

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 25-288

BY SENATOR(S) Rodriguez, Bridges, Cutter, Exum, Hinrichsen, Jodeh, Kipp, Michaelson Jenet, Mullica, Roberts, Snyder, Wallace, Coleman; also REPRESENTATIVE(S) Titone and Soper, Bird, Boesenecker, Duran, Espenoza, Hamrick, Lindstedt, McCormick, Ricks.

CONCERNING PREVENTING CERTAIN DISCLOSURES OF INTIMATE DEPICTIONS,
AND, IN CONNECTION THEREWITH, CREATING A CAUSE OF ACTION FOR
NONCONSENSUAL DISCLOSURE OF AN INTIMATE DIGITAL DEPICTION
AND ADDING AND AMENDING RELATED PROVISIONS IN CRIMINAL LAW.

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

SECTION 1. In Colorado Revised Statutes, **add** part 15 to article 21 of title 13 as follows:

PART 15
PREVENTING UNAUTHORIZED DISCLOSURE
OF INTIMATE DIGITAL DEPICTIONS ACT

13-21-1501. Short title. THE SHORT TITLE OF THIS PART 15 IS THE "PREVENTING UNAUTHORIZED DISCLOSURE OF INTIMATE DIGITAL DEPICTIONS ACT".

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

13-21-1502. Definitions. AS USED IN THIS PART 15, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BROADCASTER" MEANS:

(a) AN ENTITY THAT OPERATES A LICENSED AM, FM, OR TELEVISION BROADCAST FACILITY UNDER THE JURISDICTION OF THE FEDERAL COMMUNICATIONS COMMISSION, INCLUDING A DIGITAL PLATFORM OWNED AND OPERATED BY THE ENTITY; OR

(b) A RADIO OR TELEVISION BROADCASTING STATION, INCLUDING A CABLE OR SATELLITE TELEVISION OPERATOR, PROGRAMMER, PRODUCER, OR STREAMING SERVICE.

(2) "COMPUTER-GENERATED" MEANS CREATED, DEVELOPED, MADE, OR PRODUCED BY DIGITAL SOFTWARE, INCLUDING, BUT NOT LIMITED TO, PHONE APPLICATIONS AND IMAGE EDITING SOFTWARE.

(3) "CONSENT" MEANS AFFIRMATIVE, CONSCIOUS, AND VOLUNTARY AUTHORIZATION BY A DEPICTED INDIVIDUAL;

(4) "DEPICTED INDIVIDUAL" MEANS AN INDIVIDUAL WHO, BY DIGITAL OR COMPUTER-GENERATED MEANS, APPEARS IN WHOLE OR IN PART IN AN INTIMATE DIGITAL DEPICTION AND WHO IS IDENTIFIABLE BY VIRTUE OF THE INDIVIDUAL'S FACE, LIKENESS, OR OTHER DISTINGUISHING CHARACTERISTIC, INCLUDING A UNIQUE BIRTHMARK OR OTHER RECOGNIZABLE FEATURE, OR FROM INFORMATION ANOTHER PERSON DISPLAYS IN CONNECTION WITH THE DIGITAL DEPICTION.

(5) "DIGITAL DEPICTION" MEANS A HIGHLY REALISTIC VISUAL DEPICTION OF A DEPICTED INDIVIDUAL THAT FALSELY APPEARS TO BE AUTHENTIC OR TRUTHFUL, FEATURES A DEPICTION OF AN INDIVIDUAL APPEARING TO ACT IN A WAY THAT THE INDIVIDUAL DID NOT ACT, AND HAS BEEN CREATED, ALTERED, OR PRODUCED BY GENERATIVE AI, IMAGE EDITING SOFTWARE, OR COMPUTER-GENERATED MEANS. "DIGITAL DEPICTION" INCLUDES STORED DATA THAT IS CAPABLE OF CONVERSION INTO A VISUAL IMAGE. "DIGITAL DEPICTION" DOES NOT INCLUDE AN IMAGE OF THE DEPICTED INDIVIDUAL CONTEMPORANEOUSLY CAPTURED BY FILM, VIDEO, CAMERA, OR DIGITAL MEANS WITHOUT FURTHER EDITING, CHANGES,

ALTERATIONS, OR ADDITIONS OF AN INTIMATE PART OR EXPLICIT SEXUAL CONDUCT NOT OTHERWISE FOUND IN THE ORIGINAL IMAGE OR CAPTURED AT THE TIME OF THE ORIGINAL IMAGE.

(6) "DISCLOSE" MEANS TO TRANSFER, PUBLISH, DISTRIBUTE, OR MAKE ACCESSIBLE.

(7) "EXPLICIT SEXUAL CONDUCT" MEANS SEXUAL INTERCOURSE, SEXUAL INTRUSION, EROTIC FONDLING, EROTIC NUDITY, MASTURBATION, SADOMASOCHISM, OR SEXUAL EXCITEMENT.

(8) "GENERATIVE AI" MEANS A SUBSET OF ARTIFICIAL INTELLIGENCE THAT INVOLVES USING ALGORITHMS AND MODELS TO GENERATE OR CREATE NEW AND ORIGINAL CONTENT.

(9) "IMAGE EDITING SOFTWARE" MEANS A COMPUTER PROGRAM THAT ALLOWS EDITING, MODIFICATION, OR ALTERATION OF AN IMAGE OR VIDEO.

(10) "INTIMATE DIGITAL DEPICTION" MEANS A DIGITAL DEPICTION THAT DEPICTS:

(a) THE INTIMATE PARTS OF A DEPICTED INDIVIDUAL;

(b) SEXUAL CONTACT INVOLVING A DEPICTED INDIVIDUAL; OR

(c) A DEPICTED INDIVIDUAL ENGAGING IN EXPLICIT SEXUAL CONDUCT.

(11) "INTIMATE PARTS" MEANS THE EXTERNAL GENITALIA OR THE PERINEUM OR THE ANUS OR THE BUTTOCKS OR THE PUBES OR THE BREAST OF A PERSON.

(12) "RECKLESS DISREGARD" MEANS CONSCIOUSLY DISREGARDING A SUBSTANTIAL AND UNJUSTIFIABLE RISK THAT A RESULT WILL OCCUR OR THAT A CIRCUMSTANCE EXISTS. "RECKLESS DISREGARD" INCLUDES, BUT IS NOT LIMITED TO, CIRCUMSTANCES WHEN A PERSON IS PLACED ON NOTICE, EITHER IMPLICITLY OR EXPLICITLY, THAT THE DISCLOSURE WOULD CAUSE REPUTATIONAL, EMOTIONAL, FINANCIAL, OR PHYSICAL HARM TO THE DEPICTED INDIVIDUAL.

