

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 17-0184.01 Michael Dohr x4347

HOUSE BILL 17-1302

HOUSE SPONSORSHIP

Lee and Willett,

SENATE SPONSORSHIP

Gardner and Fields,

House Committees
Judiciary

Senate Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING MATTERS RELATED TO SEXUALLY EXPLICIT IMAGES OF**
102 **A JUVENILE, AND, IN CONNECTION THEREWITH, REQUIRING A**
103 **POST-ENACTMENT REVIEW OF THE IMPLEMENTATION OF THIS**
104 **ACT.**

SENATE
2nd Reading Unamended
May 3, 2017

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/>.)

HOUSE
Amended 3rd Reading
April 26, 2017

The bill creates the crime of posting private images by a juvenile. The offense prohibits a juvenile from knowingly distributing, displaying, or publishing, through digital or electronic means, a sexually explicit

HOUSE
Amended 2nd Reading
April 25, 2017

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.

image of himself or herself or of another juvenile to the view of more than one other person or to the view of another person:

- ! Without the depicted juvenile's consent; or
- ! When the recipient did not solicit or request to be supplied with the image or images and suffered emotional distress; or
- ! When the juvenile knew or should have known that the depicted juvenile had a reasonable expectation that the image would remain private.

The bill creates the crime of possessing private images by a juvenile. The offense prohibits a juvenile from possessing a sexually explicit image of another juvenile without the depicted juvenile's consent or after the depicted juvenile rescinds his or her consent. The bill states it is not a violation of either offense if the person was coerced, intimidated, or harassed into committing the offense.

A juvenile whose conduct satisfies either offense cannot be charged with sexual exploitation of a child.

The bill creates an exception to the offense of sexual exploitation of a child if the person is under 18 years of age and the child is at least 14 years of age or less than 4 years younger than the person unless the person discloses publicly any sexually exploitative material that depicts the child or distributes, displays, or publishes, with the intent to obtain a pecuniary benefit from anyone, sexually exploitative material that depicts the child. The bill states it is not a violation of sexual exploitation of a child if a person under 18 was coerced, intimidated, or harassed into disclosing publicly a sexually exploitative image.

The bill requires the school safety resource center to make available a sexting curriculum for school districts to use.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Currently when a juvenile engages in sexting behavior, usually
5 the only available offense with which to charge that juvenile is sexual
6 exploitation of a child, which is a class 3 felony;

7 (b) It is necessary to provide in statute the ability of all law
8 enforcement, including district attorneys, to charge lower level offenses
9 or civil infractions in addition to providing other diversionary programs

1 that can more appropriately address the conduct involved in cases
2 involving sexting behavior;

3 (c) It is imperative that, for any offense charged or civil infraction
4 issued, the court have the discretion to impose appropriate sanctions that
5 are consistent with the objectives of the Colorado children's code; and

6 (d) In order to track and assess the efficacy of creating these new
7 offenses and their impact on any reduction in the filing of felony charges,
8 the impact on the number of diversion or alternative case resolution
9 programs, the level of education provided to teens on issues related to
10 sexting behavior, and any discernable impact on teen sexting behavior,
11 the judicial department, school safety resource officers, and district
12 attorneys' offices should track the number of cases, including the offenses
13 involved, the number of juveniles who participated in the education
14 programs provided for in this legislation, and who provided those
15 programs.

16 (2) Therefore, the general assembly is creating the crimes of
17 posting private images by a juvenile and possessing private images by a
18 juvenile and the civil infraction of exchange of a private image by a
19 juvenile.

20 **SECTION 2.** In Colorado Revised Statutes, 16-22-103, **amend**
21 (5)(a) introductory portion and (5)(a)(III) as follows:

22 **16-22-103. Sex offender registration - required - applicability**
23 **- exception.** (5) (a) Notwithstanding any provision of this ~~article~~ ARTICLE
24 22 to the contrary, if, pursuant to a motion filed by a person described in
25 this subsection (5) or on its own motion, a court determines that the
26 registration requirement specified in this section would be unfairly
27 punitive and that exempting the person from the registration requirement

1 would not pose a significant risk to the community, the court, upon
2 consideration of the totality of the circumstances, may exempt the person
3 from the registration requirements imposed pursuant to this section if:

4 (III) The offense, as charged in the first petition filed with the
5 court, is a first offense of either misdemeanor unlawful sexual contact, as
6 described in section 18-3-404; ~~C.R.S.~~, or indecent exposure, as described
7 in section 18-7-302; ~~C.R.S.~~ OR SEXUAL EXPLOITATION OF A CHILD, AS
8 DESCRIBED IN SECTION 18-6-403, AND THE PERSON'S CONDUCT IS LIMITED
9 TO THE ELEMENTS IN POSTING PRIVATE IMAGES BY A JUVENILE, AS
10 DESCRIBED IN SECTION 18-7-109 (1), OR POSSESSING PRIVATE IMAGES BY
11 A JUVENILE, AS DESCRIBED IN SECTION 18-7-109 (2); and

12 **SECTION 3.** In Colorado Revised Statutes, 18-6-403, **add** (3.5)
13 and (7) as follows:

14 **18-6-403. Sexual exploitation of a child - legislative declaration**
15 **- definitions.** (3.5) A JUVENILE'S CONDUCT THAT IS LIMITED TO THE
16 ELEMENTS OF THE PETTY OFFENSE OF POSSESSION OF A PRIVATE IMAGE BY
17 A JUVENILE, AS DESCRIBED IN SECTION 18-7-109 (2), OR LIMITED TO THE
18 ELEMENTS OF THE CIVIL INFRACTION OF EXCHANGE OF A PRIVATE IMAGE
19 BY A JUVENILE, AS DESCRIBED IN SECTION 18-7-109 (3), IS NOT SUBJECT TO
20 PROSECUTION PURSUANT TO SUBSECTION (3)(b) OR (3)(b.5) OF THIS
21 SECTION.

22 (7) A JUVENILE CHARGED WITH A VIOLATION OF SECTION 18-7-109
23 (1) IS NOT SUBJECT TO PROSECUTION FOR VIOLATION OF THIS SECTION FOR
24 THE SAME ELECTRONIC OR DIGITAL PHOTOGRAPH, VIDEO, OR IMAGE
25 ARISING OUT OF THE SAME CRIMINAL EPISODE.

26 **SECTION 4.** In Colorado Revised Statutes, **add** 18-7-109 as
27 follows:

1 **18-7-109. Posting, possession, or exchange of a private image**
2 **by a juvenile - definitions - penalties.** (1) A JUVENILE COMMITS THE
3 OFFENSE OF POSTING A PRIVATE IMAGE BY A JUVENILE IF HE OR SHE,
4 THROUGH DIGITAL OR ELECTRONIC MEANS:
5 (a) KNOWINGLY DISTRIBUTES, DISPLAYS, OR PUBLISHES TO THE
6 VIEW OF ANOTHER PERSON A SEXUALLY EXPLICIT IMAGE OF A PERSON
7 OTHER THAN HIMSELF OR HERSELF WHO IS AT LEAST FOURTEEN YEARS OF
8 AGE OR IS LESS THAN FOUR YEARS YOUNGER THAN THE JUVENILE:
9 (I) WITHOUT THE DEPICTED PERSON'S PERMISSION; OR
10 (II) WHEN THE RECIPIENT DID NOT SOLICIT OR REQUEST TO BE
11 SUPPLIED WITH THE IMAGE AND SUFFERED EMOTIONAL DISTRESS; OR
12 (III) WHEN THE JUVENILE KNEW OR SHOULD HAVE KNOWN THAT
13 THE DEPICTED PERSON HAD A REASONABLE EXPECTATION THAT THE IMAGE
14 WOULD REMAIN PRIVATE; OR
15 (b) KNOWINGLY DISTRIBUTES, DISPLAYS, OR PUBLISHES, TO THE
16 VIEW OF ANOTHER PERSON WHO IS AT LEAST FOURTEEN YEARS OF AGE OR
17 IS LESS THAN FOUR YEARS YOUNGER THAN THE JUVENILE, A SEXUALLY
18 EXPLICIT IMAGE OF HIMSELF OR HERSELF WHEN THE RECIPIENT DID NOT
19 SOLICIT OR REQUEST TO BE SUPPLIED WITH THE IMAGE AND SUFFERED
20 EMOTIONAL DISTRESS.
21 (2) A JUVENILE COMMITS THE OFFENSE OF POSSESSING A PRIVATE
22 IMAGE BY A JUVENILE IF HE OR SHE, THROUGH DIGITAL OR ELECTRONIC
23 MEANS, KNOWINGLY POSSESSES A SEXUALLY EXPLICIT IMAGE OF ANOTHER
24 PERSON WHO IS AT LEAST FOURTEEN YEARS OF AGE OR IS LESS THAN FOUR
25 YEARS YOUNGER THAN THE JUVENILE WITHOUT THE DEPICTED PERSON'S
26 PERMISSION; EXCEPT THAT IT IS NOT A VIOLATION OF THIS SUBSECTION (2)
27 IF THE JUVENILE:

1 (a) TOOK REASONABLE STEPS TO EITHER DESTROY OR DELETE THE
2 IMAGE WITHIN SEVENTY-TWO HOURS AFTER INITIALLY VIEWING THE
3 IMAGE; OR

4 (b) REPORTED THE INITIAL VIEWING OF SUCH IMAGE TO LAW
5 ENFORCEMENT OR A SCHOOL RESOURCE OFFICER WITHIN SEVENTY-TWO
6 HOURS AFTER INITIALLY VIEWING THE IMAGE.

7 (3) A JUVENILE COMMITS THE CIVIL INFRACTION OF EXCHANGE OF
8 A PRIVATE IMAGE BY A JUVENILE IF HE OR SHE, THROUGH DIGITAL OR
9 ELECTRONIC MEANS:

10 (a) KNOWINGLY SENDS A SEXUALLY EXPLICIT IMAGE OR IMAGES
11 OF HIMSELF OR HERSELF TO ANOTHER PERSON WHO IS AT LEAST FOURTEEN
12 YEARS OF AGE OR IS LESS THAN FOUR YEARS YOUNGER THAN THE
13 JUVENILE, AND THE IMAGE OR IMAGES DEPICT ONLY THE SENDER AND NO
14 OTHER PERSON AND THE SENDER REASONABLY BELIEVED THAT THE
15 RECIPIENT HAD SOLICITED OR OTHERWISE AGREED TO THE TRANSMITTAL
16 OF THE IMAGE OR IMAGES; OR

17 (b) KNOWINGLY POSSESSES A SEXUALLY EXPLICIT IMAGE OR
18 IMAGES OF ANOTHER PERSON WHO IS AT LEAST FOURTEEN YEARS OF AGE
19 OR IS LESS THAN FOUR YEARS YOUNGER THAN THE JUVENILE, AND THE
20 IMAGE OR IMAGES DEPICT ONLY THE SENDER AND NO OTHER PERSON AND
21 THE JUVENILE REASONABLY BELIEVED THAT THE DEPICTED PERSON HAD
22 TRANSMITTED THE IMAGE OR IMAGES OR OTHERWISE AGREED TO THE
23 TRANSMITTAL OF THE IMAGE OR IMAGES.

24 (4) IT IS AN AFFIRMATIVE DEFENSE TO SUBSECTION (1), (2), OR (3)
25 OF THIS SECTION IF A JUVENILE IS COERCED, THREATENED, OR INTIMATED
26 INTO DISTRIBUTING, DISPLAYING, PUBLISHING, POSSESSING, OR
27 EXCHANGING A SEXUALLY EXPLICIT IMAGE OF A PERSON UNDER EIGHTEEN

1 YEARS OF AGE.

2 (5) (a) POSTING A PRIVATE IMAGE BY A JUVENILE IS A CLASS 2
3 MISDEMEANOR; EXCEPT THAT IT IS A CLASS 1 MISDEMEANOR IF:

4 (I) THE JUVENILE COMMITTED THE OFFENSE WITH THE INTENT TO
5 COERCE, INTIMIDATE, THREATEN, OR OTHERWISE CAUSE EMOTIONAL
6 DISTRESS TO THE DEPICTED PERSON; OR

7 (II) THE JUVENILE HAD PREVIOUSLY POSTED A PRIVATE IMAGE AND
8 COMPLETED A DIVERSION PROGRAM OR EDUCATION PROGRAM FOR THE
9 ACT PURSUANT TO THE PROVISIONS OF THIS SECTION OR HAD A PRIOR
10 ADJUDICATION FOR POSTING A PRIVATE IMAGE BY A JUVENILE; OR

11 (III) THE JUVENILE DISTRIBUTED, DISPLAYED, OR PUBLISHED
12 THREE OR MORE IMAGES THAT DEPICTED THREE OR MORE SEPARATE AND
13 DISTINCT PERSONS.

