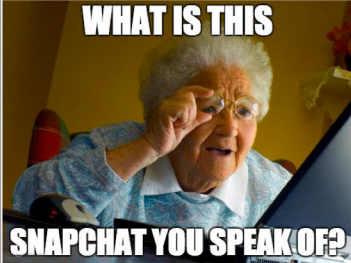


## Digital Citizenship

**Karen Haase**



 KSB School Law

 @KarenHaase

 karenahaase



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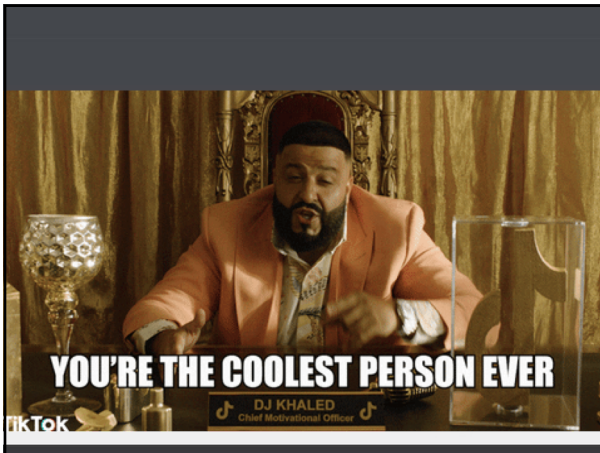
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## Consequences for Digital Citizenship Fails

- School-based
- Civil Liability
- Criminal Prosecution
- Victimization by Predators

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## School Based Consequences

- Activities
- Suspension and Expulsion

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## Sports and Activities



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## Arceneaux v. Assumption Parish Sch. Bd., 242 F. Supp. 3d 486 (5<sup>th</sup> Cir. May, 2018)

- Cheerleaders post pic on Snapchat
- Sent to Weekend Schemers
  - “The Weekend Schemers maintains a Snapchat account that posts pictures provided by third parties and bills itself as ‘[t]he authority on college life, partying, and most importantly scheming.’”
  - “Many of the photographs featured on Weekend Schemers’s Snapchat account depict young women exposing their buttocks”
- School found out

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**Arceneaux v. Assumption Parish Sch. Bd.,  
242 F. Supp. 3d 486 (5<sup>th</sup> Cir. May, 2018)**

- Student given
  - 3 days ISS
  - Kicked off cheer squad
  - Prevented from trying out senior year
- Parents Sued
  - Student Handbook
  - First Amendment
  - Sex Discrimination

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**Arceneaux v. Assumption Parish Sch. Bd.,  
242 F. Supp. 3d 486 (5<sup>th</sup> Cir. May, 2018)**

- Court:
  - Family failed to present direct or circumstantial evidence that would give rise to an inference of unlawful discrimination
  - Student "was not excluded from participating in cheerleading because she was a female student. She was removed from the team because she posed for a photograph, raising her cheerleading uniform skirt, and that photo was posted on the internet.

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**Suspensions and Expulsions**

Dad: We just got back from parent-teacher conferences, you've been expelled

Kid: But I'm homeschooled

Dad: You have 24 hours to get out



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## Suspensions and Expulsions

- NEB. REV. STAT. 79-254 *et seq.*
- Reasons for discipline:
  - “ongoing pattern of physical, verbal or electronic abuse”
  - “any activity forbidden by NE law”
- “On school grounds” = 1-1 devices
- Consequences:
  - Loss of extracurricular privileges
  - Suspension
  - Expulsion
  - Mandatory Reassignment

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## Shen v. Albany Unified Sch. Dist. (2017)

- Student created Instagram account with limited access, around 10 other kids
- Posts were racist and threatening in nature
  - KKK starter pack
  - Picture of a white man beating a black slave
  - Pictures of African-American staff and students with nooses drawn on their necks

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## J.S. v. Grand Island Pub. Sch. 297 Neb. 347 (2017)

- Comments on SM by MS students:
  - “Tomorrow gonna be hella fire 🔥 be there (School).”
  - “Don’t show up to school tomorrow 🇺🇸”
- Parents call police
- Police show up at school

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**J.S. v. Grand Island Pub. Sch.**  
297 Neb. 347 (2017)

- Girl who made "hella fire 🔥" comment:
  - When asked why she did it?
  - "hella fire" means awesome
  - School suspended for 15 days
  - Appealed
- Nebraska Supreme Court dismissed appeal

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**Shen v. Albany Unified Sch. Dist. (2017)**

- Ten students depicted; word gets out
- Instagram account deleted
- Creator of the account expelled; students who liked and commented also disciplined
  - Liking a post "broadcasts the user's expression of agreement, approval, or enjoyment of the post"

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**Shen v. Albany Unified Sch. Dist. (2017)**

- Protected speech?
  - Court finds a nexus between Instagram account and school; posts about school staff, students, activities
  - Reasonably foreseeable speech would reach school and create a risk of substantial disruption; posts about students likely to be shared with targets
- Students found to be properly disciplined

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## Civil Litigation



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## Civil Litigation

- Student and parents can be sued
  - Suing for money; no jail time
  - Homeowners insurance often pays
  - Judgments can result in home foreclosure and other hardship

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## Taylor v. Francko

- William Francko proposed to Leona Taylor
- She refused
- He posted nude photos of her online, along with her contact information
- Sued for infliction of emotional distress
- Wait, could this happen to you and your parents, in Nebraska...?