(13) "SEXUAL CONTACT" MEANS:

(a) THE TOUCHING OF A DEPICTED INDIVIDUAL'S INTIMATE PARTS BY ANOTHER PERSON, OR OF ANOTHER PERSON'S INTIMATE PARTS BY THE DEPICTED INDIVIDUAL, OR THE TOUCHING OF THE CLOTHING COVERING THE IMMEDIATE AREA OF THE DEPICTED INDIVIDUAL OR OTHER PERSON'S INTIMATE PARTS IF THAT SEXUAL CONTACT IS FOR THE PURPOSES OF SEXUAL AROUSAL, GRATIFICATION, OR ABUSE;

(b) THE EMISSION OR EJACULATION OF SEMINAL FLUID ONTO A BODY PART OF THE DEPICTED INDIVIDUAL OR THE CLOTHING COVERING A BODY PART OF THE DEPICTED INDIVIDUAL; OR

(c) CAUSING SEMEN, BLOOD, URINE, FECES, OR A BODILY SUBSTANCE TO CONTACT A BODY PART OF THE DEPICTED INDIVIDUAL OR THE CLOTHING COVERING A BODY PART OF THE DEPICTED INDIVIDUAL IF THAT CONTACT WITH SEMEN, BLOOD, URINE, FECES, OR A BODILY SUBSTANCE IS FOR THE PURPOSE OF SEXUAL AROUSAL, GRATIFICATION, OR ABUSE.

(14) "VOLUNTARY AUTHORIZATION" MEANS AUTHORIZATION PROVIDED IN THE ABSENCE OF FORCE, FRAUD, MISREPRESENTATION, DURESS, OR COERCION.

13-21-1503. Civil action - consent - disclaimers. (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 13-21-1504, A DEPICTED INDIVIDUAL WHO IS THE SUBJECT OF AN INTIMATE DIGITAL DEPICTION THAT A PERSON DISCLOSED OR THREATENED TO DISCLOSE WITHOUT THE DEPICTED INDIVIDUAL'S CONSENT AND WHO HAS SUFFERED HARM FROM THE DISCLOSURE OR THREATENED DISCLOSURE OF THE INTIMATE DIGITAL DEPICTION HAS A CAUSE OF ACTION AGAINST THE PERSON WHO DISCLOSED THE INTIMATE DIGITAL DEPICTION IF THE PERSON KNEW OR ACTED WITH RECKLESS DISREGARD FOR WHETHER THE DEPICTED INDIVIDUAL:

(a) DID NOT CONSENT TO THE DISCLOSURE;

(b) WOULD EXPERIENCE SEVERE EMOTIONAL DISTRESS DUE TO THE DISCLOSURE OR THREATENED DISCLOSURE; AND

(c) WAS IDENTIFIABLE.

(2) FOR PURPOSES OF AN ACTION BROUGHT PURSUANT TO SUBSECTION (1) OF THIS SECTION:

(a) A DEPICTED INDIVIDUAL'S CONSENT TO THE CREATION OF THE INTIMATE DIGITAL DEPICTION DOES NOT ESTABLISH THAT THE DEPICTED INDIVIDUAL CONSENTED TO DISCLOSURE OF THE INTIMATE DIGITAL DEPICTION;

(b) A DEPICTED INDIVIDUAL'S CONSENT IS NOT VALID UNLESS THE CONSENT IS SET FORTH IN AN AGREEMENT THAT:

(I) IS WRITTEN IN PLAIN LANGUAGE;

(II) IS SIGNED KNOWINGLY AND VOLUNTARILY BY THE DEPICTED INDIVIDUAL;

(III) INCLUDES A GENERAL DESCRIPTION OF THE INTIMATE DIGITAL DEPICTION;

(IV) IDENTIFIES THE SPECIFIC USE OF THE INTIMATE DIGITAL DEPICTION AGREED UPON BETWEEN THE PARTIES, INCLUDING THE PLATFORMS OR LOCATIONS WHERE THE INTIMATE DIGITAL DEPICTION WILL BE PUBLISHED OR OTHERWISE MADE AVAILABLE TO THIRD PARTIES, THE TIME PERIOD DURING WHICH THE INTIMATE DIGITAL DEPICTION WILL BE MADE AVAILABLE TO THIRD PARTIES, AND SECURITY FEATURES CONTAINED WITHIN THE DIGITAL DEPICTION TO PREVENT THEFT OR UNAUTHORIZED COPYING; AND

(V) IF APPLICABLE, INCLUDES A GENERAL DESCRIPTION OF THE VISUAL WORK INTO WHICH THE INTIMATE DIGITAL DEPICTION IS INCORPORATED, INCLUDING, BUT NOT LIMITED TO, A MOVIE, TELEVISION SHOW, ARTWORK, PRODUCT, COMIC BOOK, COMPUTER APPLICATION, VISUAL NOVEL, WEB SERIES, ONLINE AVATAR, DATING APPLICATION, COMPUTER GAME, VIDEO GAME, OR CHATBOT; AND

(c) PREVIOUS CONSENSUAL DISCLOSURE OF THE INTIMATE DIGITAL DEPICTION THAT IS THE SUBJECT OF THE ACTION DOES NOT, BY ITSELF, ESTABLISH THAT THE DEPICTED INDIVIDUAL CONSENTED TO A SUBSEQUENT DISCLOSURE OF THE INTIMATE DIGITAL DEPICTION.

(3) IT IS NOT A DEFENSE TO AN ACTION BROUGHT PURSUANT TO THIS PART 15 THAT THERE IS A DISCLAIMER STATING THAT THE INTIMATE DIGITAL DEPICTION OF THE DEPICTED INDIVIDUAL WAS UNAUTHORIZED OR THAT THE DEPICTED INDIVIDUAL DID NOT PARTICIPATE IN THE CREATION OR DEVELOPMENT OF THE INTIMATE DIGITAL DEPICTION.

(4) IN THE CASE OF A DEPICTED INDIVIDUAL WHO IS UNDER EIGHTEEN YEARS OF AGE OR IS INCOMPETENT, INCAPACITATED, OR DECEASED, THE LEGAL GUARDIAN OF THE DEPICTED INDIVIDUAL, ANOTHER FAMILY MEMBER, A REPRESENTATIVE OF THE DEPICTED INDIVIDUAL'S ESTATE, OR ANY OTHER PERSON APPOINTED AS SUITABLE BY THE COURT MAY ASSUME THE DEPICTED INDIVIDUAL'S RIGHTS PURSUANT TO THIS PART 15; EXCEPT THAT A DEFENDANT AGAINST WHOM AN ACTION IS BROUGHT PURSUANT TO THIS PART 15 SHALL NOT, IN ANY EVENT, ASSUME THE DEPICTED INDIVIDUAL'S RIGHTS.

(5) THIS SECTION IS NOT THE EXCLUSIVE REMEDY FOR A DISCLOSURE OR THREATENED DISCLOSURE OF AN INTIMATE DIGITAL DEPICTION; A PLAINTIFF MAY ALSO BRING ANY OTHER AVAILABLE COMMON LAW OR STATUTORY CLAIMS.

