

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 20, 2017
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB17-1302 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

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

16 (d) In order to track and assess the efficacy of creating these new
17 offenses and their impact on any reduction in the filing of felony charges,
18 the impact on the number of diversion or alternative case resolution
19 programs, the level of education provided to teens on issues related to
20 sexting behavior, and any discernable impact on teen sexting behavior,
21 the judicial department, school safety resource officers, and district
22 attorneys' offices should track the number of cases, including the offenses
23 involved, the number of juveniles who participated in the education

1 programs provided for in this legislation, and who provided those
2 programs.

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

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

9 **16-22-103. Sex offender registration - required - applicability**
10 **- exception.** (5) (a) Notwithstanding any provision of this ~~article~~ ARTICLE
11 22 to the contrary, if, pursuant to a motion filed by a person described in
12 this subsection (5) or on its own motion, a court determines that the
13 registration requirement specified in this section would be unfairly
14 punitive and that exempting the person from the registration requirement
15 would not pose a significant risk to the community, the court, upon
16 consideration of the totality of the circumstances, may exempt the person
17 from the registration requirements imposed pursuant to this section if:

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

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

28 **18-6-403. Sexual exploitation of a child - legislative declaration**
29 **- definitions.** (3.5) A JUVENILE'S CONDUCT THAT IS LIMITED TO THE
30 ELEMENTS OF THE PETTY OFFENSE OF POSSESSION OF A PRIVATE IMAGE BY
31 A JUVENILE, AS DESCRIBED IN SECTION 18-7-109 (2), OR LIMITED TO THE
32 ELEMENTS OF THE CIVIL INFRACTION OF EXCHANGE OF A PRIVATE IMAGE
33 BY A JUVENILE, AS DESCRIBED IN SECTION 18-7-109 (3), IS NOT SUBJECT TO
34 PROSECUTION PURSUANT TO SUBSECTION (3)(b) OR (3)(b.5) OF THIS
35 SECTION.

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

40 **SECTION 4.** In Colorado Revised Statutes, **add** 18-7-109 as
41 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:
28 (a) TOOK REASONABLE STEPS TO EITHER DESTROY OR DELETE THE
29 IMAGE WITHIN SEVENTY-TWO HOURS AFTER INITIALLY VIEWING THE
30 IMAGE; OR
31 (b) REPORTED THE INITIAL VIEWING OF SUCH IMAGE TO LAW
32 ENFORCEMENT OR A SCHOOL RESOURCE OFFICER WITHIN SEVENTY-TWO
33 HOURS AFTER INITIALLY VIEWING THE IMAGE.
34 (3) A JUVENILE COMMITS THE CIVIL INFRACTION OF EXCHANGE OF
35 A PRIVATE IMAGE BY A JUVENILE IF HE OR SHE, THROUGH DIGITAL OR
36 ELECTRONIC MEANS:
37 (a) KNOWINGLY SENDS A SEXUALLY EXPLICIT IMAGE OF HIMSELF
38 OR HERSELF TO ANOTHER PERSON WHO IS AT LEAST FOURTEEN YEARS OF
39 AGE OR IS LESS THAN FOUR YEARS YOUNGER THAN THE JUVENILE, AND THE
40 IMAGE DEPICTS ONLY THE SENDER AND NO OTHER PERSON AND THE
41 SENDER REASONABLY BELIEVED THAT THE RECIPIENT HAD SOLICITED OR

