

Teen Dating Violence Social Media



and Tech Misuse Guidance for Judges



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For more information about the NCJFCJ or this document, please contact:

National Council of Juvenile and Family Court Judges
P.O. Box 8970
Reno, Nevada 89507
www.ncjfcj.org

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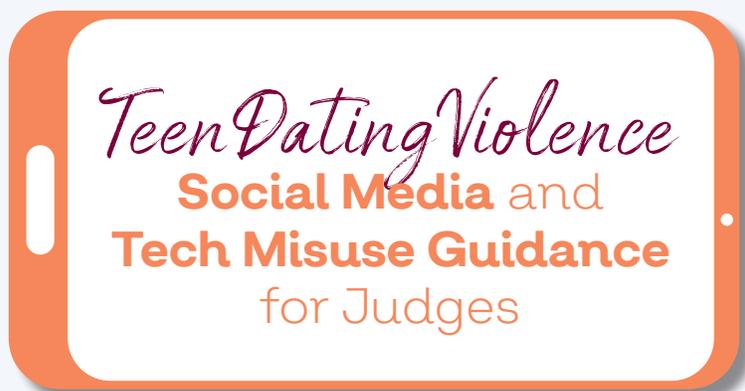
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Authors:

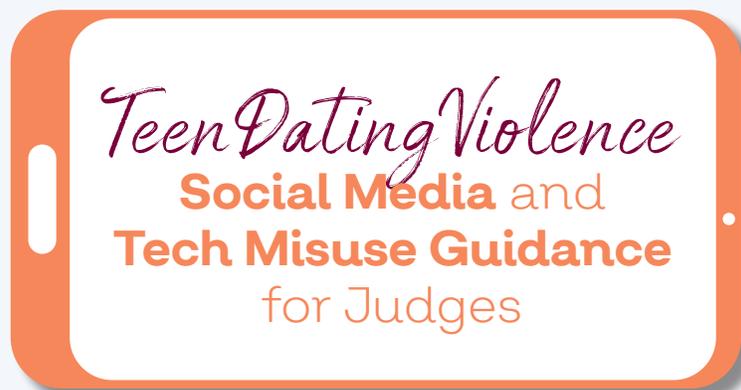
Stephine Bowman, Program Attorney, NCJFCJ

Jessica Pearce, Senior Site Manager, NCJFCJ

Rebekah Tucci, Program Manager, NCJFCJ

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Today's social media and online landscape provides access to information, education, and connection that we could not have imagined even a decade ago. In addition to all of the instant connections that social media facilitates, it can create a safe space of belonging—building community as well as mental and emotional well-being. Social media provides a seemingly personal connection to many that they could never connect with in person—celebrities, people on the other side of the globe, artists and even experts in any field.

While online communities are still new experiences for some adults, both teens and emerging adults who grew up with these online spaces navigate this environment with ease. For young people, online communities are frequently more convenient than in-person communities. Not only are they able to maintain communication with friends and acquaintances without the need to travel within their physical communities, they are also able to meet and make connections with people across the globe that share their interests. For many youth, an online community may be safer than in-person communities. Many teens feeling isolated in their immediate social surroundings can and do build relationships and connections via the internet. For gender non-conforming teens living in a hostile home environment, online friendships may be the only place where they are called by their correct name and pronoun. Similarly, for youth from other cultures or other countries, online communities may be the only outlets for them to connect with others from similar language, cultural and social experiences. For disabled/ differently abled teens and emerging adults,¹ homebound teens, or those caring for homebound loved ones, most of their social life may happen over the internet or may be assisted by smart or internet connected devices.

Yet, these same social media platforms can be a breeding ground for targeted threats, harassment, stalking, and emotional and physical abuse. Isolation and other social factors leave teens open for abuse and exploitation by others.² While stalking is not a new behavior, technology has made stalking (or cyberstalking) easier and more efficient.³ As courts adjust to the new realities of online life, judicial decisions, rulings and court orders must be crafted to reflect an understanding of the dangers and dynamics that youth face as they create their new world of social engagement and human connections.