14 (b) POSSESSING A PRIVATE IMAGE BY A JUVENILE IS A PETTY
15 OFFENSE; EXCEPT THAT IT IS A CLASS 2 MISDEMEANOR IF THE UNSOLICITED
16 POSSESSOR OF THE IMAGE POSSESSED TEN OR MORE SEPARATE IMAGES
17 THAT DEPICTED THREE OR MORE SEPARATE AND DISTINCT PERSONS.

18 (c) EXCHANGE OF A PRIVATE IMAGE BY A JUVENILE IS A CIVIL
19 INFRACTION AND IS PUNISHABLE BY PARTICIPATION IN A PROGRAM
20 DESIGNED BY THE SCHOOL SAFETY RESOURCE CENTER OR OTHER
21 APPROPRIATE PROGRAM ADDRESSING THE RISKS AND CONSEQUENCES OF
22 EXCHANGING A SEXUALLY EXPLICIT IMAGE OF A JUVENILE OR A FINE OF UP
23 TO FIFTY DOLLARS, WHICH MAY BE WAIVED BY THE COURT UPON A
24 SHOWING OF INDIGENCY. IF THE JUVENILE FAILS TO APPEAR IN RESPONSE
25 TO A CIVIL INFRACTION CITATION OR FAILS TO COMPLETE THE REQUIRED
26 CLASS OR PAY THE IMPOSED FEE, THE COURT MAY ISSUE AN ORDER TO
27 SHOW CAUSE REQUIRING THE JUVENILE'S APPEARANCE IN COURT AND

1 IMPOSE ADDITIONAL AGE-APPROPRIATE PENALTIES. THE COURT SHALL NOT
2 ISSUE A WARRANT FOR THE ARREST OF THE JUVENILE OR IMPOSE
3 INCARCERATION AS A PENALTY.

4 (d) IN ADDITION TO ANY OTHER SENTENCE THE COURT MAY IMPOSE
5 FOR A VIOLATION OF SECTION 18-7-109 (1), THE COURT SHALL ORDER THE
6 JUVENILE BE ASSESSED FOR SUITABILITY TO PARTICIPATE IN RESTORATIVE
7 JUSTICE PRACTICES, IF AVAILABLE, AND, UPON A DETERMINATION OF
8 SUITABILITY, THE COURT SHALL INFORM THE VICTIM ABOUT THE
9 POSSIBILITY OF RESTORATIVE JUSTICE PRACTICES AS DEFINED IN SECTION
10 18-1-901 (3)(o.5). THE COURT SHALL NOT CONSIDER THE VICTIM'S
11 UNWILLINGNESS TO PARTICIPATE IN RESTORATIVE JUSTICE PRACTICES
12 WHEN DETERMINING OTHER SENTENCING OPTIONS.

13 (e) EACH DISTRICT ATTORNEY IS ENCOURAGED TO DEVELOP A
14 DIVERSION PROGRAM FOR JUVENILES WHO VIOLATE THE PROVISIONS OF
15 THIS SECTION AND OFFER THE PROGRAM TO A JUVENILE WHO IS ALLEGED
16 TO HAVE VIOLATED THIS SECTION FOR THE FIRST TIME. IF THE
17 JURISDICTION DOES NOT HAVE A DIVERSION PROGRAM, THE DISTRICT
18 ATTORNEY IS ENCOURAGED TO PROVIDE ALTERNATIVE PROGRAMMING
19 DESIGNED TO ALLOW THE JUVENILE TO AVOID ANY ADJUDICATION.

20 (6) THE COURT SHALL ORDER ALL RECORDS IN A JUVENILE
21 DELINQUENCY CASE IN THE CUSTODY OF THE COURT, AND ANY RECORDS
22 RELATED TO THE CASE AND CHARGES IN THE CUSTODY OF ANY OTHER
23 AGENCY, PERSON, COMPANY, OR ORGANIZATION, THAT ARE RELATED TO
24 AN OFFENSE PURSUANT TO THIS SECTION EXPUNGED WITHIN FORTY-TWO
25 DAYS AFTER THE COMPLETION OF THE SENTENCE OR OTHER ALTERNATIVE
26 PROGRAM.

27 (7) A PERSON WHO IS A VICTIM OF A VIOLATION OF SUBSECTION (1),

1 (2), OR (3) OF THIS SECTION IS ELIGIBLE FOR COMPENSATION AND SERVICES
2 PURSUANT TO PART 1 OF ARTICLE 4.1 OF TITLE 24.

3 (8) AS USED IN THIS SECTION:

4 (a) "JUVENILE" MEANS A PERSON UNDER EIGHTEEN YEARS OF AGE.

5 (b) "SEXUALLY EXPLICIT IMAGE" MEANS ANY ELECTRONIC OR
6 DIGITAL PHOTOGRAPH, VIDEO, OR VIDEO DEPICTION OF THE EXTERNAL
7 GENITALIA OR PERINEUM OR ANUS OR BUTTOCKS OR PUBES OF ANY PERSON
8 OR THE BREAST OF A FEMALE PERSON.

9 **SECTION 5.** In Colorado Revised Statutes, 19-2-104, **amend**
10 (1)(a)(I) as follows:

11 **19-2-104. Jurisdiction.** (1) Except as otherwise provided by law,
12 the juvenile court shall have exclusive original jurisdiction in
13 proceedings:

14 (a) Concerning any juvenile ten years of age or older who has
15 violated:

16 (I) Any federal or state law, except nonfelony state traffic, game
17 and fish, and parks and recreation laws or rules; the offenses specified in
18 section 18-13-121, ~~C.R.S.~~, concerning tobacco products; the offense
19 specified in section 18-13-122, ~~C.R.S.~~, concerning the illegal possession
20 or consumption of ethyl alcohol or marijuana by an underage person or
21 illegal possession of marijuana paraphernalia by an underage person; ~~and~~
22 the offenses specified in section 18-18-406 (5)(a)(I), (5)(b)(I), and
23 (5)(b)(II), ~~C.R.S.~~, concerning marijuana and marijuana concentrate; ~~AND~~
24 THE CIVIL INFRACTION IN SECTION 18-7-109 (3) CONCERNING EXCHANGE
25 OF A PRIVATE IMAGE BY A JUVENILE;

26 **SECTION 6.** In Colorado Revised Statutes, 24-33.5-1803,
27 **amend** (3)(k) and (3)(l); and **add** (3)(m) as follows:

1 **24-33.5-1803. School safety resource center - created - duties**

2 **- repeal.** (3) The center has the following duties:

3 (k) To provide suggestions for school resource officer training to
4 the peace officers standards and training board, pursuant to section
5 24-31-312; and

6 (l) To provide materials and training as described in section
7 24-33.5-1809 to personnel in school districts and charter schools, parents,
8 and students regarding the awareness and prevention of child sexual
9 abuse and assault; AND

10 (m) BY JUNE 1, 2018, TO MAKE AVAILABLE A MODEL PROGRAM
11 THAT CONFORMS WITH SECTION 22-1-128, REGARDING THE RISKS AND
12 CONSEQUENCES OF SEXTING FOR SCHOOL DISTRICTS TO USE, WHICH
13 CURRICULUM MUST INCLUDE INFORMATION INFORMING STUDENTS OF THE
14 PROVISIONS OF SECTION 18-7-109, INCLUDING THAT, IF A STUDENT
15 RECEIVES A SEXUALLY EXPLICIT IMAGE IN VIOLATION OF SECTION
16 18-7-109, THE STUDENT CAN AVOID ADJUDICATION AS A JUVENILE
17 DELINQUENT BY TAKING REASONABLE STEPS TO EITHER DESTROY OR
18 DELETE OR REPORT THE INITIAL VIEWING OF THE IMAGE WITHIN
19 SEVENTY-TWO HOURS AFTER RECEIVING THE IMAGE.

20 **SECTION 7. Accountability.** Two years after this act becomes
21 law and in accordance with section 2-2-1201, Colorado Revised Statutes,
22 the legislative service agencies of the Colorado general assembly shall
23 conduct a post-enactment review of the implementation of this act
24 utilizing the information contained in the legislative declaration set forth
25 in section 1 of this act.

26 **SECTION 8. Effective date - applicability.** This act takes effect
27 January 1, 2018, and applies to offenses committed on or after said date.

1 **SECTION 9. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.