

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0542.01 Michael Dohr x4347

HOUSE BILL 17-1064

HOUSE SPONSORSHIP

Willett,

SENATE SPONSORSHIP

Fields,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CREATING THE CRIME OF MISUSE OF ELECTRONIC**
102 **IMAGES BY A JUVENILE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

The bill creates the crime of misuse of electronic images by a juvenile. The offense prohibits a juvenile from knowingly distributing, displaying, or publishing through digital or electronic means, or possessing, a sexually explicit image of himself or herself or of another juvenile who, as depicted in the image, is within 4 years of age of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

charged juvenile. If a juvenile is charged with the crime of misuse of electronic images by a juvenile, he or she cannot be charged with sexual exploitation of a child. It is an affirmative defense to the distribution offense if the juvenile committed the act as a result of coercion, intimidation, or harassment. It is an affirmative defense to the possession offense if the juvenile:

- ! Did not solicit or request to be supplied with the image or images; and
- ! Did not participate in or encourage the making of the image or images; and
- ! Did not transmit or distribute the image or images to another person; and
- ! Took reasonable steps to either destroy or delete the images within 72 hours or reported the receipt of such image or images to law enforcement or a school official within 72 hours.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 18-6-403, **add** (7) as
3 follows:

4 **18-6-403. Sexual exploitation of a child.** (7) A JUVENILE
5 CHARGED WITH A VIOLATION OF SECTION 18-7-109 BY THE FILING OF A
6 JUVENILE PETITION IN DELINQUENCY PURSUANT TO ARTICLE 2 OF TITLE 19
7 IS NOT SUBJECT TO PROSECUTION FOR A VIOLATION OF THIS SECTION FOR
8 THE SAME ELECTRONIC OR DIGITAL PHOTOGRAPH, VIDEO, OR IMAGE
9 ARISING OUT OF THE SAME CRIMINAL EPISODE.

10 **SECTION 2.** In Colorado Revised Statutes, **add** 18-7-109 as
11 follows:

12 **18-7-109. Misuse of electronic images by a juvenile -**
13 **definitions.** (1) A JUVENILE COMMITS MISUSE OF ELECTRONIC IMAGES IF
14 HE OR SHE:

15 (a) THROUGH DIGITAL OR ELECTRONIC MEANS, KNOWINGLY
16 DISTRIBUTES, DISPLAYS, OR PUBLISHES A SEXUALLY EXPLICIT IMAGE OF

1 HIMSELF OR HERSELF OR OF ANOTHER JUVENILE WHO, AS DEPICTED IN THE
2 IMAGE, IS WITHIN FOUR YEARS OF AGE OF THE CHARGED JUVENILE; OR

3 (b) KNOWINGLY POSSESSES A SEXUALLY EXPLICIT IMAGE OF
4 ANOTHER JUVENILE WHO, AS DEPICTED IN THE IMAGE, IS WITHIN FOUR
5 YEARS OF AGE OF THE CHARGED JUVENILE.

6 (2) IT IS AN AFFIRMATIVE DEFENSE TO SUBSECTION (1)(a) OF THIS
7 SECTION IF THE JUVENILE DISTRIBUTED, DISPLAYED, OR PUBLISHED A
8 SEXUALLY EXPLICIT IMAGE AS A RESULT OF COERCION, INTIMIDATION, OR
9 HARASSMENT.

10 (3) IT IS AN AFFIRMATIVE DEFENSE TO SUBSECTION (1)(b) OF THIS
11 SECTION IF THE JUVENILE, A RECIPIENT OF A SEXUALLY EXPLICIT IMAGE:

12 (a) DID NOT SOLICIT OR REQUEST TO BE SUPPLIED WITH THE IMAGE
13 OR IMAGES; AND

14 (b) DID NOT PARTICIPATE IN OR ENCOURAGE THE MAKING OF THE
15 IMAGE OR IMAGES; AND

16 (c) DID NOT TRANSMIT OR DISTRIBUTE THE IMAGE OR IMAGES TO
17 ANOTHER PERSON; AND

18 (d) TOOK REASONABLE STEPS TO EITHER DESTROY OR DELETE THE
19 IMAGES WITHIN SEVENTY-TWO HOURS OR REPORTED THE RECEIPT OF SUCH
20 IMAGE OR IMAGES TO LAW ENFORCEMENT OR A SCHOOL OFFICIAL WITHIN
21 SEVENTY-TWO HOURS.

22 (4) MISUSE OF ELECTRONIC IMAGES BY A JUVENILE IS A CLASS 2
23 MISDEMEANOR; EXCEPT THAT A VIOLATION OF THIS SECTION IS A CLASS 1
24 PETTY OFFENSE IF:

25 (a) THE JUVENILE SENT THE IMAGE TO A PERSON WHO IS FOURTEEN
26 YEARS OF AGE OR OLDER AND WHO IS WITHIN FOUR YEARS OF AGE OF THAT
27 JUVENILE;

- 1 (b) THE JUVENILE SENT THE IMAGE ONCE;
- 2 (c) THE IMAGE DEPICTS ONLY THE SENDER OF THE IMAGE AND NO
3 OTHER PERSON;
- 4 (d) THE JUVENILE REASONABLY BELIEVED THAT THE RECIPIENT
5 HAD SOLICITED OR OTHERWISE REQUESTED THE JUVENILE TO SEND THE
6 IMAGE; AND
- 7 (e) THE JUVENILE EXPRESSED TO THE RECIPIENT THAT THE IMAGE
8 MAY NOT BE DISTRIBUTED, DISPLAYED, OR PUBLISHED TO ANY OTHER
9 PERSON.

10 (5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
11 REQUIRES:

- 12 (a) "JUVENILE" MEANS A PERSON UNDER EIGHTEEN YEARS OF AGE.
- 13 (b) "SEXUALLY EXPLICIT IMAGE" MEANS ANY ELECTRONIC OR
14 DIGITAL PHOTOGRAPH OR VIDEO DEPICTION OF THE EXTERNAL GENITALIA
15 OR PERINEUM OR ANUS OR BUTTOCKS OR PUBES OF ANY PERSON OR BREAST
16 OF A FEMALE PERSON.

17 **SECTION 3. Effective date - applicability.** This act takes effect
18 July 1, 2017, and applies to offenses committed on or after said date.

19 **SECTION 4. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.