Addressing Technology and Teen Dating Violence

Abusive behaviors through social media and technology mirror abusive behaviors offline – surveilling or stalking, spreading false narratives or impersonating the survivor,⁴ ruining credibility, causing financial harm through fraud or by hurting a survivor’s professional or scholastic reputation, exposing survivors to harm from third parties, humiliating survivors, and causing pain and suffering.

Even though the sharing of intimate images without a person’s consent may seem like a new abusive behavior, in the past photocopies of such images may have been sent to the survivor’s fellow classmates, coworkers, or family. What is different is the ability for the abuser to quickly reach a larger audience online and do so with considerable anonymity.

Social media platforms are constantly evolving. Different platforms come in and out of style and relevant platforms are frequently updating their features. The most common/popular ones for young people in early 2021 are Instagram, TikTok, and Snapchat, but that may change at any time.

In general, social media platforms allow for users to post images and videos and for their friends and followers to comment, like, and share that content. Many platforms give



“Sharing” is a catch-all term which includes “reposting” something using the mechanisms in the application. While most platforms alert the original poster/user of their content being shared with the application, people can record the user’s content with another device or with screen-recording to record and share the user’s content without their knowledge.

the user the option of keeping their activities private and allow their content to be only viewed by “friends” and “followers” that the user has granted permission. A user can also choose to keep their profile public for anyone to see.

Platforms vary in what type of content is shared. For example, Instagram content is generally photo based, but does allow for video sharing and direct messaging. TikTok involves sharing short videos or direct messages. Twitch, generally used by online gamers, allows for live streaming with other online players. Many social media platforms, including Instagram, have added similar features that enable users to start a live feed where others can join as spectators and commenters. Most platforms that offer live feeds save the live-streamed content as a video once the user ends the live feed. This means that “going live” allows for others to view what is happening in real time and also allows for sharing after the fact.

Unlike other platforms, Snapchat is known for disappearing photos and messages. The platform alerts the sender if the receiver takes a screen shot or screen recording of a message or photo. This process has pros and cons: the app sends an alert to the sender that the image or message has been copied and saved, but in the case of technology misuse, that same alert may notify an offender that the survivor has attempted to document evidence. Either way, recording with a second device, such as a cell phone or camera, would not send an alert.

Though new types of social media platforms come and go, they generally involve some combination of these key features and the ability for other users to “like” or comment on the content shared. While it is likely impractical for judicial officers to remain up to date on all the latest platforms, an understanding of these main features can help a judge appreciate how new platforms can be used and misused in the cases before them and provide them with enough knowledge to ask meaningful questions of litigants regarding the alleged abuse or harassment and safety concerns.⁵

Online Abuser Tactics

Although social media platforms generally require a name and email address to create an account, it is easy to assume a false identity on most platforms or even entice third parties to participate in the harassment and abuse. This includes targeting victims using online community forums, creating fake profiles, uploading fake pictures, and crafting false narratives.

