Teens rely on social media for their friendships, for their relationships, for education and awareness, to find community and information, and to read the news. Not having social media significantly disconnects teens from their networks, security and world. The incredible benefits of the online world have made it an essential part of everyday life and communication. Unfortunately, this dependence also makes it impossible to escape and protect oneself from cyber abuse, and the new forms of control, danger and abuse that the legal and modern world are still working to account for and protect from. The abuse becomes relentless.

1. **Obsession & Dependence on Electronics**

50% of teens say they feel addicted to their mobile device.³

Teenagers’ constant use of social media rewrites their developing brains to constantly seek out immediate gratification. This can lead to addictive behaviors. The “sudden cessation of online social networking may in some chronic users cause signs and symptoms that at least partially resemble the ones seen during drug/alcohol/nicotine abstinence syndrome.”⁴

2. **Forms of Cyber Abuse**

**Constancy:** The omnipresence of technology and our devices gives abusers a new ability to constantly make their presence and dominance known, furthering coercive control.

**Secrecy:** Abusers can gain location access and get remote access to information on a victim’s phone. This can be done in seconds through easily accessible, little to no cost cell phone applications or through previously shared access. Armed with this private information without the user’s knowledge, an abuser can easily establish coercive control by having constant tracking and stalking powers over the victim.
Below are the common types of abuse the virtual world has opened up to abusers:

### Cyber Harassment:

**Private:** Excessive and threatening messaging  
**Publicly:** Writing embarrassing/ harassing/ threatening material on social media  

### Coercive Control:

Spyware/Tracking – including location  
Tampering with victim’s social media accounts  
Coercing sexually explicit images  

#### Sextortion

**Definition:** Extortion or coercion wherein the “currency” sought is not monetary but rather is sex acts or sexual imagery.  
**Access:** The internet and social media platforms have enabled perpetrators to target victims and given them new ways to gain control over and information about them.  
**Forms:** The threats made to accomplish sextortion are made in many forms. Most commonly it is a threat of releasing previously received imagery or sex acts. It is also often the threat of disclosing embarrassing or damaging information or harming a loved one.  
**Laws:** Criminal law structures often fail to capture sextortion conduct. Since 2017 at least 16 jurisdictions have enacted clear criminal penalties for sextortion. (check which footnote to remove for past content).

#### Non-consensual Pornography

**Definition:** The distribution of sexually graphic images of individuals without their consent. This includes both images originally obtained without consent as well as images consensually obtained within the context of an intimate relationship. This is often referred to as “revenge porn” though the term is misleading, and now disfavored, because the overwhelming majority of perpetrators are not motivated by revenge.  
**Laws:** As of February 2021, 46 states and Washington D.C have passed laws prohibiting the distribution or production of non-consensual pornography.  

#### Sexting

**Definition:** the transmission of nude and/or sexual images or written sexual content. It can often be a normal, consensual act.  
**Teens & Relationships:** The fact that teens are utilizing digital means to form and further personal relationships extends to sexual exploration. Sexting has become a normalized form of intimacy in teen dating relationships. It is often consensual and therefore, unlike “revenge porn” and “sextortion,” it is not always an act of abuse or harm.  
**Laws:** The federal definition of child pornography is “any visual depiction of sexually explicit conduct involving a minor (less than 18).” This leaves room for potential criminal liability for sharing images consensually. “Sexually explicit” does not necessarily require depiction of a sex act. Rather, an image depicting a nude minor may constitute child pornography under federal law if the image is sufficiently sexually suggestive. (See 18 U.S.C. 2256.)  
**Potential Criminal Liability of Creator:** While most law enforcement and prosecutorial agencies have a policy against prosecuting a minor for creation and/or possession of images of child pornography that depicts themselves, the law generally does not make such a carve out.

3. Impacts of Cyber Abuse on victims

“Inescapability of cyber abuse: It is a common misconception that abuse carried out electronically presents less imminent risk to safety and/or inflicts less harm. In fact, electronic means of communication make the victim accessible to the abuser nearly all of the time. Think about how often you are out of grasp or earshot of your cell phone. There is no “escape”.

Public Sphere of Social Media: Social media can also provide an opportunity for an abuser to unwittingly involve peers in the abuse by publicly posting humiliating details about the victim. When you consider the heavy reliance on social media and electronic communication for teens forming social bonds in today’s world, removing oneself from these spheres would be further isolating to the victim and furthers the harm. Victims of digital abuse are significantly more likely to be subjected to co-perpetrated physical, psychological and sexual abuses.

