

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0184.01 Michael Dohr x4347

HOUSE BILL 17-1302

HOUSE SPONSORSHIP

Lee,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT
101 **CONCERNING MATTERS RELATED TO SEXUALLY EXPLICIT IMAGES OF**
102 **A JUVENILE.**

Bill Summary

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

The bill creates the crime of 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 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

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.

- ! 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.** In Colorado Revised Statutes, 18-6-403, **add**

3 (2)(b.5), (3.5), and (7) as follows:

4 **18-6-403. Sexual exploitation of a child - legislative declaration**

5 - **definitions.** (2) As used in this section, unless the context otherwise
6 requires:

7 (b.5) "DISCLOSE PUBLICLY" MEANS TO DISTRIBUTE, DISPLAY, OR
8 PUBLISH WITH THE INTENT TO MAKE INFORMATION AVAILABLE TO THE
9 PUBLIC OR TO ENOUGH PEOPLE THAT A REASONABLE PERSON WOULD
10 REGARD THE INFORMATION AS LIKELY TO BECOME PUBLIC KNOWLEDGE.

11 (3.5) (a) IT IS NOT A VIOLATION OF SUBSECTION (3) OF THIS

1 SECTION IF THE PERSON IS UNDER EIGHTEEN YEARS OF AGE AND THE CHILD
2 IS AT LEAST FOURTEEN YEARS OF AGE OR LESS THAN FOUR YEARS
3 YOUNGER THAN THE PERSON, UNLESS THE PERSON:

4 (I) KNOWINGLY DISCLOSES PUBLICLY ANY SEXUALLY
5 EXPLOITATIVE MATERIAL THAT DEPICTS THE CHILD; OR

6 (II) KNOWINGLY DISTRIBUTES, DISPLAYS, OR PUBLISHES, WITH THE
7 INTENT TO OBTAIN A PECUNIARY BENEFIT FROM ANYONE, SEXUALLY
8 EXPLOITATIVE MATERIAL THAT DEPICTS THE CHILD.

9 (b) IT IS NOT A VIOLATION OF SUBSECTION (3) OF THIS SECTION IF
10 A PERSON UNDER EIGHTEEN YEARS OF AGE IS COERCED, INTIMIDATED, OR
11 HARASSED INTO DISCLOSING PUBLICLY ANY SEXUALLY EXPLOITATIVE
12 MATERIAL THAT DEPICTS A CHILD.

13 (7) A JUVENILE WHOSE CONDUCT SATISFIES THE ELEMENTS OF
14 SECTION 18-7-109 IS NOT SUBJECT TO PROSECUTION FOR A VIOLATION OF
15 THIS SECTION FOR THE SAME ELECTRONIC OR DIGITAL PHOTOGRAPH,
16 VIDEO, OR IMAGE ARISING OUT OF THE SAME CRIMINAL EPISODE.

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

19 **18-7-109. Posting or possessing private images by a juvenile**
20 - **definitions.** (1) A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE
21 COMMITS THE OFFENSE OF POSTING A PRIVATE IMAGE BY A JUVENILE IF HE
22 OR SHE, THROUGH DIGITAL OR ELECTRONIC MEANS:

23 (a) KNOWINGLY DISTRIBUTES, DISPLAYS, OR PUBLISHES TO THE
24 VIEW OF ANOTHER PERSON A SEXUALLY EXPLICIT IMAGE OF A JUVENILE
25 OTHER THAN HIMSELF OR HERSELF:

26 (I) WITHOUT THE DEPICTED JUVENILE'S CONSENT; OR

27 (II) WHEN THE RECIPIENT DID NOT SOLICIT OR REQUEST TO BE

1 SUPPLIED WITH THE IMAGE OR IMAGES AND SUFFERED EMOTIONAL
2 DISTRESS; OR

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

6 (b) KNOWINGLY DISTRIBUTES, DISPLAYS, OR PUBLISHES, TO THE
7 VIEW OF MORE THAN ONE PERSON AT A TIME, A SEXUALLY EXPLICIT IMAGE
8 OF HIMSELF OR HERSELF.

9 (2)(a) A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE COMMITS
10 THE OFFENSE OF POSSESSING A PRIVATE IMAGE BY A JUVENILE IF HE OR
11 SHE, THROUGH DIGITAL OR ELECTRONIC MEANS, KNOWINGLY POSSESSES
12 A SEXUALLY EXPLICIT IMAGE OF ANOTHER JUVENILE WITHOUT THE
13 DEPICTED JUVENILE'S CONSENT; EXCEPT THAT IT IS NOT A VIOLATION OF
14 THIS SUBSECTION (2) IF THE PERSON TOOK REASONABLE STEPS TO EITHER
15 DESTROY OR DELETE THE IMAGE WITHIN SEVENTY-TWO HOURS AFTER
16 RECEIVING THE IMAGE OR IMAGES OR REPORTED THE RECEIPT OF SUCH
17 IMAGE OR IMAGES TO LAW ENFORCEMENT OR A SCHOOL OFFICIAL WITHIN
18 SEVENTY-TWO HOURS AFTER RECEIVING THE IMAGE OR IMAGES.