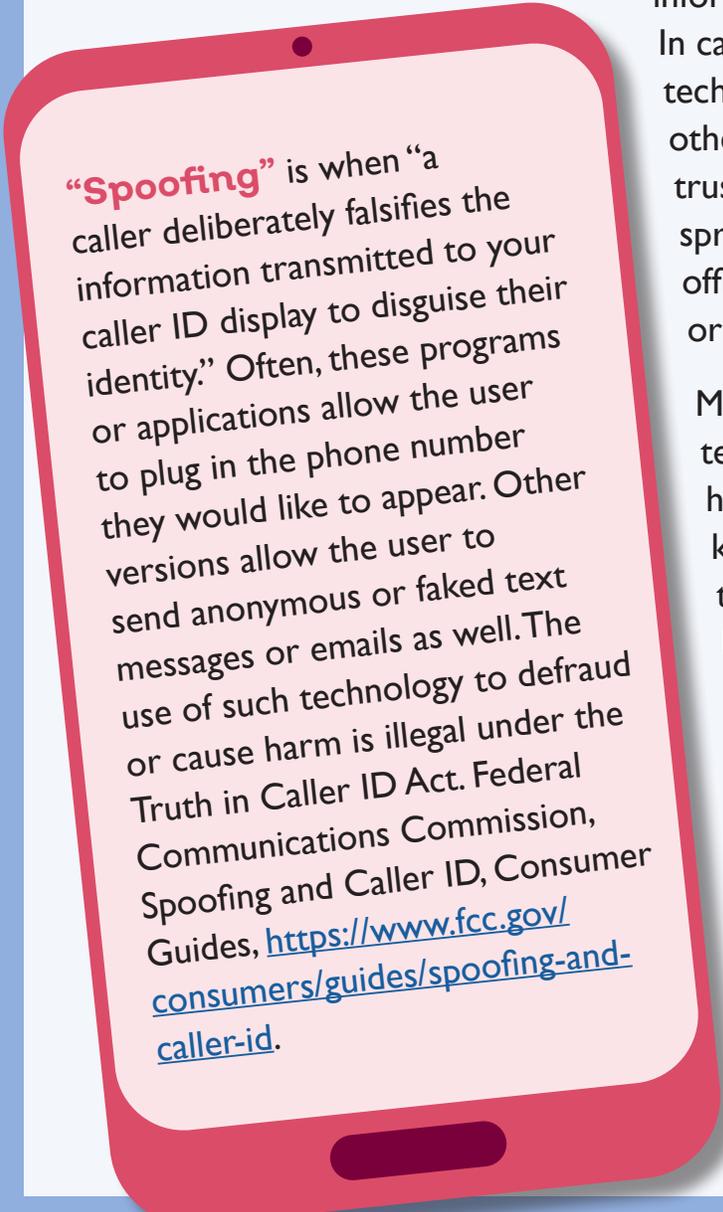
A frequently used tactic is “catfishing” which involves using social media platforms to create fake profiles and perpetuate false identities. The person who sets up these false personal profiles on social media and online dating sites is referred to as a “catfish.” It is important to remember that even if youthful offenders are blocked on social media platforms, they can continue to harass and abuse survivors from their fake catfish accounts - blocking each fake account can turn into a game of whack-a-mole quickly. They may comment hateful or hurtful things on a survivor’s social media, inundating the survivor until they feel that they need to remove themselves from the platform.

In addition to catfishing on social media platforms, it is also easy to create and use fake phone numbers. Some applications allow users to “spoof” or appear to be calling and/or texting from a number not their own or, with some applications, a number of their choosing. Similar technologies have been used by telemarketers and scammers to get people to answer their phones instead of screening calls or to better illicit sensitive information like social security or account numbers.

In cases involving teen dating violence, these technologies can be used to make a call that would otherwise be blocked seem like it is coming from a trusted friend or family member, or may be used to spread misinformation to the victim by posing as officials from schools, employers, service providers, or even the court.

Moreover, youthful offenders may use spoofing technology to make it appear that the survivor has called them. If not carefully examined, these kinds of tactics enable youthful offenders to “flip the script” and say that everything that allegedly happened was the survivor. In these kinds of instances, faked social media and technology evidence can muddy the waters quickly.

While evidence of spoofing can be hard for parties to obtain for some types of non-criminal proceedings—especially if one of the numbers in question belongs to a third party—phone company business records can



“Spoofing” is when “a caller deliberately falsifies the information transmitted to your caller ID display to disguise their identity.” Often, these programs or applications allow the user to plug in the phone number they would like to appear. Other versions allow the user to send anonymous or faked text messages or emails as well. The use of such technology to defraud or cause harm is illegal under the Truth in Caller ID Act. Federal Communications Commission, Spoofing and Caller ID, Consumer Guides, <https://www.fcc.gov/consumers/guides/spoofing-and-caller-id>.

