

“Using Social Media in Supervision (GOTCHA)”



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CHAPTER 16

Using Social Media in Supervision

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Part I.

Narrative (GOTCHA)”

by David J. Ferrell

Juvenile law has a different focus than adult criminal law because of the immaturity of the alleged perpetrators who are people who have not yet learned how to deal with society and themselves.

One of the things that is very common in juvenile minds is the desire to fit in and the desire to show off. On occasion a juvenile will do things that are contrary to the law that are very serious in nature but the juvenile does not understand the gravity of his/her actions. However, he/she wants to flaunt the behavior so he/she will publish the behavior in the ubiquitous social media realm that surrounds us all. Of course these juveniles also do not understand the ramifications of **social media** and can incriminate themselves online, on the Internet.

A juvenile probation officer would be elated to supervise a juvenile with more efficacy by being able to delve into the social patterns of the juvenile probationer he/she is supervising from his office desktop computer.

There are many social media web sites, but for the purposes of this paper I will focus on the most used, Facebook.

Facebook has over 1 billion subscribers. The population of the United States is approximately three hundred and fifty million so almost everybody in America is a client of Facebook. Almost every teenager has a Facebook account, and why not, there is no charge. Facebook has various different levels of security, and privacy. Some of these juvenile individuals have no protection and no privacy for one reason or another and often they do not see it is necessary. These are the juveniles who are most Internet accessible by their juvenile probation officers.

Even if protection is used on Facebook, it has data-mining capabilities that can scan posts and chats for criminal activity. If Facebook detects suspicious behavior, it can flag the content and determine if further steps, such as informing the police, juvenile probation officers, *etc.* is required. This information was disclosed by Facebook chief security officer Joe Sullivan and was admitted on July 2012 in an interview (Reference Link #1).

Here is the lead in to the Reuters the above linked story:

“A man in his early 30s was chatting about sex with a 13-year-old South Florida girl and planned to meet her after middle school classes the next day. Facebook’s extensive but little discussed technology for scanning postings and chats for criminal activity automatically flagged the conversation for employees, who read it and quickly called the police. Officers took control of the teenager’s computer and arrested the man the next day.”

This security software by Facebook looks for certain phrases found in previously obtained chat records from criminals, including sexual predators.

I assume that the same security software can be used by Facebook to monitor certain juvenile behavior for the benefit of supervision.

However, how do you get Facebook to cooperate with you if you are the juvenile probation officer or the juvenile court involved with juveniles on probation.

Facebook has posted its policy online which articulates the following (**Reference Link #1**):

Law Enforcement & Third-Party Matters

“How does Facebook work with law enforcement?

We work with law enforcement where appropriate and to the extent required by law to ensure the safety of the people who use Facebook. We may disclose information pursuant to subpoenas, court orders, or other requests (including criminal and civil matters) if we have a good faith belief that the response is required by law. This may include respecting requests from jurisdictions outside of the United States where we have a good faith belief that the response is required by law under the local laws in that jurisdiction, apply to users from that jurisdiction, and are consistent with generally accepted international standards.

We may also share information when we have a good faith belief it is necessary to prevent fraud or other illegal activity, to prevent imminent bodily harm, or to protect ourselves and you from people violating our Statement of Rights and Responsibilities. This may include sharing information with other companies, lawyers, courts or other government entities.”

Since juvenile law falls under the Family Code in Texas, subpoenas may be issued to obtain the information that is desired on a juvenile's Facebook page, if the juvenile has used privacy protection to exclude prying eyes. Facebook's procedure is as follows:

"Facebook may provide basic subscriber information (not content) to a party in a civil matter only where: 1) the requested information is indispensable to the case and not within the party's possession; and 2) you personally serve a valid California or federal subpoena on Facebook. Out-of-state civil subpoenas must be domesticated in California and personally served on Facebook's registered agent.

Parties seeking basic subscriber information as set forth above must specifically identify the account by providing the email address, Facebook user ID (UID) and vanity URL (if any) Names, birthdays, locations, and other information are insufficient to identify a Facebook account. UIDs and/or vanity URLs may be found in the uniform resource locator available in a browser displaying the account in question."

If you want to go to the full Facebook Law Enforcement & Third-Party Matters site go to the link I have included in **Reference Link #2**.

Another aspect of supervision deals with "connection" to the juveniles "social media" sites. Official "Friending" the juvenile on Facebook to view his/her behavior I believe is inappropriate, to say the least, but it would probably be the most effective way to see what the juvenile is doing. The benefit is outweighed by the potential liability of the juvenile probation officer or judge for this "connection".

I have attached 10 "Reference Links" and "Assorted Additional Content" to this paper that delve into the most relevant issues of Social Media and juveniles. This paper is interactive and is best reviewed with Adobe Acrobat 9/10 Reader.

Part II.

REFERENCES

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February 2012

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Emerging Legal Issues in Social Media: Part II

Vita

Introduction

SOCIAL MEDIA and the Police

VIDEO LINK BELOW

<http://video.today.msnbc.msn.com/today/48092185#48092185>

Transcript:

>>> so many used social media sites to stay in touch with friends. now a growing number of police departments are turning to them to help solve crimes. nbc justice correspondent pete williams has details. good morning, pete.

>> reporter: this is the version to generate tips from the old days of wanted posters to crime stoppers on television, now social media . twitter, facebook and increasingly youtube . sheriff's deputies in hillsboro county, florida wanted to find a man who stole a canned drink and used it to attack this convenience store clerk. they posted the surveillance video on youtube . someone who recognized the attacker called in the tip. within two days he was arrested and has since pleaded guilty. just this week, police in akron, ohio wanted to know who was using stolen credit cards to buy things at local stores. they posted this surveillance video hoping to generate tips. it's part of a growing trend, police expanding their reach using social media to assist investigations. maryland posted this video of a flash mob robbing a convenience store and viewers helped identify who was involved. investigators say it's not just faces that can be recognized.

>> it also helps because you can actually see the person move, how he walks. sometimes that's a characteristic identifiable to people.