13-21-1504. Exceptions to liability - construction. (1) (a) A PERSON IS NOT LIABLE UNDER THIS PART 15 IF THE PERSON PROVES THAT DISCLOSURE OF, OR A THREAT TO DISCLOSE, THE INTIMATE DIGITAL DEPICTION WAS:

(I) MADE IN GOOD FAITH:

(A) TO LAW ENFORCEMENT; OR

(B) IN A LEGAL PROCEEDING;

(II) MADE IN GOOD FAITH IN THE REPORTING OR INVESTIGATION OF:

(A) UNLAWFUL CONDUCT; OR

(B) UNSOLICITED AND UNWELCOME CONDUCT;

(III) RELATED TO A MATTER OF PUBLIC CONCERN OR PUBLIC INTEREST; OR

(IV) REASONABLY INTENDED TO ASSIST THE DEPICTED INDIVIDUAL.

(b) NOTWITHSTANDING THE EXCEPTIONS IN SUBSECTION (1)(a) OF THIS SECTION, A CLAIM OF GOOD FAITH DOES NOT LIMIT LIABILITY FOR A DEFENDANT WHO CREATED, DEVELOPED, OR OTHERWISE MADE THE INTIMATE DIGITAL DEPICTION.

(2) IF A DEFENDANT ASSERTS AN EXCEPTION TO LIABILITY PURSUANT TO THIS SECTION, THE EXCEPTION DOES NOT APPLY IF THE PLAINTIFF PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE DISCLOSURE WAS:

(a) PROHIBITED BY LAW OTHER THAN THIS PART 15; OR

(b) MADE, POSSESSED, OR DISTRIBUTED FOR THE PURPOSES OF SEXUAL AROUSAL, SEXUAL GRATIFICATION, HUMILIATION, DEGRADATION, OR MONETARY OR COMMERCIAL GAIN.

(3) DISCLOSURE OF, OR A THREAT TO DISCLOSE, AN INTIMATE DIGITAL DEPICTION IS NOT A MATTER OF PUBLIC CONCERN OR PUBLIC INTEREST SOLELY BECAUSE THE DEPICTED INDIVIDUAL IS A PUBLIC FIGURE.

(4) THIS PART 15 DOES NOT APPLY TO MEDIA CONTENT THAT CONSTITUTES SATIRE OR PARODY, OR TO MEDIA CONTENT, THE PRODUCTION OF WHICH IS SUBSTANTIALLY DEPENDENT ON THE ABILITY OF A PERSON TO PHYSICALLY OR VERBALLY IMPERSONATE A DEPICTED INDIVIDUAL AND NOT UPON COMPUTER-GENERATED MEANS.

(5) THIS PART 15 DOES NOT APPLY TO THE PROVIDER OF TECHNOLOGY USED IN THE CREATION OF AN INTIMATE DIGITAL DEPICTION.

(6) NOTHING IN THIS SECTION IMPOSES LIABILITY ON THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. SEC. 230 (f)(2); AN INFORMATION SERVICE, AS DEFINED IN 47 U.S.C. SEC. 153 (24); OR A TELECOMMUNICATIONS SERVICE, AS DEFINED IN 47 U.S.C. SEC. 153 (53), FOR CONTENT PROVIDED BY ANOTHER PERSON.

(7) NOTHING IN THIS PART 15 IMPOSES LIABILITY ON THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. SEC. 230 (f)(2), FOR:

(a) AN ACTION THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE TAKES VOLUNTARILY AND IN GOOD FAITH TO RESTRICT ACCESS TO OR AVAILABILITY OF AN INTIMATE DIGITAL DEPICTION; OR

(b) AN ACTION THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE TAKES TO ENABLE OR MAKE AVAILABLE TO INFORMATION CONTENT PROVIDERS, AS DEFINED IN 47 U.S.C. SEC. 230 (f)(3), OR OTHER PERSONS THE TECHNICAL MEANS TO RESTRICT ACCESS TO AN INTIMATE DIGITAL DEPICTION.

(8)(a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 15, A BROADCASTER IS NOT LIABLE PURSUANT TO THIS PART 15 SOLELY FOR THE BROADCAST, REBROADCAST, OR PUBLICATION OF THIRD-PARTY CONTENT THAT CONTAINS OR IS ALLEGED TO CONTAIN AN INTIMATE DIGITAL DEPICTION IF THE BROADCASTER:

(I) DID NOT CREATE, ALTER, OR MATERIALLY CONTRIBUTE TO THE DEVELOPMENT OF THE INTIMATE DIGITAL DEPICTION;

(II) LACKED ACTUAL KNOWLEDGE THAT THE CONTENT WAS AN INTIMATE DIGITAL DEPICTION THAT THE DEPICTED INDIVIDUAL DID NOT CONSENT TO HAVE DISCLOSED; AND

(III) UPON OBTAINING THE ACTUAL KNOWLEDGE DESCRIBED IN SUBSECTION (8)(a)(II) OF THIS SECTION, ACTED PROMPTLY AND IN GOOD FAITH TO REMOVE, CEASE FURTHER DISSEMINATION OF, OR OTHERWISE LIMIT ACCESS TO THE CONTENT, WHEN REASONABLY FEASIBLE.

(b) THIS SUBSECTION (8) DOES NOT LIMIT LIABILITY IF A BROADCASTER KNOWINGLY OR RECKLESSLY BROADCASTS, PUBLISHES, OR DISTRIBUTES CONTENT IN VIOLATION OF THIS PART 15, OR FAILS TO RESPOND TO A VALID REQUEST TO REMOVE THE MATERIAL.

(9) THIS PART 15 MUST BE CONSTRUED TO BE CONSISTENT WITH THE FEDERAL "COMMUNICATIONS DECENCY ACT OF 1996", 47 U.S.C. SEC. 230.

13-21-1505. Plaintiff privacy. (1) IN A CIVIL ACTION FILED PURSUANT TO THIS PART 15:

(a) A PLAINTIFF MAY PROCEED USING A PSEUDONYM IN PLACE OF THE

PLAINTIFF'S TRUE NAME;

(b) THE COURT MAY AUTHORIZE AN IN CAMERA PROCEEDING; AND

(c) THE COURT MAY MAKE FURTHER ORDERS AS NECESSARY TO PROTECT THE IDENTITY AND PRIVACY OF A PLAINTIFF.

13-21-1506. Remedies. (1) IN A CIVIL ACTION FILED PURSUANT TO THIS PART 15, A PREVAILING PLAINTIFF MAY RECOVER ALL OF THE FOLLOWING:

(a) AN AMOUNT EQUAL TO THE MONETARY GAIN THE DEFENDANT MADE FROM THE CREATION, DEVELOPMENT, OR DISCLOSURE OF THE INTIMATE DIGITAL DEPICTION;

(b) EITHER OF THE FOLLOWING, WHICHEVER IS GREATER:

(I) THE ACTUAL DAMAGES SUSTAINED BY THE DEPICTED INDIVIDUAL AS A RESULT OF THE INTIMATE DIGITAL DEPICTION'S DISCLOSURE, INCLUDING DAMAGES FOR EMOTIONAL DISTRESS; OR

(II) LIQUIDATED DAMAGES OF ONE HUNDRED FIFTY THOUSAND DOLLARS;

(c) EXEMPLARY DAMAGES; AND

(d) THE COST OF THE ACTION, INCLUDING REASONABLE ATTORNEY FEES AND OTHER LITIGATION COSTS REASONABLY INCURRED.