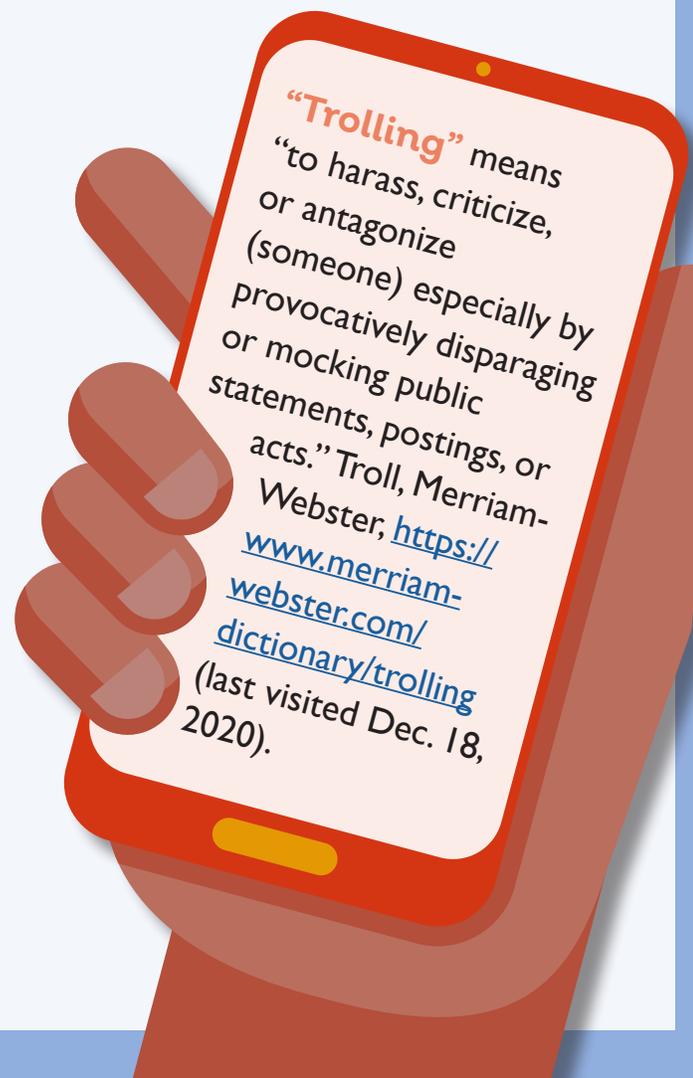
show where the calls originated. Even when phone records are not available, the court may consider circumstantial evidence that bolsters the credibility of the allegations of manipulated evidence. Ultimately, it is the finder of fact that must determine what weight to give each piece of evidence offered to the court and admitted.⁶

Abusers also may enlist third parties – friends and strangers -- to harass and abuse survivors. Third parties may be recruited through various online forums. The offender may share content with people and forums that are known to be virulent. The offender then encourages the targeting of the survivor with hateful comments, spam, obscene images, and bogus friend requests. For example, if a youthful offender is harassing a survivor who they know is a person of color, they may share their profile information with a white supremacist chat forum to get those additional people involved in abusing the teen dating violence survivor. The use of social media “mobs” to harass based on perceived differences is usually referred to as “trolling.”

Trolling may include another type of abuse called “doxing.” This is the revealing of the targeted person’s name, physical address, employer and work address, or other personal information to people who will harass the target directly or by reaching out to the targeted person’s employer, friends and family. In certain circumstances, some even see doxing as a type of vigilante justice.⁷ Celebrities, politicians, journalists, judges and other public figures have also been the targets of doxing.⁸

When it comes to teen dating violence survivors, doxing can be debilitating. This form of abuse can make victims even more hyper-vigilant as they worry about where and when the next attack will occur and by whom because it multiplies the streams of abuse a survivor must regularly face.