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**Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act (Neb. Rev. Stat. §§ 25-3501 to 25-3508.)**

- New Nebraska law allows for civil lawsuits when a private intimate image is shared
- Allows for actual damages and emotional distress
- If the actual damages are difficult to quantify, presumed damages of up to \$10,000 against each defendant.
- Allows for
  - attorney's fees
  - costs
  - injunctive relief

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**Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act (Neb. Rev. Stat. §§ 25-3501 to 25-3508.)**

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  - attorney's fees
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**Taylor v. Francko**

- William Francko proposed to Leona Taylor
- She refused
- He posted nude photos of her online, along with her contact information
- Sued for infliction of emotional distress
- Court entered judgment against Francko and awarded Taylor "damages".....
- \$425,000

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## Criminal Consequences



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## Criminal Consequences

- NEB. REV. STAT. 28-311.01
- Terroristic Threats: "threatens to commit any crime of violence ..."
  - With the intent to terrorize another
  - With the intent of causing evacuation of a building or public place
  - In reckless disregard of the risk of causing such terror or evacuation
- Class IIIA Felony punishable by up to 3 years in prison per threat

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 SarpyCountySheriff  
@SarpySheriff

Follow

Social media postings have recently surfaced with content "joking" about shooting schools and other places. These posts were followed up on and determined not to be a credible threat. Parents talk with your children about social media comments. #NoJoke #WeWillTakeItSeriously

**Plattsmouth students accused of planning school attack appear in court; county attorney describes 'very troubling' plan**

**Student banned from Nebraska City Public Schools property after making threat**

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**Elkhorn teenager arrested for terroristic threats toward school, officials say**

**Neligh-Oakdale Student Arrested For 'Columbine' Threat**

BY Antelope County News | 12/20/2016

**Student arrested after threats made against Wahoo High School**

Omaha police have investigated dozens of threats against schools, students since Florida shooting

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CHANNEL 35 10:47 PM NEWS CHANNEL NEBRASKA

**NEWS CHANNEL NEBRASKA**

HOME | NEWS | WEATHER | SPORTS | VIDEO | COMMUNITY | WIN STUFF | ABOUT US

**Neligh-Oakdale Student Arrested For 'Columbine' Threat**

BY Antelope County News | 12/20/2016

Home > News > Featured News

A Neligh-Oakdale student was arrested Monday after allegedly using Snapchat to threaten "to make Columbine look like a (expletive) joke."

According to Ofc. Kraig Nelson of the Neligh Police Department, the threat showed a picture of a toy gun and a message that stated "I'm going to make Columbine look like a 'expletive' joke." This Snapchat message was sent to a large group of students and friends of the suspect.

The Neligh Police, along with the Antelope County Sheriff's Department, received the report of the potential threat from the Neligh-Oakdale School administration.

Nelson said upon investigating the threat, a male juvenile was arrested by the Neligh Police Department for Terroristic Threats, a Class IIIA Felony. The male juvenile was taken to the Juvenile Detention Center in Madison to be held on his charges.

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**Sexting and Privacy**

Denise

Marcus  
send me a pic of you in bra 😊

Denise  
ok

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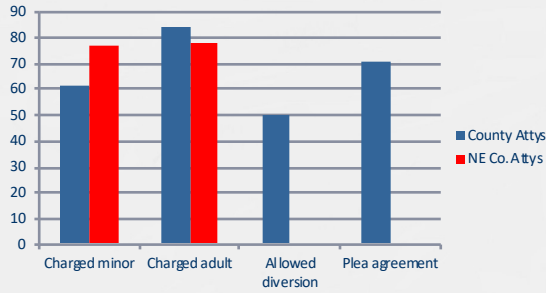
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## Nebraska's Sexting Laws: The Harsh Reality




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## Nudes of Minors are Illegal for ANYONE to Create or Distribute

- NEB. REV. STAT. 28-1463.01-.06 (Creation)
  - (1) It shall be unlawful for a person to knowingly **make, publish, direct, create**, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.
  - (2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, **distribute**, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.
- (No affirmative defenses...)