>> reporter: in philadelphia investigators put this on youtube after a woman riding on a city bus beat up a passenger. just two days after it was posted, investigators got a tip that led to an arrest.

>>> a survey by the international association of chiefs of police show 90% of law enforcement agencies use social media of some kind. many agencies have set up youtube sites, often posting crime scene surveillance videos that are internet ready. in prince george 's county, maryland they use youtube as a channel to reach people directly with information.

>> we'll put an entire news conference on youtube to include surveillance video or mug shots along with interviews from the various police officials. so the information is getting out to the public.

>> reporter: videos have another advantage. they can be posted instantly helping to get the word out quickly and stopping criminals from attacking again.

>> thanks

Reference Link #1

Facebook scans chats and posts for criminal activity

LINK

the article below can be found in its entirety at the link below

http://news.cnet.com/8301-1023_3-57471570-93/facebook-scans-chats-and-posts-for-criminal-activity/

Facebook's monitoring software focuses on conversations between members who have a loose relationship on the social network.

by Emil Protalinski July 12, 2012 5:45 PM PDT

Facebook has added sleuthing to its array of data-mining capabilities, scanning your posts and chats for criminal activity. If the social-networking giant detects suspicious behavior, it flags the content and determines if further steps, such as informing the police, are required.

The new tidbit about the company's monitoring system comes from a Reuters interview with Facebook Chief Security Officer Joe Sullivan. Here's the lead-in to the Reuters story:

A man in his early 30s was chatting about sex with a 13-year-old South Florida girl and planned to meet her after middle-school classes the next day. Facebook's extensive but little-discussed technology for scanning postings and chats for criminal activity automatically flagged the conversation for employees, who read it and quickly called police. Officers took control of the teenager's computer and arrested the man the next day.

Facebook's software focuses on conversations between members who have a loose relationship on the social network. For example, if two users aren't friends, only recently became friends, have no mutual friends, interact with each other very little, have a significant age difference, and/or are located far from each other, the tool pays particular attention.

The scanning program looks for certain phrases found in previously obtained chat records from criminals, including sexual predators (because of the Reuters story, we know of at least one alleged child predator who is being brought before the courts as a direct result of Facebook's chat scanning). The relationship analysis and phrase material have to add up before a Facebook employee actually looks at communications and makes the final decision of whether to ping the authorities.

"We've never wanted to set up an environment where we have employees looking at private communications, so it's really important that we use technology that has a very low false-positive rate," Sullivan told Reuters. While details of the tool are still scarce, it's a well-known fact that Facebook cooperates with the police, since, like any company, it has to abide by the law. In fact, just

a few months ago, Facebook complied with a police subpoena by sending over 62 pages of photos, Wall posts, messages, contacts, and past activity on the site for a murder suspect.

For more information about Facebook's stance on working with the police, I checked out these two pages: Law Enforcement and Third-Party Matters, as well as Information for Law Enforcement Authorities. It's worth noting that neither of these documents discusses the aforementioned tool (a quick search for the words "monitor" and "scan" bring up nothing).

Facebook likely wants to avoid discussing the existence of the monitoring technology in order to avoid further privacy concerns. Many users don't like the idea of having their conversations reviewed, even if it's done by software and rarely by Facebook employees.

Reference Link #2

FACEBOOK Law Enforcement & Third-Party Matters

LINK

the article below can be found in its entirety at the link below

<http://www.facebook.com/help/473784375984502/>

How does Facebook work with law enforcement?

We work with law enforcement where appropriate and to the extent required by law to ensure the safety of the people who use Facebook. We may disclose information pursuant to subpoenas, court orders, or other requests (including criminal and civil matters) if we have a good faith belief that the response is required by law. This may include respecting requests from jurisdictions outside of the United States where we have a good faith belief that the response is required by law under the local laws in that jurisdiction, apply to users from that jurisdiction, and are consistent with generally accepted international standards.

We may also share information when we have a good faith belief it is necessary to prevent fraud or other illegal activity, to prevent imminent bodily harm, or to protect ourselves and you from people violating our Statement of Rights and Responsibilities. This may include sharing information with other companies, lawyers, courts or other government entities.

How can I report a convicted sex offender?

Convicted sex offenders are prohibited from using Facebook. Once we are able to verify a user's status as a sex offender, we immediately disable their account and remove their account and all information associated with it.

We accept the following forms of documentation to verify someone's status as a convicted sex offender:

Link to a listing in a national sex offender registry

Link to an online news article

Link to a court document

Documentation verifying the report attached to the sex offender report form

If you are unable to provide documentation, we recommend that you ask a local law enforcement representative to contact us so we can take action on your report.

If you have encountered an account that may belong to a convicted sex offender, please report it and we will review the information.

Does Facebook notify users prior to responding to subpoenas?

Facebook may notify users before responding to legal process as permitted by law.

Data Use Policy Last updated: June 8, 2012

Information we receive and how it is used

Learn about the types of information we receive, and how that information is used.

Sharing and finding you on Facebook

Get to know the privacy settings that help you control your information on facebook.com.

Other websites and applications

Learn about things like social plugins and how information is shared with the games, applications and websites you and your friends use off Facebook.

How advertising and Sponsored Stories work

See how ads are served without sharing your information with advertisers, and understand how we pair ads with social context, such as newsfeed-style stories.

Cookies, pixels and other system technologies

Find out how cookies, pixels and tools (like local storage) are used to provide you with services, features and relevant ads and content.

Some other things you need to know

Learn how we make changes to this policy and more.

May I obtain contents of a user's account from Facebook using a civil subpoena?

Federal law prohibits Facebook from disclosing user content (such as messages, timeline posts, photos, etc.) in response to a civil subpoena. Specifically, the Stored Communications Act, 18 U.S.C. § 2701 et seq., prohibits Facebook from disclosing the contents of an account to any non-governmental entity pursuant to a subpoena or court order.