“Swatting” is yet another tactic that often combines spoofing and doxing by providing the targeted person’s personal information to law enforcement in a manner that causes law enforcement or other emergency services to respond to, enter, or investigate the target’s



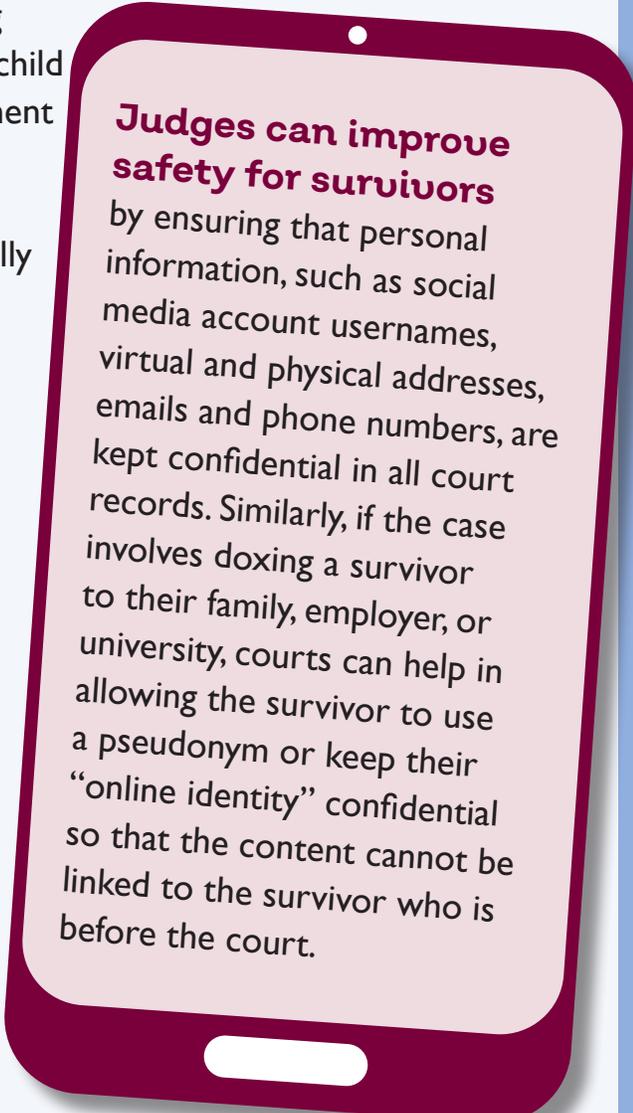
home, workplace, or other location. A case of swatting might involve a youthful offender calling the police or child protective services to report that a child was in imminent danger to get the authorities to storm the survivor's home in response to the call. Getting raided by the police is always a traumatic experience and is potentially life-threatening, particularly when the targeted person is from a marginalized group.

Challenges in Teen Dating Violence Cases

Cases of teen dating violence that involve technology are often complex factually and it can be difficult to secure the evidence needed to determine whether a civil protection order should be entered or whether a delinquency case involves teen dating violence. In civil protection cases, many jurisdictions do not have lawyers for petitioners or respondents – especially for teens involved in these cases. In delinquency cases, the charging documents may not indicate that teen dating violence is at the heart of the case that may be listed as a battery, assault, harassment with no reference to the relationship between the survivor witness and the youthful offender.

Teen dating violence cases are as unique and individual as the adolescents involved in them. Judicial officers must be mindful that teens and emerging adults are still developing their brains, their bodies, and their social understandings and awareness.

In communication with teens, judges should be patient and limit their use of legal jargon. For both teens and judicial officers, a hearing involving teen dating violence can cause culture shock as technology terminology, teen culture and judicial culture collide. At the same time, judges must enter legally sufficient findings of fact and conclusions of law. For teen survivors, orders should promote safety and autonomy while emphasizing healthy relationships. For youthful offenders, orders should be crafted to promote accountability



Judges can improve safety for survivors by ensuring that personal information, such as social media account usernames, virtual and physical addresses, emails and phone numbers, are kept confidential in all court records. Similarly, if the case involves doxing a survivor to their family, employer, or university, courts can help in allowing the survivor to use a pseudonym or keep their “online identity” confidential so that the content cannot be linked to the survivor who is before the court.

and rehabilitation while emphasizing healthy relationships. To that end, it is important that judges avoid boilerplate language; inquire whether social media was involved in the actions that lead to assault, battery, harassment, or emotional abuse; and explore how the survivor and the offender use social media.

Protection Order Cases

Protection orders in cases of teen dating violence should address the misuse of technology by the youthful offender, clearly explain to the offender what actions would be a violation of the order, and the potential consequences of violating the order.