(2) IN A CIVIL ACTION FILED PURSUANT TO THIS PART 15, A COURT MAY, IN ADDITION TO ANY OTHER RELIEF AVAILABLE PURSUANT TO STATE LAW, ORDER EQUITABLE RELIEF, INCLUDING A TEMPORARY RESTRAINING ORDER, A PRELIMINARY INJUNCTION, OR A PERMANENT INJUNCTION ORDERING THE DEFENDANT TO CEASE DISCLOSURE OF THE INTIMATE DIGITAL DEPICTION.

13-21-1507. Rules. THE ATTORNEY GENERAL MAY ADOPT RULES AS NECESSARY FOR THE PURPOSE OF IMPLEMENTING THIS PART 15.

SECTION 2. In Colorado Revised Statutes, 18-6-403, **amend** (1),

(1.5), (2)(j), and (3.5); and **add** (2)(b.7), (2)(e.3), (9), and (10) as follows:

18-6-403. Sexual exploitation of a child - legislative declaration - definitions. (1) The general assembly hereby finds and declares: That the sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental, and emotional injury to the child; that a child below the age of eighteen years is incapable of giving informed consent to the use of ~~his or her~~ THE CHILD'S body for a sexual purpose OR TO THE USE OF ALL OR PART OF THE CHILD'S IMAGE TO CREATE SEXUALLY EXPLOITATIVE MATERIAL; and that to protect children from sexual exploitation it is necessary to prohibit the production of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

(1.5) The general assembly further finds and declares that the mere possession or control of any sexually exploitative material results in continuing victimization of our children by the fact that such material is a permanent record of an act or acts of sexual abuse of a child; THAT THE CREATION OR THE MERE POSSESSION OR CONTROL OF COMPUTER-GENERATED MATERIAL OR DIGITAL DEPICTIONS USING ALL OR PART OF THE IMAGE OF A CHILD IN SEXUALLY EXPLOITATIVE MATERIAL RESULTS IN THE VICTIMIZATION OF OUR CHILDREN; that each time such material is shown or viewed, the child is harmed; that such material is used to break down the will and resistance of other children to encourage them to participate in similar acts of sexual abuse; that laws banning the production and distribution of such material are insufficient to halt this abuse; that in order to stop the sexual exploitation and abuse of our children, it is necessary for the state to ban the possession of any sexually exploitative materials; and that the state has a compelling interest in outlawing the possession of any sexually exploitative materials in order to protect society as a whole, and particularly the privacy, health, and emotional welfare of its children.

(2) As used in this section, unless the context otherwise requires:

(b.7) "DIGITIZATION" HAS THE SAME MEANING AS IN SECTION 18-7-107 (6)(i).

(e.3) "IDENTIFIABLE CHILD" MEANS A PERSON WHO:

(I) WAS UNDER THE AGE OF EIGHTEEN AT THE TIME A REALISTIC

VISUAL DEPICTION OF THE PERSON WAS CREATED, PRODUCED, OR ALTERED OR A PERSON WHOSE IMAGE IS USED TO CREATE OR PRODUCE A REALISTIC VISUAL DEPICTION OR WHOSE IMAGE IS ALTERED TO BE A REALISTIC VISUAL DEPICTION, AND WHO WAS UNDER THE AGE OF EIGHTEEN AT THE TIME THE IMAGE WAS CAPTURED; AND

(II) IS IDENTIFIABLE BY VIRTUE OF THE INDIVIDUAL'S FACE, LIKENESS, OR OTHER DISTINGUISHING CHARACTERISTIC, INCLUDING A UNIQUE BIRTHMARK OR OTHER RECOGNIZABLE FEATURE.

(j) "Sexually exploitative material" means: ~~any~~

(I) A photograph, motion picture, video, recording or broadcast of moving visual images, live stream, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct; OR

(II) A REALISTIC VISUAL DEPICTION, WHICH HAS BEEN CREATED, ALTERED, OR PRODUCED BY DIGITIZATION OR COMPUTER-GENERATED MEANS, THAT DEPICTS AN IDENTIFIABLE CHILD, IN WHOLE OR IN PART, ENGAGED IN, PARTICIPATING IN, OBSERVING, OR BEING USED FOR EXPLICIT SEXUAL CONDUCT.

(3.5) A juvenile's conduct that is limited to the elements of the petty offense of possession of a ~~private image~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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.

(9) A PROSECUTION BROUGHT PURSUANT TO THIS SECTION DOES NOT REQUIRE PROOF OF THE ACTUAL IDENTITY OF AN IDENTIFIABLE CHILD.

(10) WHEN THE CHARGED OFFENSE INVOLVES SEXUALLY EXPLOITATIVE MATERIAL PURSUANT TO SUBSECTION (2)(j)(II) OF THIS SECTION, IT IS NOT A DEFENSE THAT THE DEFENDANT LACKED KNOWLEDGE OF WHETHER THE REALISTIC VISUAL DEPICTION WAS CREATED, ALTERED, OR PRODUCED BY DIGITIZATION OR COMPUTER-GENERATED MEANS.

SECTION 3. In Colorado Revised Statutes, 18-7-107, **amend** (1), (2.5), (4)(b), (5), and (6); and **add** (5.5) as follows:

18-7-107. Disclosing a private intimate image or intimate digital depiction for harassment - definitions. (1) (a) An actor who is eighteen years of age or older commits the offense of ~~posting a private image~~ DISCLOSING A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION for harassment if the actor ~~posts or distributes~~ DISCLOSES OR THREATENS TO DISCLOSE through the use of ~~social~~ ELECTRONIC media or ~~any~~ A website ~~any photograph, video, or other image displaying the real or simulated private intimate parts of an identified or identifiable person eighteen years of age or older or an image displaying sexual acts of an identified or identifiable person~~ A PRIVATE INTIMATE IMAGE OR AN INTIMATE DIGITAL DEPICTION WITHOUT THE DEPICTED INDIVIDUAL'S CONSENT:

(I) ~~With the intent to harass, intimidate, or coerce the depicted person;~~

(II) (A) ~~Without the depicted person's consent; or~~

(B) ~~When the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private; and~~

(III) ~~The conduct results in serious emotional distress of the depicted person;~~

(IV) (A) WITH THE INTENT TO HARASS, INTIMIDATE, OR COERCE THE DEPICTED INDIVIDUAL; OR

(B) WHEN THE ACTOR KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE DEPICTED INDIVIDUAL HAD A REASONABLE EXPECTATION THAT THE PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION WOULD REMAIN PRIVATE; AND

(V) THE DISCLOSURE OR THREAT TO DISCLOSE CAUSED PHYSICAL, EMOTIONAL, OR REPUTATIONAL HARM TO THE DEPICTED INDIVIDUAL.

(b) ~~Posting a private image~~ DISCLOSING A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION for harassment is a class 1 misdemeanor;

EXCEPT THAT IT IS A CLASS 6 FELONY IF THE ACTOR DISCLOSED THE PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION AND THE DISCLOSURE POSED AN IMMINENT AND SERIOUS THREAT TO THE DEPICTED INDIVIDUAL'S SAFETY OR THE SAFETY OF THE DEPICTED INDIVIDUAL'S IMMEDIATE FAMILY AND THE ACTOR KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE IMMINENT AND SERIOUS THREAT.