Parties to civil litigation may satisfy discovery requirements relating to their Facebook accounts by producing and authenticating contents of their accounts and by using Facebook's "Download Your Information" tool, which is accessible through the "Account Settings" drop down menu.

If a user cannot access content because he or she disables or deleted his or her account, Facebook will, to the extent possible, restore access to allow the user to collect and produce the account's content. Facebook preserves user content only in response to a valid law enforcement request.

May I obtain any information about a user's account using a civil subpoena?

Facebook may provide basic subscriber information (not content) to a party in a civil matter only where: 1) the requested information is indispensable to the case and not within the party's possession; and 2) you personally serve a valid California or federal subpoena on Facebook. Out-of-state civil subpoenas must be domesticated in California and personally served on Facebook's registered agent.

Parties seeking basic subscriber information as set forth above must specifically identify the account by providing the email address, Facebook user ID (UID) and vanity URL (if any) Names, birthdays, locations, and other information are insufficient to identify a Facebook account. UIDs and/or vanity URLs may be found in the uniform resource locator available in a browser displaying the account in question. For example, in the URL <http://www.facebook.com/profile.php?id=12345678910>, 12345678910 is the UID.

When will I receive a response to my civil subpoena?

Facebook requires a minimum of 30 days to process a civil subpoena for basic identifying information. Additional time may be required depending on various factors. Delivery may be delayed if you fail to include Facebook's processing fee in your request.

Do I need a Facebook representative to testify at a civil trial?

No. The account owner, or any person with knowledge of the contents of the account, can authenticate account content. Further, under federal and California law, business records produced by Facebook are self-authenticating.

Reference Link #3

Let the Tweeter beware

LINK

the article below can be found in its entirety at the link below

<http://www.tdcaa.com/journal/let-tweeter-beware>

The onslaught of online social media—Facebook, Twitter, blogs, et al.—has caught some indiscreet folks off-guard when they post something vulgar, inappropriate, or just plain stupid to their profiles. Don't let it happen to you!

By Sarah Wolf

TDCAA -Communications -Director in Austin

The newspaper stories are cringe-worthy. A New Mexico police officer shot and killed a gang suspect earlier this year and described his job on Facebook as a “human waste disposal.” In Massachusetts, a veteran firefighter was fired for Facebook posts that were critical of a supervisor and town officials and contained foul language and anti-gay slurs. And do we even need to mention a certain Congressional representative who sent sexy-time photos of himself via Twitter to various female admirers, all the while claiming someone had hacked his account?

Given the sometimes dire consequences of such indiscretion, it would do us all good to be reminded that social media, as fun, enlightening, and helpful as it can sometimes be, is also fraught with traps for the unwary. We know how incriminating these sites can be—what prosecutor doesn't check defendants' online profiles for signs of drug use, weapons possession, or gang affiliation to sweeten the State's arsenal of evidence in court?—yet we ourselves still sometimes post things that are inappropriate at best or, at worst, worthy of termination.

We at TDCAA talked to several prosecutors across the state, in offices large and small, to find out what these supervisors say about their employees' online presence and how it can affect a person's reputation and livelihood. Not every office has a policy on using such social media, but everyone noted that those who work in a prosecutor's office must be especially careful with what information they put out there for public consumption. What might be a normal work-related gripe for someone in another profession can result in big trouble—even legal trouble—for those in a prosecutor's office. Rules 5.02 and 5.03 of the Disciplinary Rules of Professional Conduct, as well as the criminal offense provisions of the Public Information Act, state that disclosing any information concerning a legal matter being handled by the office is grounds for immediate discipline, up to and including discharge, and potential criminal prosecution. This rule applies during the workday as well as after hours.

“Employees of prosecutors' offices do not have the luxury of leaving work at the office,” says Jay Johannes, an assistant county and district attorney in Colorado County. “We need a certain moral authority to do our jobs effectively, and imprudent use of social media undercuts that moral authority.”

Some bosses check their employees' Facebook or Twitter accounts for a wide array of purposes: what time of day people are posting (i.e., during the workday and/or on county computers); whether any legal matters are discussed; if excessive drinking, drug use, or criminal activity is mentioned; or if anything reflecting poorly on the office is posted. Even stating one's professional position is forbidden in at least one jurisdiction, the Harris County DA's office, as it may imply an official statement of the office as a whole.

Lest you think that such strictness is an overreaction, consider the permanence of online information and lightning-fast speed with which that information spreads. What you write today is immediately available to countless people, including the defense bar, victims' families, and journalists, within moments.

"I've been an attorney for 16 years and a prosecutor for 11—it's hard to surprise me," Johannes says. "While I do not have a Facebook account, my wife does and I am amazed by the web of connections through our county. There truly are fewer than three degrees of separation, and news travels fast."

The rule of thumb that almost every prosecutor mentioned is to never post anything on the Internet that you would not want to see on the front page of tomorrow's newspaper—along with your name, title, office, and county. If you must gripe about something work-related, pick up the phone rather than dashing off a hasty tweet. "Electronic is forever; a phone call isn't," says C. Scott Brumley, county attorney in Potter County. "Always remember that distinction."

Note, too, that inappropriate or unprofessional online commentary can follow a person even after she leaves a job and seeks a new one. Several prosecutors mentioned that they check potential employees' Facebook profiles before extending job offers to see "whether representations of responsibility made during the interview are consistent with the image they broadcast to their friends and the public," Brumley explains, "and whether the applicant is dumb enough to publish their salacious or sophomoric behavior to the world. Also, it is not unheard of to find disparaging remarks about the office after a job interview. It's better to know whether you're poisoning the well [by hiring such an employee] before you actually do it."

Lee Hon, the district attorney in Polk County, also does a little Facebook reconnaissance when he's interviewing people for open positions. "Just looking for potential red flags, i.e., pictures or comments indicating the applicant may not exercise good judgment in their personal affairs or conduct themselves in a way consistent with the image of my office," he says. Bosses may be surprised by what they find.