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## Nudes of Minors are Illegal for ANYONE to Possess

- NEB. REV. STAT. 28-813.01 (Obscenity)
  - It shall be unlawful for a person **under nineteen years of age** to **knowingly and intentionally possess any visual depiction** of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers. Violation of this subsection is a **Class I misdemeanor**. A second or subsequent conviction under this subsection is a **Class IV felony**.
  - 2 possible defenses for **voluntary sharing**— 15 to 18, or within 4 years in age if 17 or younger

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## It is Illegal to Share Nudes of ANYONE without their Consent

### ▪NEB. REV. STAT. 28-311.08 (Intrusion)

(4) It shall be unlawful for any person to **knowingly and intentionally distribute or otherwise make public an image or video of another person's intimate area** or of another person engaged in sexually explicit conduct (a) if the other person had a reasonable expectation that the image would remain private, (b) knowing the other person did not consent to distributing or making public the image or video, and (c) if distributing or making public the image or video serves no legitimate purpose. Violation of this subsection is a Class I misdemeanor. A second or subsequent violation of this subsection is a Class IV felony.

- "Intimate area" means "the naked or undergarment-clad genitalia, pubic area, buttocks, or female breast of an individual"

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## It is illegal to THREATEN to share a Nude (of anyone)

### ▪NEB. REV. STAT. 28-311.08 (Intrusion)

(5) It shall be unlawful for any person **to threaten to distribute** or otherwise make public an image or video of another person's intimate area or of another person engaged in sexually explicit conduct with the intent to intimidate, threaten, or harass any person. Violation of this subsection is a Class I misdemeanor.

- (No affirmative defenses...)

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## It is Illegal to ask a Minor to take or send a Nudes

### ▪28-707 (Child Abuse)

▪A **person** commits child abuse if he or she knowingly, intentionally, or negligently **causes or permits a minor child to be...**

- "Placed in a situation to be sexually exploited by allowing [or] encouraging such minor child to ... engage in ... pornographic photography, films, or depictions"

▪28-711: "any school employee" **must report child abuse**

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## 34 teens face sexting charges

by Alexis Bechman roundup staff reporter Jun 5, 2018 0 1 min to read

- Boys had been selling and trading nudes of female classmates
- Had group chats and Snapchat groups dedicated to sharing them
- Wouldn't have been charged if he "took steps" to report what was sent to them

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## "12-year-olds charged for sexting"

- Middle school girl sends inappropriate pictures to middle school boy; boy shares pictures
- Boy and girl both charged with illegal use of a minor in nudity-oriented material (felony)
- Both plead guilty, put on probation

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## State v. Simms

- 17 year old sent nude to girlfriend
- Two felony counts of manufacturing and possessing child pornography
- Search warrant
- Pled guilty
  - Probation
  - Sex offender

Va. Teen Could Be Jailed for "Sexting" Girl



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FOOTBALL

## Husker RB Maurice Washington faces child porn charges in California after sending video of ex-girlfriend

By Sam McKewon / World-Herald staff writer 6 hrs ago



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## Victimization



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## The Most Recent Teenagers Caught Sexting

Blank area for notes or text.

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**Lincoln man arrested, charged with child enticement**



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**Colorado Man arrested for child enticement of Lincoln teen**



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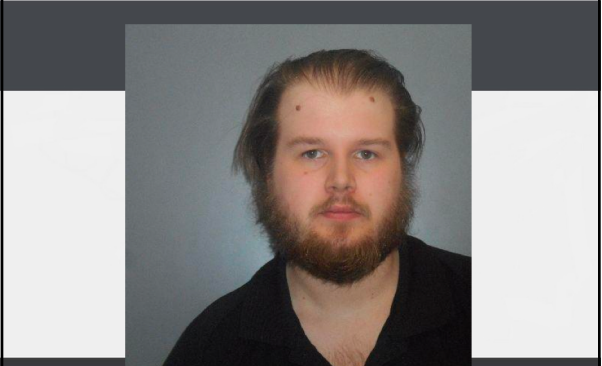
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**Lincoln man arrested after child enticement investigation by NSP**



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## Man arrested for child enticement in Lincoln



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## UNL Sextortion Case

- 3 different males stripped during video chats with female attending UNL
- Contacted boys after chats saying she had recordings
- Told boys she would post them on Facebook and Instagram unless they sent money to an account in the Philippines:
  - Male 1: \$1,500 sent
  - Male 2: \$1,018 sent
  - Male 3: \$500 sent

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## It only happens to little kids!

### Most Internet Sex Offenders Target Teens, Not Kids

SHERRY BAKER  
By HEALTHDAY REPORTER

FRIDAY, Feb. 22 (HealthDay News) -- The stereotype of the middle-aged male sex offender posing online as a young person to trick adolescents into clandestine meetings where they can be abducted and raped is inaccurate, a new study finds.

Instead, Internet-initiated sex crimes most often involve adult men who do not lie about their age, are open about wanting sex, and use instant messaging, e-mail and chat rooms to meet and seduce teenagers, according to research published in the February/March issue of *American Psychologist*, the journal of the American Psychological Association.

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## Questions?

Karen Haase



(402) 804-8000 (office) (402) 499-0547 (cell)

karen@ksbschoollaw.com

www.ksbschoollaw.com



KSB School Law



@KarenHaase



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