(c) Notwithstanding ~~the provisions of section 18-1.3-501 (1)(a)~~ SECTION 18-1.3-501 (1)(a.5), in addition to any other sentence the court may impose, the court shall fine the defendant up to ten thousand dollars. The fines collected pursuant to this ~~paragraph (c)~~ shall SUBSECTION (1)(c) MUST be credited to the crime victim compensation fund created in section 24-4.1-117. ~~C.R.S.~~

(2.5) It is not a defense to an alleged violation of this section that ~~the image is partially digitally created or altered or that the private intimate parts were digitally created or altered~~ THERE IS A DISCLAIMER STATING THAT THE INTIMATE DIGITAL DEPICTION OF THE DEPICTED INDIVIDUAL WAS UNAUTHORIZED OR THAT THE DEPICTED INDIVIDUAL DID NOT PARTICIPATE IN THE CREATION OR DEVELOPMENT OF THE INTIMATE DIGITAL DEPICTION.

(4) (b) An individual whose private intimate ~~parts have been posted or an individual who has had an image displaying sexual acts of the individual posted~~ IMAGE HAS BEEN DISCLOSED in accordance with this section ~~shall retain~~ RETAINS a protectable right of authorship regarding the commercial use of the private INTIMATE image.

(5) (a) Nothing in this section ~~shall be construed to impose~~ IMPOSES liability on the provider of an interactive computer service, as defined in 47 U.S.C. sec. 230 (f)(2); an information service, as defined in ~~47 U.S.C. sec. 153~~ 47 U.S.C. SEC. 153 (24); or a telecommunications service, as defined in ~~47 U.S.C. sec. 153~~ 47 U.S.C. SEC. 153 (53), for content provided by another person.

(b) NOTHING IN THIS SECTION IMPOSES LIABILITY ON THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. SEC. 230 (f)(2), FOR:

(I) AN ACTION THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE TAKES VOLUNTARILY AND IN GOOD FAITH TO RESTRICT ACCESS TO

OR AVAILABILITY OF A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION; OR

(II) AN ACTION THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE TAKES TO ENABLE OR MAKE AVAILABLE TO INFORMATION CONTENT PROVIDERS, AS DEFINED IN 47 U.S.C. SEC. 230 (f)(3), OR OTHER PERSONS THE TECHNICAL MEANS TO RESTRICT ACCESS TO A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION.

(5.5) THIS SECTION DOES NOT APPLY TO A DISCLOSURE OF A PRIVATE INTIMATE IMAGE OR AN INTIMATE DIGITAL DEPICTION IF THE DISCLOSURE WAS MADE IN GOOD FAITH:

(a) TO LAW ENFORCEMENT WHILE REPORTING A VIOLATION OF THIS SECTION; OR

(b) TO THE COURT, A PARTY, OR A FINDER OF FACT IN A CRIMINAL PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

(6) For purposes of this section, unless the context otherwise requires:

(a) ~~"Displaying sexual acts" means any display of sexual acts even if the private intimate parts are not visible in the image.~~

(b) ~~"Image" means a photograph, film, videotape, recording, digital file, or other reproduction.~~

(c) ~~"Private intimate parts" means external genitalia or the perineum or the anus or the pubes of any person or the breast of a female.~~

(d) ~~"Sexual acts" means sexual intrusion or sexual penetration as defined by section 18-3-401.~~

(e) ~~"Social media" means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet website profiles.~~

(f) "COMPUTER-GENERATED" MEANS CREATED, DEVELOPED, MADE, OR PRODUCED BY DIGITAL SOFTWARE, INCLUDING, BUT NOT LIMITED TO, PHONE APPLICATIONS AND IMAGE EDITING SOFTWARE.

(g) "DEPICTED INDIVIDUAL" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE OR OLDER AND WHO IS IDENTIFIABLE BY VIRTUE OF THE INDIVIDUAL'S FACE, LIKENESS, OR OTHER DISTINGUISHING CHARACTERISTIC, INCLUDING A UNIQUE BIRTHMARK OR OTHER RECOGNIZABLE FEATURE, AND WHO:

(I) BY DIGITAL OR COMPUTER-GENERATED MEANS APPEARS IN WHOLE OR IN PART IN AN INTIMATE DIGITAL DEPICTION; OR

(II) APPEARS IN WHOLE OR IN PART IN A PRIVATE INTIMATE IMAGE.

(h) "DIGITAL DEPICTION" MEANS A PHOTOGRAPH, FILM, VIDEOTAPE, RECORDING, DIGITAL FILE, OR OTHER HIGHLY REALISTIC VISUAL DEPICTION OF A DEPICTED INDIVIDUAL THAT FALSELY APPEARS TO BE AUTHENTIC OR TRUTHFUL, FEATURES A DEPICTION OF AN INDIVIDUAL APPEARING TO ACT IN A WAY THAT THE INDIVIDUAL DID NOT ACT, AND HAS BEEN CREATED, ALTERED, OR PRODUCED BY DIGITIZATION OR COMPUTER-GENERATED MEANS. "DIGITAL DEPICTION" DOES NOT INCLUDE HANDMADE DRAWINGS OR CARTOONS.

(i) "DIGITIZATION" MEANS CREATING OR ALTERING VISUAL OR PRINTED MATTER IN A REALISTIC MANNER USING IMAGES OF ANOTHER PERSON OR COMPUTER-GENERATED IMAGES, REGARDLESS OF WHETHER THE CREATION OR ALTERATION IS ACCOMPLISHED MANUALLY OR THROUGH AN AUTOMATED PROCESS. "DIGITIZATION" INCLUDES, BUT IS NOT LIMITED TO, CREATION OR ALTERATION OF VISUAL OR PRINTED MATTER USING GENERATIVE AI SOFTWARE.

(j) "DISCLOSE" MEANS TO TRANSFER, PUBLISH, DISTRIBUTE, OR MAKE ACCESSIBLE.

(k) "ELECTRONIC MEDIA" MEANS AN ELECTRONIC MEDIUM, INCLUDING AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA NETWORK, THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW USER-GENERATED CONTENT, INCLUDING, BUT NOT LIMITED TO, VIDEOS, STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS OR CHATS, LIVE BLOGS OR LIVE

STREAMS, PODCASTS, INSTANT MESSAGES, DIRECT MESSAGES, ELECTRONIC MAIL, OR INTERNET WEBSITE PROFILES.

(l) "GENERATIVE AI" MEANS A SUBSET OF ARTIFICIAL INTELLIGENCE THAT INVOLVES USING ALGORITHMS AND MODELS TO GENERATE OR CREATE NEW AND ORIGINAL CONTENT.

(m) "IMAGE EDITING SOFTWARE" MEANS A COMPUTER PROGRAM THAT ALLOWS EDITING, MODIFICATION, OR ALTERATION OF AN IMAGE OR VIDEO.