Folks at TDCAA went through just such a situation a few years ago. After a solid in-person interview with an applicant, we offered the job, which was accepted. Meanwhile, we hunted around on MySpace (remember MySpace?) for this person's profile page and were shocked to discover ugly words about the job at TDCAA and even uglier words about a crumbling home life. The job offer was subsequently withdrawn.

"Review of her comments made it clear that the applicant was not someone who truly held herself to the standards required of those earnestly engaged in prosecution," Brumley explains.

Those who work in prosecutor's offices are wise to remember that their bosses are elected officials—politicians—who are public figures as much as they are prosecutors. What they and their staffs put out there for the world (wide web) to see reflects on them as public servants and as professional attorneys for the State. "Social media can be an effective networking tool," Hon says. "I use mine mainly for friend, family, professional, and political networking. As a public figure and

representative of an elected public office, you just have to be extra sensitive to the things you post.”
And so do those who call these public figures “boss.”

Published in The Prosecutor, July-August 2011, Volume 41, No. 4

Reference Link #4

Social Networking and Law Enforcement Discover How Police Are Using Social Media to Solve Crimes and Build Trust

LINK

the article below can be found in its entirety at the link below

http://criminologycareers.about.com/od/Career_Trends/a/Social-Networking-And-Law-Enforcement.htm

Using Social Media to Solve Crime
By Timothy Roufa, About.com Guide

Believe it or not, social networking is providing officers new avenues and tools to help them solve crimes. Because so many people now have such large online presences, investigators are able to gain new tips and insights into crimes committed in their communities.

The fact is, Facebook is helping to catch criminals. Sometimes, police are able to get tips from suspects' "friends" after the suspect inevitably brags about his deviant behavior on the social networking site. Other times, detectives can gather evidence from pictures or video posted on sites like MySpace and YouTube....

Reference Link #5

Police embrace social media as crime-fighting tool

updated 5:23 PM EDT, Thu August 30, 2012

LINK

the article below can be found in its entirety at the link below

<http://www.cnn.com/2012/08/30/tech/social-media/fighting-crime-social-media/index.html>

Police embrace social media as crime-fighting tool

By Heather Kelly, CNN

updated 5:23 PM EDT, Thu August 30, 2012 | Filed under: Social Media

A recent survey found that Facebook is the most fruitful social network for law enforcement investigations.

STORY HIGHLIGHTS

Law enforcement increasingly uses social media to solve crimes

Police arrested a New York man on murder charges after seeing incriminating Facebook posts

Some police violate Facebook policy by creating fake profiles

Facebook the most used social network by law enforcement, followed by YouTube

SEE ENTIRE ARTICLE AT REFERENCED LINK

Reference Link #6

Gang members stupidly brag of heists, 'friend' cop on Facebook

LINK

the article below can be found in its entirety at the link below

http://digitallife.today.com/_news/2012/05/31/11991466-gang-members-stupidly-brag-of-heists-friend-cop-on-facebook?lite

Gang members stupidly brag of heists, 'friend' cop on Facebook

By Suzanne Choney

December 3, 2012, 8:19 am

NBCNews.com

Dreamstime

For the last year, 14 members of a New York street gang were on a spree of robberies, assaults and burglaries in the Brower Park area of Crown Heights, but their greed and their need to share information on Facebook, as well as friending a cop on the social network, helped lead to their arrests.

On Thursday, Kings County District Attorney Charles J. Hynes and New York City Police Commissioner Raymond W. Kelly announced a 102-count indictment against 14 members the gang, known as the "Brower Boys." Two were charged are juveniles, including a 13-year-old; the other defendants are between 15 and 19.

The "Brower Boys" committed a series of burglaries, climbing up and down apartment building fire escapes after taking electronic equipment, like laptops and cell phones, that they pawned, police say in the indictment. Most of the break-ins happened when residents weren't home. But in one apartment robbery, four of the defendants, including the 13-year-old, tied up the residents, sexually assaulted a female resident and threatened to kill the victims if they called the police, according to the indictment.

In another case, one gang member, age 18, shot a resident of the home he was burglarizing, then was shot and injured himself in a struggle with the victim.

With such a busy — and criminal — schedule, it seems hard to fathom that gang members would use Facebook to discuss their business, but they did. They not only boasted about their acts, but they even fought with each other on the social network over who should get what when it came to the loot.

"Although some were as young as 13, the Brower Boys were old hands at burglaries and worse — victimizing neighbors, but making the mistake of fighting over the proceeds on Facebook," said Kelly in a statement.

The police know this because, well, they were monitoring it. Kelly gave kudos to several officers in the case, and named Det. Michael Rodriguez, in particular. It was Rodriguez who "friended" seven of the gang members on Facebook. (The detective probably didn't have "detective" in his Facebook name or request, and police aren't saying what name he did use.)

And the gang members telegraphed their upcoming heists on Facebook as well, which helped get the police in place to videotape and record some of those incidents.

On Facebook, the gang members "signed off on their messages with LOL — laughing out loud," Kelly told the New York Post. "Well, there was a person who was laughing out loud. That was Police Officer Michael Rodriques of the 77th Precinct."

Now, the police hope, the gang members can continue to LOL — from prison, if they are convicted.

Reference Link #7

Social media has benefits and pitfalls for courts, panelists say

LINK

the article below can be found in its entirety at the link below

<http://www.americanbar.org/newsletter/publications/youraba/201109article03.html>

ABA September 2011

Social media has benefits and pitfalls for courts, panelists say

If Facebook were a country, it would be the world's third largest, audience members learned during an ABA Annual Meeting session Aug. 6 on social media and the judiciary. And when the judges in the room were asked to stand if they had Facebook accounts, a substantial majority did so.

In fact, a survey last year by the Conference of Court Public Information Officers found that 40 percent of judges in the United States, most of whom are elected, have Facebook accounts.

Keynote speaker Herbert B. Dixon Jr., a judge on the District of Columbia Superior Court, knows his stuff when it comes to technology and the judiciary. Among other positions, he is technology columnist for the ABA Judicial Division's Judges Journal, and he oversees his court's technology-enhanced courtroom project.

