

## CHAPTER 390

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**CRIMINAL LAW AND PROCEDURE**

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**HOUSE BILL 17-1302**

BY REPRESENTATIVE(S) Lee and Willett, Becker J., Buckner, Covarrubias, Exum, Hansen, Herod, Jackson, Kennedy, Kraft-Tharp, Landgraf, Liston, McKean, Melton, Michaelson Jenet, Navarro, Ransom, Sias, Valdez, Van Winkle, Williams D., Winter;  
also SENATOR(S) Gardner and Fields, Aguilar, Cooke, Court, Crowder, Garcia, Guzman, Jahn, Kefalas, Kerr, Martinez Humenik, Merrifield, Moreno, Tate, Todd, Williams A., Zenzinger.

**AN ACT**

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

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

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

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

(b) It is necessary to provide in statute the ability of all law enforcement, including district attorneys, to charge lower level offenses or civil infractions in addition to providing other diversionary programs that can more appropriately address the conduct involved in cases involving sexting behavior;

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

(d) In order to track and assess the efficacy of creating these new offenses and their impact on any reduction in the filing of felony charges, the impact on the number of diversion or alternative case resolution programs, the level of education provided to teens on issues related to sexting behavior, and any discernable impact

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

on teen sexting behavior, the judicial department, school safety resource officers, and district attorneys' offices should track the number of cases, including the offenses involved, the number of juveniles who participated in the education programs provided for in this legislation, and who provided those programs.

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

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

**16-22-103. Sex offender registration - required - applicability - exception.**

(5) (a) Notwithstanding any provision of this ~~article~~ ARTICLE 22 to the contrary, if, pursuant to a motion filed by a person described in this subsection (5) or on its own motion, a court determines that the registration requirement specified in this section would be unfairly punitive and that exempting the person from the registration requirement would not pose a significant risk to the community, the court, upon consideration of the totality of the circumstances, may exempt the person from the registration requirements imposed pursuant to this section if:

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

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

**18-6-403. Sexual exploitation of a child - legislative declaration - definitions.**

(3.5) A JUVENILE'S CONDUCT THAT IS LIMITED TO THE ELEMENTS OF THE PETTY OFFENSE OF POSSESSION OF A PRIVATE IMAGE BY A JUVENILE, AS DESCRIBED IN SECTION 18-7-109 (2), OR LIMITED TO THE ELEMENTS OF THE CIVIL INFRACTION OF EXCHANGE OF A PRIVATE IMAGE BY A JUVENILE, AS DESCRIBED IN SECTION 18-7-109 (3), IS NOT SUBJECT TO PROSECUTION PURSUANT TO SUBSECTION (3)(b) OR (3)(b.5) OF THIS SECTION.

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

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

**18-7-109. Posting, possession, or exchange of a private image by a juvenile - definitions - penalties.** (1) A JUVENILE COMMITS THE OFFENSE OF POSTING A PRIVATE IMAGE BY A JUVENILE IF HE OR SHE, THROUGH DIGITAL OR ELECTRONIC MEANS:

(a) KNOWINGLY DISTRIBUTES, DISPLAYS, OR PUBLISHES TO THE VIEW OF ANOTHER PERSON A SEXUALLY EXPLICIT IMAGE OF A PERSON OTHER THAN HIMSELF OR HERSELF WHO IS AT LEAST FOURTEEN YEARS OF AGE OR IS LESS THAN FOUR YEARS YOUNGER THAN THE JUVENILE:

(I) WITHOUT THE DEPICTED PERSON'S PERMISSION; OR

(II) WHEN THE RECIPIENT DID NOT SOLICIT OR REQUEST TO BE SUPPLIED WITH THE IMAGE AND SUFFERED EMOTIONAL DISTRESS; OR

(III) WHEN THE JUVENILE KNEW OR SHOULD HAVE KNOWN THAT THE DEPICTED PERSON HAD A REASONABLE EXPECTATION THAT THE IMAGE WOULD REMAIN PRIVATE; OR

(b) KNOWINGLY DISTRIBUTES, DISPLAYS, OR PUBLISHES, TO THE VIEW OF ANOTHER PERSON WHO IS AT LEAST FOURTEEN YEARS OF AGE OR IS LESS THAN FOUR YEARS YOUNGER THAN THE JUVENILE, A SEXUALLY EXPLICIT IMAGE OF HIMSELF OR HERSELF WHEN THE RECIPIENT DID NOT SOLICIT OR REQUEST TO BE SUPPLIED WITH THE IMAGE AND SUFFERED EMOTIONAL DISTRESS.

(2) A JUVENILE COMMITS THE OFFENSE OF POSSESSING A PRIVATE IMAGE BY A JUVENILE IF HE OR SHE, THROUGH DIGITAL OR ELECTRONIC MEANS, KNOWINGLY POSSESSES A SEXUALLY EXPLICIT IMAGE OF ANOTHER PERSON WHO IS AT LEAST FOURTEEN YEARS OF AGE OR IS LESS THAN FOUR YEARS YOUNGER THAN THE JUVENILE WITHOUT THE DEPICTED PERSON'S PERMISSION; EXCEPT THAT IT IS NOT A VIOLATION OF THIS SUBSECTION (2) IF THE JUVENILE:

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

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

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

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

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

(4) IT IS AN AFFIRMATIVE DEFENSE TO SUBSECTION (1), (2), OR (3) OF THIS SECTION IF A JUVENILE IS COERCED, THREATENED, OR INTIMIDATED INTO DISTRIBUTING, DISPLAYING, PUBLISHING, POSSESSING, OR EXCHANGING A SEXUALLY EXPLICIT IMAGE OF A PERSON UNDER EIGHTEEN YEARS OF AGE.

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

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

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

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

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

(c) EXCHANGE OF A PRIVATE IMAGE BY A JUVENILE IS A CIVIL INFRACTION AND IS PUNISHABLE BY PARTICIPATION IN A PROGRAM DESIGNED BY THE SCHOOL SAFETY RESOURCE CENTER OR OTHER APPROPRIATE PROGRAM ADDRESSING THE RISKS AND CONSEQUENCES OF EXCHANGING A SEXUALLY EXPLICIT IMAGE OF A JUVENILE OR A FINE OF UP TO FIFTY DOLLARS, WHICH MAY BE WAIVED BY THE COURT UPON A SHOWING OF INDIGENCY. IF THE JUVENILE FAILS TO APPEAR IN RESPONSE TO A CIVIL INFRACTION CITATION OR FAILS TO COMPLETE THE REQUIRED CLASS OR PAY THE IMPOSED FEE, THE COURT MAY ISSUE AN ORDER TO SHOW CAUSE REQUIRING THE JUVENILE'S APPEARANCE IN COURT AND IMPOSE ADDITIONAL AGE-APPROPRIATE PENALTIES. THE COURT SHALL NOT ISSUE A WARRANT FOR THE ARREST OF THE JUVENILE OR IMPOSE INCARCERATION AS A PENALTY.

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

(e) EACH DISTRICT ATTORNEY IS ENCOURAGED TO DEVELOP A DIVERSION PROGRAM FOR JUVENILES WHO VIOLATE THE PROVISIONS OF THIS SECTION AND OFFER THE PROGRAM TO A JUVENILE WHO IS ALLEGED TO HAVE VIOLATED THIS SECTION FOR THE FIRST TIME. IF THE JURISDICTION DOES NOT HAVE A DIVERSION PROGRAM, THE DISTRICT ATTORNEY IS ENCOURAGED TO PROVIDE ALTERNATIVE

PROGRAMMING DESIGNED TO ALLOW THE JUVENILE TO AVOID ANY ADJUDICATION.

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

(7) A PERSON WHO IS A VICTIM OF A VIOLATION OF SUBSECTION (1), (2), OR (3) OF THIS SECTION IS ELIGIBLE FOR COMPENSATION AND SERVICES PURSUANT TO PART 1 OF ARTICLE 4.1 OF TITLE 24.

(8) AS USED IN THIS SECTION:

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

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

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

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

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

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

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

**24-33.5-1803. School safety resource center - created - duties - repeal.** (3) The center has the following duties:

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

(l) To provide materials and training as described in section 24-33.5-1809 to personnel in school districts and charter schools, parents, and students regarding the

awareness and prevention of child sexual abuse and assault; AND

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

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

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

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

Approved: June 6, 2017