Harm of Cyber Abuse: Cyber abuse leads to constant, prolonged bad stress. Research on teen brains shows that teens:

- are more susceptible to developing PTSD than adults
- are liable to develop maladaptive coping mechanisms through alcohol, smoking, texting, drugs, and self-harm
- experience addictions in a much more destructive and harder to eradicate way than adults.

For more details, see the Teen Dating Abuse and Violence Information Sheet titled “The Teenage Brain: Nature & Nurture, Neuroscience and ACEs.”

4. Evidence of Cyber-Facilitated TDAV

<table>
<thead>
<tr>
<th>Who owns it?</th>
<th>Type of Cyber Abuse evidence:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The victim</td>
<td>Testimony</td>
</tr>
<tr>
<td>The offender</td>
<td>Screenshots/photographs (emails, text messages &amp; cell site, messaging app and social media account data)</td>
</tr>
<tr>
<td>Social Media Platforms</td>
<td>Records (e.g., call logs)</td>
</tr>
<tr>
<td>Cell phone carriers</td>
<td>Reports of forensic examinations</td>
</tr>
</tbody>
</table>

“There were days I cried for six hours straight and didn’t leave my room. It was constant. It was on my phone. It was all the time.” Whenever a new post went up, she felt as though she’d been “sexually assaulted at that moment,” -Chenoa Cooper – as quoted in Law 360 article: “With Online Revenge Porn, “The Law Is Still Catching Up”
How to obtain evidence:

**Records maintained by owner:** The victim may be able to provide evidence from calls, texts, and/or social media from their own phone or account.

**Subpoena:** This is generally accepted for producing subscriber information and IP address(es) but not for obtaining the substance of accounts (e.g., messages).

**Search warrant:** This is generally required for searching a cell phone (unless upon consent) or to receive cell carrier account information, social media account substance (e.g., messages).

**Court order:** Usually required for obtaining location data.

**Non disclosure orders:** When requesting information from providers on a user’s account, courts can include a nondisclosure order to avoid the owner finding out.

**Limitations/narrowing of orders/warrants:** Warrants and orders can be formatted to minimize privacy invasions by specifying a relevant date range, type of content, the people between whom the content was exchanged or only using public content. However, some providers or those performing the forensic search for the evidence are unable to do the sophisticated filtering required to comply with a narrowly tailored order. Strategies to deal with this are:

- Setting up a “**Taint team**” that can receive the full dump of the phone, for example, and filter to give law enforcement only what they are permitted to search under your order.
- Returning the evidence for **in camera inspection**: If a case is already pending, judges can also receive the evidence in camera – but then you (or your clerks) are stuck filtering for what the parties can have.

**Preservation Requests:** Law enforcement has the ability to submit preservation requests while they attempt to obtain a warrant/order (usually preserves for 30 – 90 days even if user attempts to delete content; courts can issue sanctions if platform fails to preserve content).

**Motions to compel:** Opposing party motions to compel content of a victim’s social media account, email account, etc. should be evaluated critically. In the criminal context, the victim is not a party and the victim’s credibility can be explored via cross examination. Requests to compel the full information of a victim’s account are very often a fishing expedition to obtain personal and embarrassing information. It is sometimes an effort to further the abusive pattern of establishing power and control. If within the criminal context, the prosecution generally does not have an affirmative obligation to obtain social media/electronic evidence unless they are aware it contains Brady information.

How is the Foundation Laid?

**Testimony:** It can often be sufficient to lay a foundation to admit electronic evidence. One major issue with digital evidence is establishing whether the defendant was in fact the one communicating through the account that bears their identity at the moment the content at issue was sent. This can be sufficiently established circumstantially. Questions such as these bear on the weight to be accorded the evidence, to be determined by the fact-finder, rather than the question of admissibility.

**Business record affidavit:** Some social media/internet/telecom companies provide a business record affidavit with their records.
5. Opportunities for Judicial Leadership

The role, influence and use of social media is new to the court system, and it is difficult to fully grasp the understanding and seriousness of its abuse. It is extremely important to encourage training for judges and court personnel on:

- Evolving technologies that facilitate communication
- Evolving forms of, and forums used to facilitate, teen dating abuse and violence
- The imminence of harm presented by cyber abuse
- Case law developments on admission of electronic evidence

Additionally, because technology is ever evolving, it is important to regularly update and provide these trainings.

For a full list of resources see the Teen Dating Abuse and Violence Information Sheet titled “Teen Dating Abuse & Violence: Resources for Judicial Leadership”
5 “Nonconsensual pornography (revenge porn) laws in the United States,” Ballotpedia, https://ballotpedia.org/Nonconsensual_pornography_(revenge_porn)_laws_in_the_United_States
6 “Needs of Adolescent Victims and Perpetrators of Adolescent Intimate Partner Violence,” NCJFCJ, November 2012