Dixon told the story of a lawyer who was angry with a judge, so he blogged that she was an "evil, unfair witch." The Florida Bar reprimanded and fined him, calling the incident a personal attack on the judiciary, not a First Amendment issue.

Dixon recounted other stories involving juror misconduct and use of the Internet. During one Florida drug trial, the judge declared a mistrial after learning that a juror did web-based research on the case. Media outlets dubbed it "Mistrial by Google." In another case, a juror posted to Facebook that she looked forward to announcing a guilty verdict.

Because of developments in social media, Dixon finds it helpful—as early as voir dire and also during jury instructions—to be explicit that jurors are prohibited not only from consulting traditional dictionaries or reference materials, but also from searching the Internet, websites and blogs. He instructs that jurors may not communicate with anyone about the case by blogging, texting and tweeting, and by discussing the case on Facebook, MySpace, LinkedIn and YouTube.

Dixon questioned the behavior of U.S. Supreme Court Chief Justice John Roberts, who is not bound by the code of judicial conduct, when he announced that he did his own Internet research in the 2011 cases of *Arizona Free Enterprise Club v. Bennett* and *McComish v. Bennett*. According to Dixon, during oral arguments Roberts said, “I checked the Citizens’ Clean Elections Commission website this morning. ... It says that this act was passed to, quote, ‘level the playing field’ when it comes to running for office. ... Why isn’t that clear evidence that [the law] is unconstitutional?”

Aside from independent fact-finding or discussion of pending cases on the Internet, other ethical landmines abound with social media. For example, is it OK for a judge to “friend” a lawyer on a social networking site like Facebook? Ethics opinions vary.

Is it OK for a judge to “friend” a lawyer on a social networking site like Facebook? Ethics opinions vary.

A South Carolina ruling stated that a magistrate judge may be social media “friends” with law enforcement officers and employees as long as there is no discussion of anything relating to the judge’s position. In Florida, however, a ruling that had a dissent determined that judges may not “friend” lawyers on Facebook and vice versa, as it creates an inappropriate appearance.

Dixon shared his “Judicial Commandments Re Social Media,” listed below with his citations to the relevant sections of the Model Code of Judicial Conduct.

A judge must maintain dignity in every comment, photograph and other information shared on social networking sites (Rule 1.2, Promoting Confidence in the Judiciary).

A judge should not make comments on a social networking site about any matters pending before the judge — not to a party, not to a counsel for a party, not to anyone (Rule 2.9, Ex Parte Communications).

A judge should not view a party’s or witnesses’ pages on a social networking site and should not use social networking sites to obtain information regarding the matter before the judge (Rule 2.9, Ex Parte Communications).

A judge should disqualify himself or herself from a proceeding when the judge’s social networking relationship with a lawyer creates bias or prejudice concerning the lawyer or party (Rule 2.11, Disqualification).

A judge may not give legal advice to others on a social networking site (Rule 3.10, Practice of Law).

A judge should be aware of the contents of his or her social networking page, be familiar with the social networking site policies and privacy controls, and be prudent in all interactions on a social networking site (“common sense”).

The panel, titled “‘Friend’ Is Now a Verb: Judicial Ethics and the New Social Media,” was moderated by Iowa State Court Judge Annette Scieszinski. Panelists included U.S. District Judge

Bernice Donald, American Judicature Society Ethics Director Cynthia Gray, Alaska Commission on Judicial Conduct Executive Director Marla Greenstein and ABA Judicial Division Chair Judge G. Michael Witte.

Panelists also discussed innovative uses of social media and the judiciary, such as in drug courts and other problem-solving courts, and when courts announce logistical information for jurors and other public information by text messaging or Twitter.

The program was sponsored by the Judicial Division and the American Judicature Society. Scieszinski invited attendees and others to contact the division if they are interested in producing a similar program in their jurisdictions.

Reference Link #8

The Children's Online Privacy Protection Act of 1998 (COPPA)

LINK

the statute below can be found in its entirety at the link below
<http://www.law.cornell.edu/uscode/text/15/6501>

The act, effective April 21, 2000, applies to the online collection of personal information by persons or entities under U.S. jurisdiction from children under 13 years of age. It details what a website operator must include in a privacy policy, when and how to seek verifiable consent from a parent or guardian, and what responsibilities an operator has to protect children's privacy and safety online including restrictions on the marketing to those under 13. While children under 13 can legally give out personal information with their parents' permission, many websites altogether disallow underage children from using their services due to the amount of paperwork involved.

15 USC § 6501 - Definitions

Current through Pub. L. 112-207. (See Public Laws for the current Congress.)

In this chapter:

(1) Child

The term “child” means an individual under the age of 13.

(2) Operator

The term “operator”—

(A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce—

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; but

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 45 of this title.

(3) Commission

The term “Commission” means the Federal Trade Commission.

(4) Disclosure

The term “disclosure” means, with respect to personal information—

(A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does not disclose or use that information for any other purpose; and

(B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through—

(i) a home page of a website;

(ii) a pen pal service;

(iii) an electronic mail service;

(iv) a message board; or

(v) a chat room.

(5) Federal agency

The term “Federal agency” means an agency, as that term is defined in section 551 (1) of title 5.

(6) Internet

The term “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) Parent

The term “parent” includes a legal guardian.

(8) Personal information

The term “personal information” means individually identifiable information about an individual collected online, including—

(A) a first and last name;

(B) a home or other physical address including street name and name of a city or town;

(C) an e-mail address;

(D) a telephone number;

(E) a Social Security number;

(F) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(G) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9) Verifiable parental consent

The term “verifiable parental consent” means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator’s personal information collection, use, and disclosure practices, and authorizes the collection, use, and

disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

(10) Website or online service directed to children

(A) In general

The term “website or online service directed to children” means—

- (i) a commercial website or online service that is targeted to children; or
- (ii) that portion of a commercial website or online service that is targeted to children.

