

# Cyber Crimes: Bullying, Stalking, Sexting & Texting

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*While Internet connectivity has many positive social benefits, it also has a dark side.*

With the emergence of the Internet, an entirely new form of social interaction was created. Currently, social networking sites, such as Facebook, LinkedIn, MySpace, Twitter, and others allow millions of people throughout the world to interact and communicate with each other almost instantaneously. While Internet connectivity has many positive social benefits, it also has a dark side, as was most recently demonstrated in the case of the eighteen year old Rutgers University student who committed suicide after his college roommate posted a video, on the Internet, of the student engaged in a sexual liaison. This is just one example of a cyber crime. Although Rhode Island does not have a legal definition for cyber crime, cyber is a prefix meaning "computer" or "computer network;" and it is the electronic medium in which online communication takes place' Therefore, cyber crimes are crimes committed through the use of a computer or similar types of electronic devices including cellular phones.

## **I. Cyberbullying, Cyberstalking and Cyberharassment**

Cyberbullying is defined as "when the Internet, cell phone or other devices are used to send or post texts or images intended to hurt or embarrass another child.<sup>112</sup> By this definition, cyberbullying only refers to minors, and it is a growing problem in middle schools and high schools. Cyberbullying is most prevalent among girls, as both victims and bullies; Cyberbullying does not refer to adults whose similar actions are categorized as cyberharassment, although Rhode Island law does not make such a distinction. To address the growing problem of cyberbullying, a special Senate commission was established'

R.I. Gen. Laws 11-52-4.2 defines cyberstalking and cyberharassment as:

Whoever transmits any communication by computer or other electronic device to any person or causes any person to be contacted for the sole purpose of harassing that person or his *OR* her family.... For the purpose of this section, "harassing" means any knowing

and willful course of conduct directed at a specific person which seriously alarms,

annoys, or bothers the person, and which serves no legitimate purpose. The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."<sup>5</sup>

The penalties for violating the cyberstalking and cyberharassment statute are as follows:

**First Offense:** The person is guilty of a misdemeanor, and "shall be punished by a fine of not more than five hundred dollars (\$500), by imprisonment for not more than one year, or both."<sup>6</sup>

**Second or Subsequent Offense:** The person is guilty of a felony, and shall be punished "by imprisonment for not more than two (2) years, by a fine of not more than six thousand dollars (\$6,000), or both:"

Cyberbullying and cyberstalking are forms of communication designed to harass the recipient. Often, victims may seek protective orders, restraining further harassment. If such a restraining order is in place and the victim is still harassed through cyberbullying or cyberstalking, the harasser faces additional penalties.

R.I. Gen. Laws 11-52-4.3 addresses the violation of a restraining order stating:

Whenever there is a restraining order or injunction issued by a court of competent jurisdiction enjoining one person from harassing another person, and the person so enjoined is convicted of the crime as set forth in section 11-52-4.2 [cyberstalking or cyberharassment] for actions against the person protected by the court order or injunction, he or she shall be guilty of a felony which shall be punishable by imprisonment for not more than two (2) years, or by a

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fine of not more than six thousand dollars (\$6,000), or both'

## II. Sexting and Child Pornography

The general definition of sexting is sending sexually-explicit photos, images and/or videos electronically. Sexting is only illegal when the sender or the recipient is a minor. Pursuant to the child pornography statute, a minor is defined as "any person not having reached eighteen (18) years of age."<sup>9</sup> There is currently no legal definition of sexting under Rhode Island General Laws. Instead, sexting is considered child pornography if it involves a minor.

The child pornography statute, R.I. Gen. Laws 11-9-1.3(c), states the following:

(1) "Child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

(i) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(ii) Such visual depiction is a digital image, computer image, or computer-generated image of a minor engaging in sexually explicit conduct; or

(iii) Such visual depiction has been created, adapted, or modified to display an identifiable minor engaging in sexually explicit conduct.m

According to the current law, a minor who takes the picture or image for the purpose of sexting can be charged with "knowingly produc[ing] child pornography." A minor who then sends the image through a text, e-mail, live Internet feed, or other means, to another person is "knowingly mail[ing], transport[ing], deliver[ing] or transfer[ing] by any means, including by computer, child pornography."<sup>12</sup> Any recipient who receives the image and then forwards it to another person is "knowingly reproduc[ing] child pornography."<sup>3</sup>

The penalties for violating the child pornography statute include "a fine of not more than five thousand dollars (\$5,000), or imprisoned for not more than fifteen (15) years, or both."<sup>14</sup> Merely

having an image on a computer or cell phone amounts to "knowingly possessing] any.. .material that contains an image of child pornography." The penalties for knowingly possessing child pornography include "a fine of not more than five thousand dollars (\$5,000), or imprisoned not more than five (5) years, or both."16

There are affirmative defenses to a potential violation of the child pornography statute. An affirmative defense to a charge of violating the child pornography statute by knowingly producing any child pornography, knowingly mailing, transporting, delivering or transferring by any means, including by computer, any child pornography, and/or knowingly producing child pornography by any means, including a computer, is as follows:

- (i) The alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and
- (ii) Each such person was an adult at the time the material was produced; and
- (iii) The defendant did not advertise, promote, present, describe or distribute the material in such a manner as to convey the impression that it is or contains a visual depiction of a minor engaging in sexually explicit conduct"

An affirmative defense to a charge of violating the child pornography statute by knowingly possessing any book, magazine, periodical, film, videotape, computer disk, computer file or any other material that contains an image of child pornography is as follows:

- (i) [The defendant] possessed less than three (3) images of child pornography; and
- (ii) Promptly and in good faith and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy of it:
  - (A) Took reasonable steps to destroy each such image; or
  - (B) Reported the matter to a law enforcement agency and afforded that agency access to each such images

### III. Texting

Texting, although much less serious than sexting, is also illegal under Rhode

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Island General Laws. Pursuant to R.I. Gen. Laws 31-22-30 (b) "no person shall use a wireless handset to compose, read or send text messages while operating a motor vehicle on any public street or public highway within the state of Rhode Island." A wireless handset refers to any "portable electronic or computing device, including cellular telephones and digital personal assistants (PDAs), capable of transmitting data in the form of a text message." 2°

The penalty for texting, while operating a motor vehicle in Rhode Island, is a fine of eighty-five dollars (\$85). A second conviction is punishable by a fine of one hundred dollars (\$100). For a third and/or subsequent conviction a person is subject to a fine of one hundred twenty-five dollars (\$125). The Rhode Island Traffic Tribunal has jurisdiction in connection with texting violations. 1'

In October of 2010, the Commonwealth of Massachusetts passed its own texting law. The Massachusetts texting law specifically targets teen drivers. Pursuant to M.G.L.A. Ch. 90, § 8M, "no person under 18 years of age shall use a mobile telephone, hands-free mobile telephone or mobile electronic device while operating a motor vehicle on any public way."<sup>22</sup> A "mobile electronic device" includes "any hand-held or other portable electronic equipment capable of providing data communication between two or more persons, including, without limitation, a mobile telephone, a text messaging device, a paging device, a personal digital assistant, a laptop computer, electronic equipment that is capable of playing a video game or digital video disk, equipment on which digital photographs are taken or transmitted or any combination thereof, or equipment that is capable of visually receiving a television broadcast."<sup>23</sup>

The penalties for texting in the Commonwealth of Massachusetts are severe when compared to the penalties in Rhode Island. For a first offense, the penalties include a one hundred dollar (\$100) fine and a sixty (60) day license suspension. In addition, before the teenager driver can have his/her license reinstated, the driver must complete "a program selected by the registrar that encourages attitudinal changes in young drivers."<sup>24</sup> A second offense includes a two hundred and fifty dollar (\$250) fine and a license suspension of one hundred

and eighty (80) days. A third and/or subsequent convictions are punishable with a five hundred dollar (\$500) fine and license suspension for one (1) year.<sup>25</sup>

As the Internet continues to permeate our daily lives and increasingly forms our social interactions with others, it is of the utmost importance to consider the criminal liability potentially associated with the use of the Internet. Hopefully, this article will be of assistance to practitioners involved in this emerging area of the law.<sup>26</sup>

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ENDNOTES

<sup>1</sup> THE AMERICAN HERITAGE SCIENCE DICTIONARY (2002)

<sup>2</sup> National Crime Prevention Council, <http://www.ncpc.org/newsroom/current-campaigns/cyberbullying> (last visited Nov. 12, 2010)

<sup>3</sup> U.S. Department of Health Human Services. [Mtp://stopbullyingnow.hrsa.gov/adults/cyber-bullying.aspx](http://stopbullyingnow.hrsa.gov/adults/cyber-bullying.aspx) (last visited Nov. 12, 2010)

<sup>4</sup> S. 2871A, 2010 Gen. Assent, Reg. Sess. (R.I. 2010)

<sup>5</sup> R.I. Gen. Laws § 11-52-4.2(a)

<sup>6</sup> R.I. Gen. Laws § 11-52-4.2(a)

<sup>7</sup> R.I. Gen. Laws 5 11-52-4.2(b)

<sup>8</sup> R.I. Gen. Laws 5 11-52-43(a)

<sup>9</sup> R.I. Gen. Laws § 11-9-1.3(c)(3)

<sup>10</sup> R.I. Gen. Laws 5 11-9-1.3(c)(1)(i), (ii) and (iii)

<sup>11</sup> R.I. Gen. Laws 5 11-9-1.3(a)(1)

<sup>12</sup> R.I. Gen. Laws 5 11-9-1.3 (a)(2)

<sup>13</sup> R.I. Gen. Laws 5 11-9-1.3(a)(3)

<sup>14</sup> R.I. Gen. Laws 5 11-9-1.3(7)(f)

<sup>15</sup> R.I. Gen. Laws 5 11-9-1.3(a)(4)

<sup>16</sup> R.I. Gen. Laws § 11-9-1.3(6)(2)

<sup>17</sup> R.I. Gen. Laws 5 11-9-1.3(d)(1)(i),(ii) and (iii)

<sup>18</sup> R.I. Gen. Laws 5 11-9-1.3(d)(2)(i) and (ii)

<sup>19</sup> R.I. Gen. Laws 5 31-22-30(b)

<sup>20</sup> R.I. Gen. Laws 5 31-22-30(a)(8)

<sup>21</sup> R.I. Gen. Laws 5 31-22-30(e)

<sup>22</sup> M.G.L.A. Ch. 90 § 8M

<sup>23</sup> M.G.L.A. Ch. 90 § 8M

<sup>24</sup> M.G.L.A. Ch. 90 § 8M

<sup>25</sup> M.G.L.A. Ch. 90 § 8M

<sup>26</sup> The authors express their deep appreciation for the assistance of Kathleen Child and Jodi Van Sprang in the preparation of this article. +