stringent penalties for child pornography. The law goes into effect on December 24, 2012 - 60 days after the bill was signed.

Pursuant to the Act, a minor who knowingly electronically transmits, distributes, publishes or disseminates a sexually explicit picture of himself or knowingly possesses or knowingly views a sexually explicit picture of a minor who is 12 years old or older commits a summary offense. The Act provides that any device used to take such pictures may be confiscated with no property right to the device. As a penalty, the Magistrate or Judge must first give consideration to referring a person

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charged with a summary offense to a diversionary program and may order the person to participate in educational programs. If the programs are completed, the minor's record would be expunged.

The minor can be charged with a misdemeanor of the third degree when s/he knowingly transmits or distributes a sexually explicit image of another minor who is 12 years old or older to another teen. A minor who takes a photo of another minor in a state of nudity, either with or without that person's consent, and transmits or distributes that photo without the other's knowledge or consent with the intention of coercing, intimidating, harassing or causing emotional distress could be charged with a second-degree misdemeanor.

This Act does not apply to any image that involves a sexually explicit act or if the image was taken, made, used or intended to be used for or in furtherance of a commercial purpose. It also does not apply to images of children under the age of 12. It also does not apply to adults (anyone 18 years old or older) who view or possess electronic images of minors. These situations would still be covered under child pornography laws, carrying with them the possibility of a felony conviction.

For school administrators, your practices should not change. Although the penalties for sexting among teens is less severe, such actions continue violate the state's criminal code. Therefore, if you suspect that students are sexting or transmitting sexually explicit photographs of one another, immediately confiscate the device and contact the police. The best practice is to refrain from searching the device yourself and allow the police to view the device and conduct the investigation. Even with the changes to the criminal code, schools can continue to impose discipline upon students who possess and/or are distributing sexually explicit pictures of another student.

If you or your staff encounter a situation where students are sexting, do not hesitate to contact our office to walk you through the procedures you need to follow to ensure that the matter is handled correctly. We are always happy to answer any questions that you may have.