Jurisdictions vary on the statutory requirements to qualify for a civil protection order and orders are not available in all jurisdictions for youth under eighteen experiencing dating violence. Whether or not a teen survivor qualifies for an order, a domestic violence victim advocate can help them plan for their safety on and offline. If protection orders are an available remedy advocates can help walk a teen survivor through the court process, including connecting them with information about documenting digital abuse.

A few recommendations:

- Parties in protection order cases are often unrepresented. Materials should be available at the courthouse and in the courtroom to explain what litigants should be prepared to provide to the court when presenting their case. These materials should include information on how digital evidence can be offered to the court and be in plain language that can easily be understood by the youthful litigants.
- Guided by survivor safety and with an understanding that young survivors find support through social media, judges can work to ensure that survivors' use of technology is not limited by judicial orders. Judges can instead foster the ability of survivors to protect their online safety by crafting CPOs and no-contact orders that promote online safety and preserve survivor autonomy.
- All protection orders should clearly state what will constitute a violation of the order, including any restrictions on the respondent's use of technology to contact or continue to harass the survivor.
- Technology is regularly used by abusers to violate civil protection orders, criminal no-contact orders, and other harassment injunctions. Violations using technology may seem innocuous, but they can greatly impact survivors' safety and autonomy

and their ability to participate in online spaces.

- At Disposition, judges should consider the needs and requirements of the parties. Ask: what technologies the parties regularly use or need to use? What technology platforms have been misused in the past? What are the survivor's concerns around technology? Does the offender have access to the survivor's accounts or does the offender have possession or control of any sensitive and personal information about the survivor, intimate photos, videos, or other posts that would serve to continue the abuse, harassment, and stalking behaviors?
- When crafting civil protection orders that include prohibitions on the offender's use of social media, judges should consider any local statutes or case law regarding prior restraints on the offender's First Amendment rights. Case law, from a handful of states, has held restrictions in protection orders on communication, especially online communication, about a particular subject or person are prior restraints on freedom of speech and must survive strict scrutiny to be permissible.⁹

Delinquency Cases

Delinquency cases are often charged as assaults, batteries or harassment. The charges may not indicate more than the youth involved are friends, attend school together or live in the same neighborhood. There may be no indication that the case involves the dynamics of teen dating violence.

To determine if a case involves teen dating violence, judges should inquire early on in the process, including at first appearance, about the relationship between the offender and the victim and whether technology was involved in the abuse. This information will help the court create dispositions that holds the offender accountable, lessens continued harassment through technology, and provides a sense of safety for the survivor.

Disposition orders also should address the youthful offender's specific use of technology in perpetuating the abuse. Finally, those responsible for monitoring probation and compliance with terms of supervision or release, should be trained on working with youth and technology abuse.

A few recommendations:

- Judges should make clear to youthful offenders why they are including certain restrictions or requirements in any orders and what the consequences of violating

the court's orders will be.

- Judicial decisions and orders in delinquency cases should not be focused on punishment but rather to “treat and rehabilitate” a youthful offender and to “protect the public from criminal conduct.”¹⁰
- When crafting conditions in delinquency cases, judges should consider the nature of the offense, how technology was misused and how conditions can assist in the rehabilitation of the minor and/or keep the public, including the teen survivor, safe.
- Before entering a decision on whether the youth is responsible, ensure that there is an assessment of the trauma and abuse that may be an integral part of the lived experience of the teen responsible for the violence. The past does not justify the violence but provides a place to begin rehabilitation and the search for the youth to take responsibility for their behaviors.
- Probation orders in delinquency cases should also be specific about any prohibitions on the youthful offender's use of technology or social media, such as orders not to contact or post about the victim. These orders should be reasonably tailored to address the offender's online or digital conduct, promote their rehabilitation, and to keep the public and the teen survivor safe.