(n) "INTIMATE DIGITAL DEPICTION" MEANS A DIGITAL DEPICTION THAT DEPICTS:

(I) THE INTIMATE PARTS OF A DEPICTED INDIVIDUAL; OR

(II) SEXUAL ACTS OF A DEPICTED INDIVIDUAL.

(o) "PRIVATE INTIMATE IMAGE" MEANS A PHOTOGRAPH, FILM, VIDEOTAPE, RECORDING, DIGITAL FILE, OR OTHER REPRODUCTION THAT DEPICTS THE PRIVATE INTIMATE PARTS OF A DEPICTED INDIVIDUAL OR A DEPICTED INDIVIDUAL ENGAGING IN SEXUAL ACTS, REGARDLESS OF WHETHER OR NOT INTIMATE PARTS ARE VISIBLE IN THE IMAGE.

(p) "PRIVATE INTIMATE PARTS" MEANS EXTERNAL GENITALIA OR THE PERINEUM OR THE ANUS OR THE PUBES OF A PERSON OR THE BREAST OF A FEMALE.

(q) "SEXUAL ACTS" MEANS SEXUAL INTRUSION OR SEXUAL PENETRATION AS DEFINED BY SECTION 18-3-401.

SECTION 4. In Colorado Revised Statutes, 18-7-108, **amend** (1), (2.5), (4)(b), (5), and (6); and **add** (5.5) as follows:

18-7-108. Disclosing a private intimate image or intimate digital depiction for pecuniary gain - definitions. (1) (a) An actor who is eighteen years of age or older commits the offense of ~~posting a private image~~ DISCLOSING A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION for pecuniary gain if the actor ~~posts or distributes~~ DISCLOSES OR THREATENS TO DISCLOSE through ~~social~~ ELECTRONIC media or ~~any~~ A

~~website any photograph, video, or other image displaying the real or simulated private intimate parts of an identified or identifiable person eighteen years of age or older or an image displaying sexual acts of an identified or identifiable person~~ A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION WITHOUT THE DEPICTED INDIVIDUAL'S CONSENT:

(I) With the intent to obtain a pecuniary benefit from ~~any~~ A person as a result of the ~~posting, viewing, or removal~~ DISCLOSURE, THREATENED DISCLOSURE, OR RETRACTION of the private INTIMATE image ~~and~~ OR INTIMATE DIGITAL DEPICTION; OR

(II) ~~(A) When the actor has not obtained the depicted person's consent; or~~

~~(B) When the actor knew or REASONABLY should have known that: the depicted person had a reasonable expectation that the image would remain private.~~

(A) THE DEPICTED INDIVIDUAL HAD A REASONABLE EXPECTATION THAT THE PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION WOULD REMAIN PRIVATE; AND

(B) THE DISCLOSURE WOULD CAUSE FINANCIAL HARM TO THE DEPICTED INDIVIDUAL.

(b) ~~Posting a private image~~ DISCLOSING A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION for pecuniary gain is a class 1 misdemeanor; EXCEPT THAT IT IS A CLASS 6 FELONY IF THE ACTOR DISCLOSED THE PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION AND THE DISCLOSURE POSED AN IMMINENT AND SERIOUS THREAT TO THE DEPICTED INDIVIDUAL'S SAFETY OR THE SAFETY OF THE DEPICTED INDIVIDUAL'S IMMEDIATE FAMILY AND THE ACTOR KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE IMMINENT AND SERIOUS THREAT.

(c) Notwithstanding ~~the provisions of section 18-1.3-501 (1)(a)~~ SECTION 18-1.3-501 (1)(a.5), in addition to any other sentence the court may impose, the court shall fine the defendant up to ten thousand dollars. The fines collected pursuant to this ~~paragraph (c) shall~~ SUBSECTION (1)(c) MUST be credited to the crime victim compensation fund created in section 24-4.1-117. ~~E.R.S.~~

(2.5) It is not a defense to an alleged violation of this section that ~~the image is partially digitally created or altered or that the private intimate parts were digitally created or altered~~ THERE IS A DISCLAIMER STATING THAT THE INTIMATE DIGITAL DEPICTION OF THE DEPICTED INDIVIDUAL WAS UNAUTHORIZED OR THAT THE DEPICTED INDIVIDUAL DID NOT PARTICIPATE IN THE CREATION OR DEVELOPMENT OF THE INTIMATE DIGITAL DEPICTION.

(4) (b) An individual whose private intimate ~~parts have been posted or an individual who has had an image displaying sexual acts of the individual posted~~ IMAGE HAS BEEN DISCLOSED in accordance with this section ~~shall retain~~ RETAINS a protectable right of authorship regarding the commercial use of the private INTIMATE image.

(5) (a) Nothing in this section ~~shall be construed to impose~~ IMPOSES liability on the provider of an interactive computer service, as defined in 47 U.S.C. sec. 230 (f)(2); an information service, as defined in ~~47 U.S.C. sec. 153~~ 47 U.S.C. SEC. 153 (24); or a telecommunications service, as defined in ~~47 U.S.C. sec. 153~~ 47 U.S.C. SEC. 153 (53), for content provided by another person.

(b) NOTHING IN THIS SECTION IMPOSES LIABILITY ON THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. SEC. 230 (f)(2), FOR:

(I) AN ACTION THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE TAKES VOLUNTARILY AND IN GOOD FAITH TO RESTRICT ACCESS TO OR AVAILABILITY OF A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION; OR

(II) AN ACTION THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE TAKES TO ENABLE OR MAKE AVAILABLE TO INFORMATION CONTENT PROVIDERS, AS DEFINED IN 47 U.S.C. SEC. 230 (f)(3), OR OTHER PERSONS THE TECHNICAL MEANS TO RESTRICT ACCESS TO A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION.

(5.5) THIS SECTION DOES NOT APPLY TO A DISCLOSURE OF A PRIVATE INTIMATE IMAGE OR AN INTIMATE DIGITAL DEPICTION IF THE DISCLOSURE WAS MADE IN GOOD FAITH:

(a) TO LAW ENFORCEMENT WHILE REPORTING A VIOLATION OF THIS

SECTION; OR

(b) TO THE COURT, A PARTY, OR A FINDER OF FACT IN A CRIMINAL PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

(6) For purposes of this section, unless the context otherwise requires:

(a) ~~"Displaying sexual acts" means any display of sexual acts even if the private intimate parts are not visible in the image.~~

(b) ~~"Image" means a photograph, film, videotape, recording, digital file, or other reproduction.~~

(c) ~~"Private intimate parts" means external genitalia or the perineum or the anus or the pubes of any person or the breast of a female.~~

(d) ~~"Sexual acts" means sexual intrusion or sexual penetration as defined by section 18-3-401.~~

(e) ~~"Social media" means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet website profiles.~~

(f) "COMPUTER-GENERATED" MEANS CREATED, DEVELOPED, MADE, OR PRODUCED BY DIGITAL SOFTWARE, INCLUDING, BUT NOT LIMITED TO, PHONE APPLICATIONS AND IMAGE EDITING SOFTWARE.