(B) Limitation

A commercial website or online service, or a portion of a commercial website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(11) Person

The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(12) Online contact information

The term “online contact information” means an e-mail address or another substantially similar identifier that permits direct contact with a person online.

Reference Link #9

Social media helps probation officers monitor juvenile offenders

LINK

the article below can be found in its entirety at the link below

<http://www.askthejudge.info/social-media-helps-probation-officers-monitor-juvenile-offenders/16881/>

Date: 07.12.12 | by Judge Tom...?

The caption of this article should come as no surprise to anyone. We've all read and heard about colleges, universities and employers checking your Facebook posts and YouTube videos. Teenagers on probation are also followed by the probation officers whether they've turned over their passwords or not. What you post on a public site is out there for anyone to see.

Judge Lisa Gonzales in Corpus Christi, Texas, orders some adult probationers to turn over their usernames and passwords to their probation officers. "This gives them one more tool to basically look up people on their accounts and see if they're posting anything that would be inappropriate or would be a violation of their probation," Judge Gonzales explained. Access to your Twitter, Facebook or MySpace account allows the PO to monitor your activities 24/7 from anywhere.

Other courts across the country are exploring similar policies. Many juvenile probation officers follow their kids on Facebook to see that they're following the terms of probation. The use of social media has grown tremendously by government officials and agencies. Statistics show that almost every governor has a personalized Twitter presence as well as 10% of state legislators. Every governor has a Facebook presence and legislatures in Illinois, New York, Minnesota, Michigan and Texas lead the nation in Facebooking.

In July, 2012, Delaware became the first state to ban colleges and universities from requiring students to provide access to their social networking accounts. Strict privacy laws protect college students from divulging information as a requirement for admission or participation in extracurricular activities. See Delaware HB 309 for the specifics.

TEXAS BAR JOURNAL

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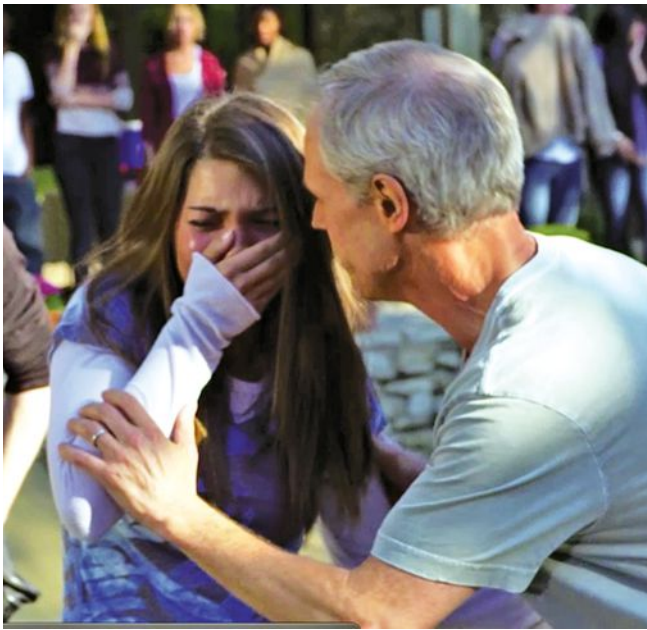
This month, the *Texas Bar Journal* takes a look at juvenile law and the juvenile justice system, including an overview of juvenile vs. criminal law, deferred prosecution, and the law concerning underage drinkers stopped for a DWI. In addition, we highlight *The Unconscious Truth*, a new project from TYLA on the legal consequences and health dangers associated with underage binge drinking. **PAGE 114**



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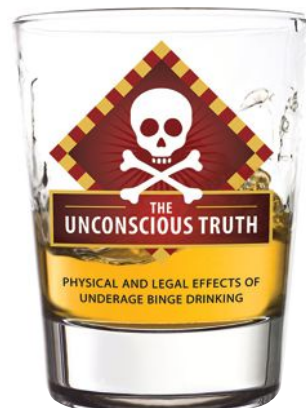


JUVENILE LAW

In this issue, the *Texas Bar Journal* takes a look at juvenile law and the juvenile justice system. Brian J. Willett provides an overview of the key differences between juvenile and criminal law, while Bradley P. Temple discusses the pretrial diversion program of deferred prosecution and the importance of diversion programs in the juvenile justice system. Judge Pat Garza outlines the law as it pertains to the taking of a breath or blood specimen of juveniles who are stopped under suspicion of driving while intoxicated.

Finally, we highlight a timely new multimedia project from the Texas Young Lawyers Association — *The Unconscious Truth: Physical and Legal Effects of Underage Binge Drinking*. Inspired by the story of Shelby Allen, a 17-year-old girl who died as a result of binge drinking at a friend's party, *The Unconscious Truth* helps educate teens and adults alike on the legal consequences and health dangers associated with binge drinking.

Let us know your thoughts. Email us at tbj@texasbar.com.



JUVENILE LAW VS. CRIMINAL LAW AN OVERVIEW

BY BRIAN J. WILLETT

The history of Texas juvenile law dates back to 1836 when the Republic of Texas established the age of eight as the age of criminal responsibility. Eighty-two years would pass (1918) before that age would be raised to the current age of 17. In 1943, the Texas Legislature adopted special civil procedures to replace the criminal procedures that were in place to deal with juveniles charged with a criminal offense.

It was the landmark case of *Morales v. Truman*, 1971 326 F. Supp. (E.D. Tex. 1971), that led to sweeping changes to the Texas juvenile justice system. The case involved 15-year-old Alicia Morales, who was forced to work and surrender all of her income to her father. She became defiant of this practice, and in response, her father had her committed to the Texas Youth Commission (TYC). Morales never received notice of the charge against her, was never given an opportunity to be heard in court, and was never provided with legal counsel. In short, her due process rights were denied in several different ways.