1 OTHERWISE AGREED TO THE TRANSMITTAL OF THE IMAGE; OR
2 (b) KNOWINGLY POSSESSES A SEXUALLY EXPLICIT IMAGE OF
3 ANOTHER PERSON WHO IS AT LEAST FOURTEEN YEARS OF AGE OR IS LESS
4 THAN FOUR YEARS YOUNGER THAN THE JUVENILE, AND THE IMAGE
5 DEPICTS ONLY THE SENDER AND NO OTHER PERSON AND THE JUVENILE
6 REASONABLY BELIEVED THAT THE DEPICTED PERSON HAD TRANSMITTED
7 THE IMAGE OR OTHERWISE AGREED TO THE TRANSMITTAL OF THE IMAGE.
8 (4) IT IS AN AFFIRMATIVE DEFENSE TO SUBSECTION (1), (2), OR (3)
9 OF THIS SECTION IF A JUVENILE IS COERCED, THREATENED, OR INTIMATED
10 INTO DISTRIBUTING, DISPLAYING, PUBLISHING, POSSESSING, OR
11 EXCHANGING A SEXUALLY EXPLICIT IMAGE OF A PERSON UNDER EIGHTEEN
12 YEARS OF AGE.
13 (5) (a) POSTING A PRIVATE IMAGE BY A JUVENILE IS A CLASS 2
14 MISDEMEANOR; EXCEPT THAT IT IS A CLASS 1 MISDEMEANOR IF:
15 (I) THE JUVENILE COMMITTED THE OFFENSE WITH THE INTENT TO
16 COERCE, INTIMIDATE, THREATEN, OR OTHERWISE CAUSE EMOTIONAL
17 DISTRESS TO THE DEPICTED PERSON; OR
18 (II) THE JUVENILE HAD PREVIOUSLY POSTED A PRIVATE IMAGE AND
19 COMPLETED A DIVERSION PROGRAM OR EDUCATION PROGRAM FOR THE
20 ACT PURSUANT TO THE PROVISIONS OF THIS SECTION OR HAD A PRIOR
21 ADJUDICATION FOR POSTING A PRIVATE IMAGE BY A JUVENILE; OR
22 (III) THE JUVENILE DISTRIBUTED, DISPLAYED, OR PUBLISHED
23 THREE OR MORE IMAGES THAT DEPICTED THREE OR MORE SEPARATE AND
24 DISTINCT PERSONS.
25 (b) POSSESSING A PRIVATE IMAGE BY A JUVENILE IS A PETTY
26 OFFENSE; EXCEPT THAT IT IS A CLASS 2 MISDEMEANOR IF THE UNSOLICITED
27 POSSESSOR OF THE IMAGE POSSESSED TEN OR MORE SEPARATE IMAGES
28 THAT DEPICTED THREE OR MORE SEPARATE AND DISTINCT PERSONS.
29 (c) EXCHANGE OF A PRIVATE IMAGE BY A JUVENILE IS A CIVIL
30 INFRACTION AND IS PUNISHABLE BY PARTICIPATION IN A PROGRAM
31 DESIGNED BY THE SCHOOL SAFETY RESOURCE CENTER OR OTHER
32 APPROPRIATE PROGRAM ADDRESSING THE RISKS AND CONSEQUENCES OF
33 EXCHANGING A SEXUALLY EXPLICIT IMAGE OF A JUVENILE OR A FINE OF UP
34 TO FIFTY DOLLARS, WHICH MAY BE WAIVED BY THE COURT UPON A
35 SHOWING OF INDIGENCY. IF THE JUVENILE FAILS TO APPEAR IN RESPONSE
36 TO A CIVIL INFRACTION CITATION OR FAILS TO COMPLETE THE REQUIRED
37 CLASS OR PAY THE IMPOSED FEE, THE COURT MAY ISSUE AN ORDER TO
38 SHOW CAUSE REQUIRING THE JUVENILE'S APPEARANCE IN COURT AND
39 IMPOSE ADDITIONAL AGE-APPROPRIATE PENALTIES. THE COURT SHALL NOT
40 ISSUE A WARRANT FOR THE ARREST OF THE JUVENILE OR IMPOSE
41 INCARCERATION AS A PENALTY.

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

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

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

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

27 (8) AS USED IN THIS SECTION:

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

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

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

35 **19-2-104. Jurisdiction.** (1) Except as otherwise provided by law,
36 the juvenile court shall have exclusive original jurisdiction in
37 proceedings:

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

40 (I) Any federal or state law, except nonfelony state traffic, game
41 and fish, and parks and recreation laws or rules; the offenses specified in

1 section 18-13-121, ~~C.R.S.~~, concerning tobacco products; the offense
2 specified in section 18-13-122, ~~C.R.S.~~, concerning the illegal possession
3 or consumption of ethyl alcohol or marijuana by an underage person or
4 illegal possession of marijuana paraphernalia by an underage person; ~~and~~
5 the offenses specified in section 18-18-406 (5)(a)(I), (5)(b)(I), and
6 (5)(b)(II), ~~C.R.S.~~, concerning marijuana and marijuana concentrate; AND
7 THE CIVIL INFRACTION IN SECTION 18-7-109 (3) CONCERNING EXCHANGE
8 OF A PRIVATE IMAGE BY A JUVENILE;

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

11 **24-33.5-1803. School safety resource center - created - duties**
12 **- repeal.** (3) The center has the following duties:

13 (k) To provide suggestions for school resource officer training to
14 the peace officers standards and training board, pursuant to section
15 24-31-312; ~~and~~

16 (l) To provide materials and training as described in section
17 24-33.5-1809 to personnel in school districts and charter schools, parents,
18 and students regarding the awareness and prevention of child sexual
19 abuse and assault; AND

20 (m) BY JUNE 1, 2018, TO MAKE AVAILABLE A MODEL PROGRAM
21 THAT CONFORMS WITH SECTION 22-1-128, REGARDING THE RISKS AND
22 CONSEQUENCES OF SEXTING FOR SCHOOL DISTRICTS TO USE, WHICH
23 CURRICULUM MUST INCLUDE INFORMATION INFORMING STUDENTS OF THE
24 PROVISIONS OF SECTION 18-7-109, INCLUDING THAT, IF A STUDENT
25 RECEIVES A SEXUALLY EXPLICIT IMAGE IN VIOLATION OF SECTION
26 18-7-109, THE STUDENT CAN AVOID ADJUDICATION AS A JUVENILE
27 DELINQUENT BY TAKING REASONABLE STEPS TO EITHER DESTROY OR
28 DELETE OR REPORT THE INITIAL VIEWING OF THE IMAGE WITHIN
29 SEVENTY-TWO HOURS AFTER RECEIVING THE IMAGE.

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

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

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

1 Page 1, line 102, strike "JUVENILE." and substitute "JUVENILE, AND, IN
2 CONNECTION THEREWITH, REQUIRING A POST-ENACTMENT REVIEW OF
3 THE IMPLEMENTATION OF THIS ACT."

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