(g) "DEPICTED INDIVIDUAL" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE OR OLDER AND WHO IS IDENTIFIABLE BY VIRTUE OF THE INDIVIDUAL'S FACE, LIKENESS, OR OTHER DISTINGUISHING CHARACTERISTIC, INCLUDING A UNIQUE BIRTHMARK OR OTHER RECOGNIZABLE FEATURE, AND WHO:

(I) BY DIGITAL OR COMPUTER-GENERATED MEANS APPEARS IN WHOLE OR IN PART IN AN INTIMATE DIGITAL DEPICTION; OR

(II) APPEARS IN WHOLE OR IN PART IN A PRIVATE INTIMATE IMAGE.

(h) "DIGITAL DEPICTION" MEANS A PHOTOGRAPH, FILM, VIDEOTAPE, RECORDING, DIGITAL FILE, OR OTHER HIGHLY REALISTIC VISUAL DEPICTION OF A DEPICTED INDIVIDUAL THAT FALSELY APPEARS TO BE AUTHENTIC OR TRUTHFUL, FEATURES A DEPICTION OF AN INDIVIDUAL APPEARING TO ACT IN A WAY THAT THE INDIVIDUAL DID NOT ACT, AND HAS BEEN CREATED, ALTERED, OR PRODUCED BY DIGITIZATION OR COMPUTER-GENERATED MEANS. "DIGITAL DEPICTION" DOES NOT INCLUDE HANDMADE DRAWINGS OR CARTOONS.

(i) "DIGITIZATION" MEANS CREATING OR ALTERING VISUAL OR PRINTED MATTER IN A REALISTIC MANNER USING IMAGES OF ANOTHER PERSON OR COMPUTER-GENERATED IMAGES, REGARDLESS OF WHETHER THE CREATION OR ALTERATION IS ACCOMPLISHED MANUALLY OR THROUGH AN AUTOMATED PROCESS. "DIGITIZATION" INCLUDES, BUT IS NOT LIMITED TO, CREATION OR ALTERATION OF VISUAL OR PRINTED MATTER USING GENERATIVE AI SOFTWARE.

(j) "DISCLOSE" MEANS TO TRANSFER, PUBLISH, DISTRIBUTE, OR MAKE ACCESSIBLE.

(k) "ELECTRONIC MEDIA" MEANS AN ELECTRONIC MEDIUM, INCLUDING AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA NETWORK, THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW USER-GENERATED CONTENT, INCLUDING, BUT NOT LIMITED TO, VIDEOS, STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS OR CHATS, LIVE BLOGS OR LIVE STREAMS, PODCASTS, INSTANT MESSAGES, DIRECT MESSAGES, ELECTRONIC MAIL, OR INTERNET WEBSITE PROFILES.

(l) "GENERATIVE AI" MEANS A SUBSET OF ARTIFICIAL INTELLIGENCE THAT INVOLVES USING ALGORITHMS AND MODELS TO GENERATE OR CREATE NEW AND ORIGINAL CONTENT.

(m) "IMAGE EDITING SOFTWARE" MEANS A COMPUTER PROGRAM THAT ALLOWS EDITING, MODIFICATION, OR ALTERATION OF AN IMAGE OR VIDEO.

(n) "INTIMATE DIGITAL DEPICTION" MEANS A DIGITAL DEPICTION THAT DEPICTS:

(I) THE INTIMATE PARTS OF A DEPICTED INDIVIDUAL; OR

(II) SEXUAL ACTS OF A DEPICTED INDIVIDUAL.

(o) "PRIVATE INTIMATE IMAGE" MEANS A PHOTOGRAPH, FILM, VIDEOTAPE, RECORDING, DIGITAL FILE, OR OTHER REPRODUCTION THAT DEPICTS THE PRIVATE INTIMATE PARTS OF A DEPICTED INDIVIDUAL OR A DEPICTED INDIVIDUAL ENGAGING IN SEXUAL ACTS, REGARDLESS OF WHETHER OR NOT INTIMATE PARTS ARE VISIBLE IN THE IMAGE.

(p) "PRIVATE INTIMATE PARTS" MEANS EXTERNAL GENITALIA OR THE PERINEUM OR THE ANUS OR THE PUBES OF ANY PERSON OR THE BREAST OF A FEMALE.

(q) "SEXUAL ACTS" MEANS SEXUAL INTRUSION OR SEXUAL PENETRATION AS DEFINED BY SECTION 18-3-401.

SECTION 5. In Colorado Revised Statutes, 19-2.5-103, **amend** (1)(a)(I) as follows:

19-2.5-103. Jurisdiction. (1) Except as otherwise provided by law, the juvenile court has 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 offense specified in section 18-13-122, 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; the offenses specified in section 18-18-406 (5)(b)(I) and (5)(b)(II), concerning marijuana and marijuana concentrate; the offenses specified in section 18-18-434, concerning natural medicine and natural medicine product; and the civil infraction in section 18-7-109 (3), concerning exchange of a ~~private image~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION by a juvenile;

SECTION 6. In Colorado Revised Statutes, 18-7-109, **amend** (1), (2), (3), (4), (5)(a), (5)(b), (5)(c), and (8) as follows:

18-7-109. Disclosure, possession, or exchange of a private intimate image or intimate digital depiction by a juvenile - definitions

- penalties. (1) A juvenile commits the offense of ~~posting a private image by a juvenile if he or she~~ DISCLOSING A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION BY A JUVENILE IF THE JUVENILE, through digital or electronic means:

(a) Knowingly ~~distributes, displays, or publishes~~ DISCLOSES OR THREATENS TO DISCLOSE to the view of another person a ~~sexually explicit image of a person other than himself or herself~~ PRIVATE INTIMATE IMAGE OR AN INTIMATE DIGITAL DEPICTION OF ANOTHER INDIVIDUAL 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~~ INDIVIDUAL'S CONSENT;
or

(II) When the recipient did not solicit or request to be supplied with the PRIVATE INTIMATE image OR INTIMATE DIGITAL DEPICTION and suffered emotional distress; or

(III) When the juvenile knew or should have known that the depicted ~~person~~ INDIVIDUAL had a reasonable expectation that the PRIVATE INTIMATE image OR INTIMATE DIGITAL DEPICTION would remain private; or

(b) Knowingly ~~distributes, displays, or publishes~~ DISCLOSES OR THREATENS TO DISCLOSE, 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~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION BY A JUVENILE IF THE JUVENILE, through digital or electronic means, knowingly possesses a ~~sexually explicit image~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION of another ~~person~~ INDIVIDUAL who is at least fourteen years of age or is less than four years younger than the juvenile without the depicted ~~person's permission~~ INDIVIDUAL'S CONSENT; 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~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION within

seventy-two hours after initially viewing the image OR DEPICTION; or

(b) Reported the initial viewing of ~~such image~~ THE IMAGE OR DEPICTION to law enforcement or a school resource officer within seventy-two hours after initially viewing the image OR DEPICTION.