19 (b) A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE COMMITS
20 THE OFFENSE OF POSSESSING A PRIVATE IMAGE BY A JUVENILE IF HE OR
21 SHE, THROUGH DIGITAL OR ELECTRONIC MEANS, KNOWINGLY POSSESSES
22 A SEXUALLY EXPLICIT IMAGE OF ANOTHER JUVENILE IF THE DEPICTED
23 JUVENILE RESCINDED HIS OR HER CONSENT FOR THE PERSON TO POSSESS
24 THE IMAGE BY REQUESTING THAT THE IMAGE BE DELETED OR DESTROYED
25 AND THE PERSON FAILED TO DELETE OR DESTROY THE IMAGE WITHIN
26 SEVENTY-TWO HOURS OF THE DEPICTED JUVENILE'S REQUEST THAT THE
27 IMAGE BE DELETED OR DESTROYED.

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

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

6 (II) THE JUVENILE HAD PREVIOUSLY POSTED A PRIVATE IMAGE AND
7 COMPLETED A DIVERSION PROGRAM FOR THE ACT OR HAD A PRIOR
8 ADJUDICATION FOR POSTING A PRIVATE IMAGE BY A JUVENILE; OR

12 (b) POSSESSING A PRIVATE IMAGE BY A JUVENILE IS A PETTY
13 OFFENSE; EXCEPT THAT IT IS A CLASS 2 MISDEMEANOR IF THE UNSOLICITED
14 POSSESSOR OF THE IMAGE KNOWINGLY KEPT OR SAVED THREE OR MORE
15 SEPARATE IMAGES THAT DEPICTED SEPARATE AND DISTINCT JUVENILES.

16 (c) THE COURT MAY ORDER THE PERSON TO BE ASSESSED FOR
17 SUITABILITY TO PARTICIPATE IN RESTORATIVE JUSTICE PRACTICES AFTER
18 THE VICTIM HAS BEEN CONSULTED, ADVISED, AND INVITED TO
19 PARTICIPATE, IN ADDITION TO ANY OTHER SENTENCE THE COURT MAY
20 IMPOSE. THE COURT CANNOT CONSIDER THE VICTIM'S UNWILLINGNESS TO
21 PARTICIPATE IN RESTORATIVE JUSTICE PRACTICES WHEN DETERMINING
22 OTHER SENTENCING OPTIONS

23 (d) EACH DISTRICT ATTORNEY IS ENCOURAGED TO DEVELOP A
24 DIVERSION PROGRAM FOR JUVENILES WHO VIOLATE THE PROVISIONS OF
25 THIS SECTION AND OFFER THE PROGRAM TO A JUVENILE WHO IS CHARGED
26 WITH A VIOLATION OF THIS SECTION FOR THE FIRST TIME. IF THE CREATION
27 OF A SPECIFIC DIVERSION PROGRAM IS NOT PRACTICAL FOR THE

1 JURISDICTION, THE DISTRICT ATTORNEY IS ENCOURAGED TO OFFER THE
2 JUVENILE AN OPPORTUNITY FOR EDUCATION AND DIVERSION CONSISTENT
3 WITH WHAT IS AVAILABLE IN THE JURISDICTION.

4 (4) IT IS NOT A VIOLATION OF SUBSECTION (2) OF THIS SECTION IF
5 A PERSON UNDER EIGHTEEN YEARS OF AGE IS COERCED, INTIMIDATED, OR
6 HARASSED INTO DISTRIBUTING, DISPLAYING, PUBLISHING, OR POSSESSING
7 A SEXUALLY EXPLICIT IMAGE OF A JUVENILE.

8 (5) AS USED IN THIS SECTION:

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

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

16 **24-33.5-1803. School safety resource center - created - duties**
17 **- repeal.** (3) The center has the following duties:

18 (k) To provide suggestions for school resource officer training to
19 the peace officers standards and training board, pursuant to section
20 24-31-312; **and**

21 (l) To provide materials and training as described in section
22 24-33.5-1809 to personnel in school districts and charter schools, parents,
23 and students regarding the awareness and prevention of child sexual
24 abuse and assault; **AND**

25 (m) BY JUNE 1, 2018, TO MAKE AVAILABLE MODEL LESSONS THAT
26 CONFORM WITH SECTION 22-1-128, REGARDING THE DANGERS AND
27 CONSEQUENCES OF SEXTING FOR SCHOOL DISTRICTS TO USE, WHICH

1 CURRICULUM MUST INCLUDE INFORMATION INFORMING STUDENTS THAT,
2 IF A STUDENT RECEIVES A SEXUALLY EXPLICIT IMAGE OR IMAGES IN
3 VIOLATION OF SECTION 18-7-109, THE STUDENT CAN AVOID CRIMINAL
4 RESPONSIBILITY BY TAKING REASONABLE STEPS TO EITHER DESTROY OR
5 DELETE OR REPORT THE RECEIPT OF THE IMAGE OR IMAGES WITHIN
6 SEVENTY-TWO HOURS AFTER RECEIVING THE IMAGE OR IMAGES.

7 **SECTION 4. Effective date - applicability.** This act takes effect
8 July 1, 2017, and applies to offenses committed on or after said date.

9 **SECTION 5. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.