All Case Types

- Judges should not be distracted by the teen-said vs. teen-said nature of some teen dating violence cases. Incidents of teen dating violence should not be considered youthful high jinx.
- Judges should ensure that there are resources about online abuse and appropriate referrals to programs with victim advocates who are familiar with technology to assist with safety planning available for survivors. Judges should also ensure that attorneys in delinquency cases are familiar with the ways youthful offenders can use technology to perpetuate abuse.
- Judges should be aware of federal, state, and local court rules on public access to information. Many jurisdictions have rules requiring personal identifying information about a minor or about a victim in a civil protection order proceeding to be redacted or otherwise protected from public access. Consider including the minor's online screen or profile names in the information that is redacted. If not

protected, this information could be used to further abuse, including doxing them.

- Judges can take seriously evidence of violations. Technology abuse, especially cyberstalking, can be a red flag indicating a possible escalation of violence. When a civil protection or no-contact order is in place, continued stalking in violation of the order often signals a significant risk of continued violence.¹¹
- In crafting dispositions, judges can consider conditions or court-ordered services for a youthful offender that emphasize the development of healthy relationships, communication, and respect for personal boundaries.
- If there are questions regarding phone calls, texts messages, or other digital evidence offered to the court, judges can ask questions of the parties or their attorneys to clarify the intent of the behavior of the sender or caller, the meaning it conveyed to the receiver, and the impact of that communication on the survivor. Especially when parties are not represented by counsel, judges also can ask these questions regarding contradicting evidence. Courts can provide methods in the courthouse for self-represented litigants to make printouts or otherwise share digital evidence with the court or provide continuances to retrieve evidence, such as personal phone records or other impeachment evidence.

Compliance Reviews in All Cases

Compliance reviews in adult domestic violence cases have been successful in increasing accountability and rehabilitation of offenders. Judges can develop similar processes to monitor teen and emerging adult compliance in delinquency proceedings and civil protection order cases. Compliance reviews allow the court to learn whether the person responsible for the abuse has complied with court ordered provisions related to technology.

For instance, a court may order a respondent or offender to delete certain intimate images of the victim from their accounts and electronic devices under the supervision of a probation or supervision officer. Remember that deleting from one device does not mean these images have been completely removed from the offender's control.

- Orders should ensure that a common definition of “deleting the material” is understood by the offender as well as the court or agency personnel responsible for monitoring that the images have been removed.

- Judges should set deadlines in the orders to create an immediacy for compliance, which increases safety and decreases subsequent trauma for the survivor. The judge should be clear the consequences of failure to comply with the civil order provisions and the delinquency disposition order.

Other Areas Affecting Survivors and Youthful Offenders

Delinquency and civil protection orders where teen dating violence is an issue often involve the extra hurdle of determining ways to keep survivors safe without jeopardizing either the survivor or the youthful offender's education and meaningful access to school resources and programs. As schools from K-12 to higher education depend more and more on connecting their students with faculty and fellow classmates through technology and online learning, judges must also keep these online spaces in mind when crafting appropriate orders between classmates. When drafting dispositions, judges can ask questions of the parties about any concerns they have regarding these online educational spaces. When appropriate, judges can also remind parties that should problems arise in this area, parties are able to seek modification of the court's orders.

Additionally, in teen dating violence cases where the parties share a child in common, use of a third party communication application or platform specifically designed for co-parenting in unhealthy relationships may be appropriate. These programs can be monitored by the court or other appropriate third parties. Through these programs, communications often cannot be edited once shared. While these programs often cost, many have waivers for clients working with legal aid or those who qualify for income based fee waivers.¹²

Conclusion

As technology continues to advance and social media platforms inevitably shift judges, attorneys and the courts must stay up to date with the current methods that teens and emerging adults relate and communicate with each other. Technology provides new avenues to perpetuate the long-standing tactics of verbal, physical, sexual, financial, and coercive power and control. The goal in these cases is to preserve survivor safety and autonomy and to hold the youthful offender accountable and responsible for the violence, while addressing rehabilitation and promoting healthy relationships free of violence.