(3) A juvenile commits the civil infraction of exchange of a ~~private image~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION by a juvenile if ~~he or she~~ THE JUVENILE, through digital or electronic means:

(a) Knowingly sends a ~~sexually explicit image or images~~ A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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~~ DEPICTION DEPICTS 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~~ DEPICTION; or

(b) Knowingly possesses a ~~sexually explicit image or images~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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~~ OR DEPICTION DEPICTS only the sender and no other person and the juvenile reasonably believed that the depicted ~~person~~ INDIVIDUAL had transmitted the image or ~~images~~ DEPICTION or otherwise agreed to the transmittal of the image or ~~images~~ DEPICTION.

(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~~ DISCLOSING, possessing, or exchanging a ~~sexually explicit image~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION of a person under eighteen years of age.

(5) (a) ~~Posting a private image~~ DISCLOSING A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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~~ INDIVIDUAL; or

(II) The juvenile had previously ~~posted a private image~~ DISCLOSED A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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~~ DISCLOSING A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION by a juvenile; or

(III) The juvenile ~~distributed, displayed, or published~~ DISCLOSED three or more images OR DEPICTIONS that depicted three or more separate and distinct ~~persons~~ INDIVIDUALS.

(b) Possessing a ~~private image~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION by a juvenile is a petty offense; except that it is a class 2 misdemeanor if the unsolicited possessor of the image OR DEPICTION possessed ten or more separate images OR DEPICTIONS that depicted three or more separate and distinct ~~persons~~ INDIVIDUALS.

(c) Exchange of a ~~private image~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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.

(8) As used in this section, unless the context otherwise requires:

(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 real or simulated external genitalia or perineum or anus or buttocks or pubes of any person or the real or simulated breast of a female person.~~

(c) "COMPUTER-GENERATED" MEANS CREATED, DEVELOPED, MADE,

OR PRODUCED BY DIGITAL SOFTWARE, INCLUDING, BUT NOT LIMITED TO, PHONE APPLICATIONS AND IMAGE EDITING SOFTWARE.

(d) "DEPICTED INDIVIDUAL" MEANS AN INDIVIDUAL WHO IS IDENTIFIABLE BY VIRTUE OF THE INDIVIDUAL'S FACE, LIKENESS, OR OTHER DISTINGUISHING CHARACTERISTIC, INCLUDING A UNIQUE BIRTHMARK OR OTHER RECOGNIZABLE FEATURE, AND WHO:

(I) BY DIGITAL OR COMPUTER-GENERATED MEANS APPEARS IN WHOLE OR IN PART IN AN INTIMATE DIGITAL DEPICTION; OR

(II) APPEARS IN WHOLE OR IN PART IN A PRIVATE INTIMATE IMAGE.

(e) "DIGITAL DEPICTION" MEANS A PHOTOGRAPH, FILM, VIDEOTAPE, RECORDING, DIGITAL FILE, OR OTHER HIGHLY REALISTIC VISUAL DEPICTION OF A DEPICTED INDIVIDUAL, WHICH FALSELY APPEARS TO BE AUTHENTIC OR TRUTHFUL AND WHICH FEATURES A DEPICTION OF AN INDIVIDUAL APPEARING TO ACT IN A WAY THAT THE INDIVIDUAL DID NOT ACT, AND WHICH HAS BEEN CREATED, ALTERED, OR PRODUCED BY DIGITIZATION OR COMPUTER-GENERATED MEANS. "DIGITAL DEPICTION" DOES NOT INCLUDE HANDMADE DRAWINGS OR CARTOONS.

(f) "DIGITIZATION" MEANS CREATING OR ALTERING VISUAL OR PRINTED MATTER IN A REALISTIC MANNER USING IMAGES OF ANOTHER PERSON OR COMPUTER-GENERATED IMAGES, REGARDLESS OF WHETHER THE CREATION OR ALTERATION IS ACCOMPLISHED MANUALLY OR THROUGH AN AUTOMATED PROCESS. "DIGITIZATION" INCLUDES, BUT IS NOT LIMITED TO, CREATION OR ALTERATION OF VISUAL OR PRINTED MATTER USING GENERATIVE AI SOFTWARE.

(g) "DISCLOSE" MEANS TO TRANSFER, PUBLISH, DISTRIBUTE, OR MAKE ACCESSIBLE.

(h) "ELECTRONIC MEDIA" MEANS AN ELECTRONIC MEDIUM, INCLUDING AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA NETWORK, THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW USER-GENERATED CONTENT, INCLUDING, BUT NOT LIMITED TO, VIDEOS, STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS OR CHATS, LIVE BLOGS OR LIVE STREAMS, PODCASTS, INSTANT MESSAGES, DIRECT MESSAGES, ELECTRONIC MAIL, OR INTERNET WEBSITE PROFILES.

(i) "GENERATIVE AI" MEANS A SUBSET OF ARTIFICIAL INTELLIGENCE THAT INVOLVES USING ALGORITHMS AND MODELS TO GENERATE OR CREATE NEW AND ORIGINAL CONTENT.

(j) "IMAGE EDITING SOFTWARE" MEANS A COMPUTER PROGRAM THAT ALLOWS EDITING, MODIFICATION, OR ALTERATION OF AN IMAGE OR VIDEO.

(k) "INTIMATE DIGITAL DEPICTION" MEANS A DIGITAL DEPICTION THAT DEPICTS:

(I) THE INTIMATE PARTS OF A DEPICTED INDIVIDUAL; OR

(II) A DEPICTED INDIVIDUAL ENGAGING IN SEXUAL ACTS.

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

(m) "PRIVATE INTIMATE IMAGE" MEANS A PHOTOGRAPH, FILM, VIDEOTAPE, RECORDING, DIGITAL FILE, OR OTHER REPRODUCTION THAT DEPICTS THE PRIVATE INTIMATE PARTS OF A DEPICTED INDIVIDUAL OR A DEPICTED INDIVIDUAL ENGAGING IN SEXUAL ACTS, REGARDLESS OF WHETHER OR NOT INTIMATE PARTS ARE VISIBLE IN THE IMAGE.

(n) "PRIVATE INTIMATE PARTS" MEANS EXTERNAL GENITALIA OR THE PERINEUM OR THE ANUS OR BUTTOCKS OR THE PUBES OF A PERSON OR THE BREAST OF A FEMALE.

SECTION 7. In Colorado Revised Statutes, 24-4.1-302, **amend** (1)(mm) as follows:

24-4.1-302. Definitions. As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(1) "Crime" means any of the following offenses, acts, and violations as defined by the statutes of the state of Colorado, whether committed by an adult or a juvenile:

(mm) ~~Posting a private image~~ DISCLOSING A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION for harassment in violation of section 18-7-107 or ~~posting a private image~~ DISCLOSING A PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION for pecuniary gain in

violation of section 18-7-108;

SECTION 8. In Colorado Revised Statutes, 24-33.5-1803, **amend** (3)(m) as follows:

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

(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~~ PRIVATE INTIMATE IMAGE OR INTIMATE DIGITAL DEPICTION 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 OR DEPICTION within seventy-two hours after receiving the image OR DEPICTION; and

SECTION 9. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) Sections 2, 3, 4, 5, 6, 7, and 8 of this act apply to offenses committed on or after the applicable effective date of this act.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO