



In James City 'sexting' case, the wrong call
James City sexting case reveals need for legal discretion and education

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The 16-year-old James City girl who posted a naked self-portrait on Twitter made a reckless mistake. Her lapse in judgment will be a source of regret and embarrassment to her for years to come. But thanks to overzealous police work, her case is also becoming a source of international embarrassment for James City County police and prosecutors.

Instead of receiving strong disciplinary action from her parents, she faces charges with distributing child pornography. That, in turn, has triggered a media circus ranging from the Drudge Report to BBC World News.

We have a duty to protect our kids. Child pornography is a despicable crime, and that is why we write strong laws to punish degenerates who manufacture, collect and trade in such filth.

But in Virginia, that includes a criminal view of "sexting" — sending explicit photos by phone or social media — and that's where this story goes horribly wrong.

Yes, we as parents should deter our children from making irreversible decisions that cannot be undone. And yes, we want to aggressively prosecute anyone who pressures young people into exploitative behavior.

But to charge a teenager for sending out her own picture is something else entirely.

By the strict letter of the law, she did manufacture, possess and distribute child pornography when she posted that photo of herself. Everyone who saw it was, again using the law's specific definition, complicit in a serious offense.

James City County police, following an anonymous tip, concluded a felony child pornography charge was appropriate. Conviction usually results in jail time and listing on a sex offender registry, but it is likely that she will only be referred to a sexting education program.

The felony charge may force her to complete the program and help deter others from similar behavior. But to equate the behavior of a misguided girl to that of a pedophile is an abasement of the term child pornography. Words **do** have meaning, and what this girl did is in no logical sense the same as what child pornographers peddle.

Commonwealth's Attorney Nate Green, who fielded a call from the BBC for details of this case, says he was not consulted before the charge was filed. We bet he wished he had been, so he could have stopped this nonsense before it became public knowledge. His office hopes to resolve this through an informal judicial process rather than a felony prosecution.

This girl would be best punished by a parent's stern hand, not the cold judgment of the law. While we shy away from giving parenting advice, we think she should be grounded and confined to her bedroom for a reasonable period of reflection. Had the police not already confiscated her phone, her parents should have taken it away indefinitely.

William and Mary Law School professor Adam Gershowitz says matters like this call for reasoned prosecutorial discretion. We worry that, in the hands of a less reasoned prosecutor, the law is ripe for abuse.

Consider the 2009 sexting case in Greensburg, Pa., in which six minors were charged with child pornography. We should not provide an opportunity for misconduct in these difficult, delicate cases.

However, we should not lay all the blame on authorities. We as parents and society have miserably failed to effectively teach kids about the dangerous and indelible uses of social media and other technological advances.

Facebook, Twitter, Instagram and Snapchat have brought us closer together, but also open the door to those that mean us harm. As we have said before, sending suggestive messages and images often has an unwanted effect, not the least of which is the fact that content can't be erased. Posting your location at every stop makes one easy prey for stalkers. So do unmonitored chats with strangers who may be predators posing as innocent youngsters.

We as parents need to get a clue and stop denying our children might do equally stupid things. Recent studies claim as many as 20 percent of high school students have sent a sexually explicit photo of themselves via cell phone. Nearly a quarter of recipients say they have forwarded those photos on to others. Don't be so sure your child is immune.

Imagine a scholarship or job offer lost because a Google or Facebook search turns up racy images or ill-advised comments from a thoughtless, impulsive 13- or 15-year-old who was just responding to pressure from his or her classmates.

This case is further evidence that we're not doing enough to tell our kids about the consequences of dangerous online behavior.

The Virginia House this year turned aside a bill that would have amended the sexting statute to insert some common sense restrictions on charging young people. More specific language would have avoided embarrassment for all involved and, more importantly, helped bring appropriate charges against the accused.

But we expect prosecutors and police to use discretion and limit that tool to target real predators. And we as parents should expect ourselves to do a better job supervising our children and making them understand that misusing technology can do irreversible harm. It is a lesson that at least one local teen now knows.

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