Ethics Resources

Engaging with social media can have many pitfalls for judicial officers beyond impermissible investigation of parties or risk of ex parte communications. For more on judicial ethics and social media, see the following resources:

Center for Judicial Ethics, National Center for State Courts, <https://www.ncsc.org/topics/judicial-officers/ethics/center-for-judicial-ethics>. For the Center for Judicial Ethics' latest updates on judicial ethics and the use of technology, see Cynthia Gray, *Social Media and Judicial Ethics Up-date*, Center for Judicial Ethics, National Center for State Courts (Jan. 2021) and Cynthia Gray, *Social Media Direction and Control*, Center for Judicial Ethics, National Center for State Courts (Dec. 29, 2020).

Debra Cassen Weiss, *Should There Be a Duty of Technology Competence for Judges? Survey Raises Questions*, ABA Journal (May 10, 2019) available at <http://www.abajournal.com/news/article/should-there-be-a-duty-of-tech-competence-for-judgessurvey-raises-questions>.

Endnotes

- 1 Some of the earliest users of online social communities were disabled young people, who could not easily leave the house or who had trouble finding people who shared their experiences in person. For more information on the importance of technology and social media for persons experiencing disabilities, see Asaka Park, *The Learning Network, I'm a Disabled Teenager, and Social Media is My Lifeline*, *The New York Times* (June 5, 2019) available at <https://www.nytimes.com/2019/06/05/learning/im-a-disabled-teenager-and-social-media-is-my-lifeline.html>; Frances Ryan, *The Missing Link: Why Disabled People Can't Afford to #DeleteFacebook*, *The Guardian* (April 4, 2018) available at <https://www.theguardian.com/media/2018/apr/04/missing-link-why-disabled-people-cant-afford-delete-facebook-social-media>; Kayla Sweet, et al., *Community Building and Knowledge Sharing by Individuals with Disabilities Using Social Media*, *Journal of Computer Assisted Learning* (June 10, 2019).
- 2 According to the National Intimate Partner and Sexual Violence Survey (NISVS) completed in 2015, about half of the respondents stated that they had been stalked before the age of 25. Smith, S.G., Zhang, X., Basile, K.C., Merrick, M.T., Wang, J., Kresnow, M., Chen, J. (2018). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2015 Data Brief*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.
- 3 2009, the Bureau of Justice Statistics reported that emerging adults between the ages of 18 and 25 have the highest rate of stalking victimization. Catalano, S., Smith, E., Snyder, H. & Rand, M. (2009). Bureau of Justice Statistics selected findings: Female victims of violence. Retrieved from <http://www.bjs.gov/content/pub/pdf/fvv.pdf>.
- 4 This publication will use the term survivor to refer to victims of teen dating violence. This is the preferred terminology of those who have experienced domestic or intimate partner violence.
- 5 For more information on basic functions and common platforms, see NCJFCJ's Technology Guide for Judges.
- 6 Information on the admissibility and reliability of digital evidence compared to traditional forms of evidence is beyond the scope of this publication.
- 7 Nellie Bowles, *How 'Doxing' Became a Mainstream Tool in the Culture Wars*, *The New York Times* (Aug. 30, 2017) available at <https://www.nytimes.com/2017/08/30/technology/doxing-protests.html>.
- 8 Dox or its variant doxx are both recognized as appropriate spellings for this transitive verb. This includes the derivatives of doxed or doxxed; doxing or doxxing; doxes or doxxes. <https://www.merriam-webster.com/dictionary/dox>.
- 9 *Bey v. Rasawehr*, 2020 Ohio 3301 (2020); *Molinaro v. Molinaro*, 33 Cal.App. 5th (2019); *State v. Smith*, 57 Kan.App. 2d 312 (2019).
- 10 *In re Ricardo P.*, 7 Cal. 5th 1113, 1118 (2009); See also *In re Jawan S.*, 121 N.E.3d 1002, 1008 (Ill.App. Div. I 2018).
- 11 TK Logan, et al., *The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Costs* (2009).
- 12 The National Council of Juvenile and Family Court Judges does not recommend or endorse any particular co-parenting application. For the purpose of providing examples only, such programs include OurFamilyWizard (see <https://www.ourfamilywizard.com>), CoParenter (see <https://coparenter.com>), and Talking Parents (see <https://talkingparents.com>).



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