To gauge the extent of such violations, letters were sent to the 2,500 youths then incarcerated by the TYC, inquiring if they had been given the opportunity to have a hearing before their adjudication and sentencing, and if they had been represented by counsel. The majority had been granted a hearing, but more than one-third had not been represented by an attorney. The letters were followed up by individual interviews of the confined youths. The court discovered that 60 percent of the boys incarcerated in TYC were in custody for the offense of theft, 19 percent for disobedience and immoral conduct, and only 9 percent for violent crimes. For girls, the imprisonment numbers were even more shocking, 68 percent were confined for disobedience and immoral conduct and only 4 percent for violent crimes.

After years of negotiations, including a hearing before the U.S. Supreme Court, a settlement was reached in 1984. The *Morales* case prompted a number of beneficial changes to Texas juvenile law and procedure, including the following:

1. a separate category for juvenile court dispositions called “conduct indicating a need for supervision”;
2. due process rights in juvenile court hearings and TYC administrative hearings;
3. corporal punishment prohibition;
4. the development of individualized, specialized, and community-based treatment programs; and
5. the appropriation of state funds to assist counties in providing probation services.

JUVENILE VS. CRIMINAL LAW

The fundamentals of the two systems can be found principally in three different Texas codes. The juvenile system is outlined in the Texas Family Code and the criminal system can be found primarily in the Texas Penal Code and the Texas Code of Criminal Procedure.

The two systems have basic similarities, including the right to receive Miranda warnings, the right to be free from self-incrimination, the right to an attorney during critical court proceedings, plea bargaining, the right to a jury at the delinquent/not

delinquent or guilty/not guilty stage of a trial, the requirement that the State prove its case beyond a reasonable doubt, pretrial detention, community supervision (probation), community service hour requirements, and restitution when appropriate.

Differences in the two systems mainly exist because of the distinction of their purposes. The juvenile system's principal function is to protect and rehabilitate a delinquent child, while it can be argued, the main goal of the adult system is to punish a guilty offender.

Even the terminology created for the juvenile system is one based on civil rather than criminal standards. A juvenile is referred to as a respondent, not as a defendant. A juvenile is alleged to have committed a delinquent act rather than a criminal offense. A juvenile is generally not charged by an indictment or information; he or she is brought before a juvenile court by the filing of a petition. A juvenile is not arraigned in court at his or her first appearance, but is instead held to appear for a detention hearing. While a juvenile is detained and adjudicated, an adult is arrested and convicted.

Age determines the jurisdiction of a juvenile court while the type of offense determines the jurisdiction of a criminal court. Juvenile court procedures are usually informal and may be held privately, while criminal court procedures are more formal and open to the public. Identifying information about a juvenile, as a rule, cannot be released to the media while information about

an accused adult offender is considered public information. In the juvenile system, parents/guardians are encouraged and sometimes required to be involved in their child's rehabilitation, but not so in the adult system. A juvenile may be released into the custody of a parent/guardian, while an adult will typically be required to post bail.

Under most circumstances, a juvenile's adjudication/disposition record will be eligible for sealing, while an adult has only limited circumstances where an expunction or order of non-disclosure may be granted. A juvenile who is certified as an adult cannot be sentenced to death for a capital offense that occurred before the juvenile was 18 years of age. Finally, the juvenile court's main objective is to focus on the best interests of the child in determining what services or protections are needed to benefit the juvenile, while the criminal court generally focuses on invoking a punishment proportionate to the crime.

BRIAN J. WILLETT

of Bedford is one of only seven attorneys in Texas who is board certified in criminal and juvenile law. He has also written a book about the Texas criminal justice system, *Ignorance of the Law is No Excuse*.

This article is an excerpt from the author's presentation at the Prairie Dog Lawyers Advanced Criminal Law Seminar in January 2012. The full article is available on the TexasBarCLE Online Library at texasbarcle.com.

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JUVENILE JUSTICE

PRINCIPLES OF PRETRIAL DIVERSION DEFERRED PROSECUTION

BY BRADLEY P. TEMPLE

In Texas, each county determines how its pretrial diversion programs will be administered. The details of these programs will vary greatly from county to county, but there are two general diversion programs utilized by most counties: the First Offender Program and deferred prosecution. This article will focus on deferred prosecution.

DEFERRED PROSECUTION

Deferred prosecution is contemplated by sanction level two of the Progressive Sanctions Model, which states a child may be placed on a period of deferred prosecution by: (1) the probation department, (2) the prosecuting attorney, or (3) the juvenile court.¹ Like other forms of diversion, deferred prosecution is an alternative to seeking a formal adjudication, but one that entails a specific period of informal probation — usually six months.

Deferred prosecution is authorized by Section 53.03 of the Texas Family Code. A careful reading of this section is the first step in understanding this process. The Family Code requires that before a child is placed on deferred prosecution, there

must be a finding of probable cause that the child has engaged in delinquent conduct or conduct indicating a need for supervision.² Deferred prosecution should not be used for cases the State clearly cannot prove in court.

REFERRAL TO DEFERRED PROSECUTION BY PROBATION

Subject to certain restrictions, the probation department may place a child on deferred prosecution if the following three conditions apply:

1. Deferred prosecution would be in the best interests of the public and the child;

2. The child and the parent know that consent to participate is voluntary; and
3. The child and the parent understand they may terminate the deferred prosecution at any time and go to court.

The probation department may not defer prosecution for a case requiring forwarding to the prosecutor under Section 53.01(d) of the Texas Family Code. This section requires the forwarding of felonies and misdemeanors involving violence or weapons, unless the county juvenile board adopts an alternative forwarding plan.³ Additionally, the probation department cannot defer prosecution for a child who has previously been adjudicated of a felony, even if the current referral is for an offense not requiring forwarding, unless the prosecutor's consent is obtained in writing.⁴ The probation department can set the length of deferred prosecution for "a reasonable period of time" not to exceed six months.⁵

REFERRAL TO DEFERRED PROSECUTION BY THE PROSECUTING ATTORNEY

The Family Code empowers the prosecutor with the ability to defer prosecution for any child⁶ and in any case except for certain alcohol-related offenses.⁷ This often occurs when the probation department forwards cases to the prosecutor and the prosecutor determines that although probable cause exists, proceeding with the case formally is not necessary. The prosecutor can return the case to juvenile probation for "further proceedings."⁸ At this point, probation may place the child on deferred prosecution for a felony or misdemeanors involving violence or weapons, as an agent for the prosecutor.

Theoretically, the prosecutor can also overrule the probation department's decision not to send a case to deferred prosecution it could have sent. Whether or not this happens practically in any given county will depend on the relationship between probation and the prosecutor's office.

REFERRAL TO DEFERRED PROSECUTION BY THE JUVENILE COURT

Prior to 2003, it was a little unclear whether the juvenile court had the power to place a child in deferred prosecution.

Section 53.03 spoke only to the allocation of authority between the probation department and the prosecutor. Nothing in Section 53.03 precluded the court from sending a case to deferred prosecution and certainly Section 59.005 contemplated the court having this power, but still it was ambiguous. In 2003, the Texas Legislature cleared up this ambiguity by specifically stating the juvenile court can defer prosecution at any time before:

1. The jury is sworn in a jury trial;
2. The first witness is sworn in a bench trial; and
3. The child pleads true or agrees to a stipulation of evidence.⁹

Essentially, the court must place the child on deferred prosecution before jeopardy attaches to the case. Placing a child on deferred prosecution after jeopardy attaches would be a mistrial and a new prosecution would be prohibited.

The court may grant deferred prosecution for all cases, except for the alcohol-related offenses prohibited by Section 53.03(g). The court may grant deferred prosecution on its own motion, but usually a child will have to ask the court for a hearing to decide whether the deferred prosecution should be granted. This hearing may be conducted by formal presentation of evidence or may be conducted by the parties making professional representations to the court concerning the case and the child's background.¹⁰ Finally, the court can add to a previous order of deferred prosecution so long as the combined period does not exceed one year.¹¹

OBTAINING DEFERRED PROSECUTION FOR YOUR CLIENT

Preparation for obtaining deferred prosecution begins at the time you meet your client. The groundwork for a positive outcome is laid by gathering all the information you can about the delinquent act at issue and your client. Is this a first referral? Are there any mitigating factors, extenuating circumstances, or subsequent displays of remorse? How is your client's behavior at home? How is the behavior at school? Does your client make good grades or participate in extracurricular activities? Are there any mental health considerations? Have there been any changes in the client's environment since the referral? Are the

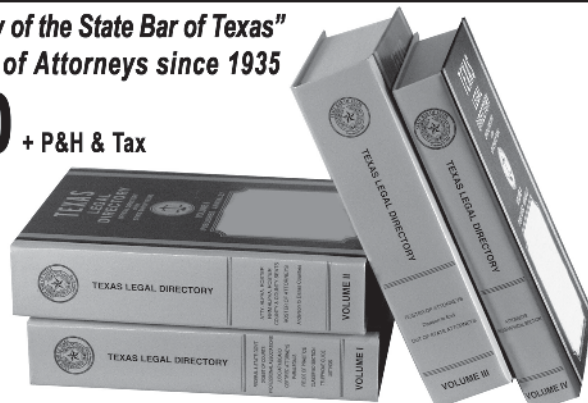
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parents doing all they can to properly supervise? Is it possible the complaining witness would support deferred prosecution? Focus on anything and everything a prosecutor or judge would want to know before deciding to grant deferred prosecution. Accentuate the positive, but do not ignore the negative. Dealing with harmful information early can have a significant impact on whether deferred prosecution will be granted. Finally, gather any documentation that reflects positively on your client and supports your arguments for deferred prosecution. The following are examples of documents you might want to obtain:

- A positive report card;
- Letters from teachers, coaches, and others in support of your client;
- Paperwork confirming your client's participation in extracurricular activities;
- Proof of employment, such as a work schedule;
- Special education or mental health records;
- A letter from a service provider showing that your client has already begun services or successfully completed them in the past; and
- A letter from your client apologizing for the behavior and expressing commitment to change and make restitution.

Part of your preparation for obtaining deferred prosecution will include preparing your client. This might involve advising your client on how to have positive interaction with decision makers or helping the client to fulfill obligations or goals. Advise your client to notify you immediately if there are any problems complying with court orders or the demands of parents and service providers. Whenever you learn of a problem, help the client come up with a solution. Take the time to explain to the client the importance of improving behavior and the connection behavior has to the objective. Monitoring your client's behavior before a final decision is made will help avoid some mistake that might ruin any chance of the decision being favorable.

Once you have gathered all of the information, prepared the client, and put together your arguments, you are ready to begin persuading. Depending on the type of offense you are dealing with, you may have up to three opportunities to persuade someone to grant deferred prosecution.

CONCLUSION

Diversion is an important part of the juvenile justice system. Most juveniles referred to juvenile court never return for a new referral.¹² In places where diversion programs are administered effectively, many positive benefits are realized. Burdens on the court system are reduced. The community and the victim are more involved in the juvenile justice system. And for the offender, the stigma of having a formal adjudication is avoided.

NOTES


1. See Tex. Fam. Code §59.005.
2. Tex. Fam. Code §53.03(a).

3. Tex. Fam. Code §53.03(e)(1).
4. Tex. Fam. Code §53.03(e)(2).
5. Tex. Fam. Code §53.03(a).
6. Tex. Fam. Code §53.03(e).
7. Tex. Fam. Code §53.03(g).
8. Tex. Fam. Code §53.012.
9. Tex. Fam. Code §53.03(i).
10. Tex. Fam. Code §53.03(k).
11. Tex. Fam. Code §53.03(j).
12. Snyder, H., and Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report*. Washington D.C.: Office of Juvenile Justice and Delinquency Prevention.

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This article is an excerpt from the author's presentation, "Principles of Pre-Trial Diversion," at the TexasBarCLE Juvenile Law Conference in February 2011. The full article is available on the TexasBarCLE Online Library at texasbarcle.com.



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